

**AGREEMENT FOR ENERGY CONSERVATION AND DEMAND
SIDE MANAGEMENT SERVICES**

BETWEEN

THE UNITED STATES OF AMERICA

AND

_____ UTILITY COMPANY

This Agreement for implementation of Energy Conservation Measures (ECMs) is entered into this ____ day of _____, 199_, by and between _____ Utility Company (Utility) and the United States of America (Government), represented by the Contracting Officer executing this Agreement. The signatories to this Agreement will be sometimes collectively referred to as the "Parties" and individually as a "Party." This Agreement (when signed by the Parties), any Task Orders (T.O.) executed pursuant to this Agreement, and any other associated agreements shall constitute the entire Contract between the Parties with respect to a particular ECM. A term or condition contained in this Agreement may be amended at any time by mutual written agreement of the Parties. However, termination, modification, or expiration of a term or condition shall not retroactively affect T.O.s previously entered into under this Agreement.

The Parties agree to the following principles, concepts and procedures:

GENERAL CONDITIONS

GC.1 Purpose. The Government desires assistance in accomplishing ECMs at _____ Installation ("Installation") (may substitute "at all Installations within the Utility Company's service area, to include [list the installations by name] ("hereinafter, "Installations")). The purpose of this Agreement is to facilitate the implementation of ECMs through T.O.s. This Agreement sets forth the terms and conditions under which subsequent T.O.s may be entered into between the Parties.

GC.2 Definitions. Terms used in this Agreement shall have the following definitions:

Acceptance - Written acceptance by the authorized representative of the Government of an individual Phase or completed ECM pursuant to a T.O.

Carrying Charge - For the purpose of this Agreement, Carrying Charge shall be an interest rate applied to all ECM Costs incurred by the Utility until permanent financing is put in place or the Government pays the ECM Cost. Accrued interest shall be considered an ECM Cost.

Contracting Officer - A Government official authorized to enter into, administer, and/or terminate a contract on behalf of the Government, and who is authorized to make related determinations and findings within the limits established pursuant to Government regulations.

Contracting Officer's Representative (COR) or Contracting Officer's Technical Representative (COTR) - A local or project site representative of the Contracting Officer delegated specific limited authority, as set forth in a formal delegation letter signed by the Contracting Officer, for a given T.O.

Energy Conservation Measure (ECM) - One or more ECPs completed, or to be completed, under a T.O. including the feasibility study, engineering and design, operation and maintenance, and/or implementation of one or more ECPs, which include, but are not limited to, energy and water conservation, energy efficient maintenance, energy management services, facilities alterations, and installation and maintenance of energy saving devices and technologies. ECMs should have a positive net present value OVER A PERIOD of 10 years or less, as required by Title 10 U.S.C., Section 2865.

Energy Conservation Measure Cost (ECM Cost) - The total cost may include, but is not limited to the Work, finance charges and overhead and profit, for the feasibility study, engineering and design, implementation and operation and maintenance of an ECM, less any financial incentive or rebates, if provided by the Utility. Payment for completed ECMs shall be calculated based upon the ECM Cost.

Energy Conservation Project (ECP) - A specific project intended and designed to provide any of the following: energy savings, demand reduction, efficiency improvements and water conservation. ECPs are described in more detail in Section GC 17.

Occupied Period - Hours during which a facility or building is occupied or used in the normal course of business.

Quality Assurance Evaluator (QAE) - A functionally qualified person who evaluates or inspects the contractor's performance of service in accordance with the quality assurance surveillance plan written specifically for the contracted service to be evaluated. The QAE performs technical monitoring of contractor actions, is responsible for requesting products and services through a government contract, and manages the day-to-day tasks of the contract.

Quality Control - A management function whereby control of quality of raw or produced material is exercised for the purpose of preventing production of defective material. For purposes of this Agreement, quality control is those actions taken by a contractor to control the production of outputs to ensure that they conform to the contract requirements.

Possession - When the Government takes beneficial occupancy of an ECP ("Possession of an ECP") or an ECM ("Possession of an ECM").

Subcontractor - Any corporation, partnership or individual hired directly by the Utility to perform a service or provide a product under this Agreement and T.O.s resulting from this Agreement.

Task Order (T.O.) - A binding contractual action entered into under this Agreement for the feasibility study, engineering and design, implementation, and/or operation and maintenance of, or any activity related to an ECM. (A T.O. can also be identified as a Delivery Order (D.O.).)

Termination Schedule - A schedule developed for each financed ECM specifying the lump sum payment necessary, at any time during the contract period following the initial Government payment, for the complete repayment of the ECM Costs, including any finance costs accrued to that point.

Work - All labor, materials, tools, equipment, services, transportation and/or other items required for the completion of the ECM.

GC.3 Term. This Agreement shall have a term of ____ years. The term may not exceed ten (10) years. This Agreement may be terminated in its entirety by either Party upon thirty (30) days written notice to the other Party. Thereafter, no new T.O.s

shall be entered into under this Agreement. Termination, modification or expiration of this Agreement shall not affect in any way T.O.s previously entered into under this Agreement. This Agreement shall be effective from the date it is signed by both Parties.

In the event the Parties sign this Agreement on different dates, then the effective date shall be the latter of the two dates.

GC.4 Services to be Provided by the Utility. The Utility shall provide preliminary audits, feasibility studies, engineering and design studies, and all initial capital, labor, material, supplies and equipment to identify, implement, operate or maintain ECMs in accordance with T.O.s entered into pursuant to this Agreement. These services may be ordered individually, as a group or in any combination under a single T.O.

GC.5 Information. Subject to national security constraints and unless otherwise prohibited by law, the Government shall provide the Utility with any information requested by the Utility to comply with regulatory commission requirements.

GC.6 Relationship of Parties. The Government acknowledges that the Utility and/or its Subcontractors shall each perform their work as independent contractors and the Government shall have no direct control and supervision of Utility or Subcontractor employees, who shall not be considered employees or agents of the Government for any purpose. The Utility, in negotiations with its Subcontractors, will ensure that the Government will be the direct beneficiary of any and all product and service guarantees and warranties.

GC.7 Subcontractor Selection. The Utility may perform some or all of the Work under a Task Order itself or through Subcontractors. When practical, the Utility shall competitively select Subcontractors for the purpose of determining the reasonableness of Subcontractor prices. When competition is not practical, price reasonableness may be determined by comparing proposed prices with those obtained for the same or similar work, prices published in independent cost guides, published in competitive price lists or developed by independent sources.

Subcontractor selection shall be based on cost, experience, past performance, reliability, and such other factors as the Utility may deem appropriate, as long as such factors are practicably related to the Government's minimum needs. In no event may such services be provided by Subcontractors listed as excluded from Federal Procurement Programs, which list is maintained by GSA pursuant to 48 C.F.R. 9.404. For any T.O., the Utility may submit the names of proposed Subcontractors to the Government Contracting Officer to ensure they are not excluded pursuant to 48 C.F.R. 9.404.

GC.8 Authority of Contracting Officer. The Government 's Contracting Officer shall be the only Government official authorized to enter into and/or modify a T.O. entered into under this Agreement.

GC.9 Ownership of Work Product. The Government may elect not to use the Utility to implement the ECM. If the Government so elects, it will pay for any accepted work, including any equipment, completed studies, and engineering and design work. Title to any work done by the Utility for the Government under a T.O. shall become the property of the Government at the time of Acceptance of the Work.

GC.10 Responsibility for Operations and Maintenance. The operation and maintenance of the equipment installed pursuant to any T.O. executed under this Agreement shall be the responsibility of the Utility during the payment term unless otherwise provided in the T.O.

GC.11 Government Projects. The Government shall not be restricted from implementing equipment installation, construction projects and ECMs independent of work performed under this Agreement, including installing new energy conservation equipment, removing existing energy consuming equipment, or adding new energy consuming equipment. The Government will notify the Utility prior to implementing projects that may affect ECMs under this Agreement.

GC.12 ECM Performance Verification. Each T.O. shall include procedures that are mutually agreeable to the parties to verify ECM performance following installation.

GC.13 Emission Credits. All on site Government emission credits earned by virtue of T.O.s entered into hereunder shall be the property of the Government.

GC.14 Order of Precedence. The Government and Utility shall determine in this Agreement or subsequent T.O.s the precedence given to the T.O., this Agreement or other documents, exhibits and attachments in the event an inconsistency arises among these documents.

GC.15 Preliminary Audits. At the request of the Government or the Utility and upon the mutual consent of both parties, the Utility will conduct, at no cost to the Government, an audit consisting of an on-site building investigation and evaluation for a mutually agreeable facility to determine if any significant energy conservation opportunities exist and whether further detailed energy analysis is warranted. Government buildings/facilities

plans will be made available upon request. Requests for plans shall be made to the COR at least fifteen (15) calendar days in advance of the audit start date. The Utility will provide a written report of the audit to the Government, normally at no cost. The Utility will utilize historical building data, utility data, and information obtained by the Utility to identify ECPs. Using this information, the Utility will generate a prioritized list of recommendations, in sequence of implementation, that are life-cycle cost effective and can be implemented in the facility being audited. The preliminary audit, to the extent applicable, shall include but not be limited to the following information:

- (a) Preliminary estimated energy and water savings,
- (b) Preliminary estimated cost savings, including reduced maintenance costs,
- (c) Current utility rates,
- (d) Preliminary retrofit cost,
- (e) Utility financial incentive/rebate, if any,
- (f) Description of existing equipment,
- (g) Description of the proposed retrofit equipment,
- (h) Overview of the general environmental impact and potential hazardous wastes identified through existing facility records, if any.

GC.16 ECM Proposal. After reviewing the preliminary audit, the Government may request a proposal from the Utility, for the evaluation of an ECM. The Utility shall submit an ECM proposal setting forth a prioritized list of the recommended ECPs within the ECM, a preliminary estimate of the cost to implement each ECP, the total costs for implementing the ECM (including estimated feasibility study, engineering and design, and implementation costs), and estimated cost savings.

GC.17 Energy Conservation Projects. The Utility may propose ECMs which include one or more ECPs. ECPs that substitute one energy type for another (e.g., natural gas in lieu of electricity) will not be considered for implementation unless a net overall energy or cost reduction can be demonstrated, based on current market energy prices. Potential ECPs include, but are not limited to:

- (a) Interior and exterior lighting replacement,
- (b) Transformer replacement,
- (c) Lighting control improvements,
- (d) Motor replacement with high efficiency motor,
- (e) Construction of alternative generation or cogeneration facilities,
- (f) Boiler control improvements,
- (g) Packaged air conditioning unit replacement,

- (h) Cooling tower retrofit,
- (i) Economizer installation,
- (j) Energy management control system (EMCS) replacement/alteration,
- (k) Occupancy sensors,
- (l) LED exit sign installation,
- (m) Fans and pump replacement or impeller trimming,
- (n) Chiller retrofit,
- (o) Upgrade of natural gas-fired boilers with new controls (low NOX burners),
- (p) Solar domestic hot water system,
- (q) Solar air preheating system,
- (r) Steam trap maintenance and replacement,
- (s) Insulation installation,
- (t) Variable speed drive utilization,
- (u) Weatherization,
- (v) Window replacement,
- (w) Window coverings and awnings,
- (y) Reflective solar window tinting,
- (z) Fuel cell installation,
- (aa) Photovoltaic system installation,
- (bb) Faucet replacement (infrared sensor),
- (cc) Replacement of air conditioning & heating unit with a heat pump,
- (dd) Addition of liquid refrigerant pump to a reciprocating air conditioning unit,
- (ee) High efficiency refrigerator replacement,
- (ff) High efficiency window air conditioner replacement,
- a. Water conservation device installation (e.g., flow restrictors, low flow flush valves, waterless urinals, horizontal axis washing machines),
- (hh) Installation, maintenance and operation of power quality and reliability measures including UPS systems, back-up generators, emergency generators, etc.,
- (ii) Fuel switching technology,
- (jj) Infrared heating system,
- (kk) Heat pipe dehumidification,
- (ll) Flash bake commercial cooking,
- (mm) Thermal energy storage system,
- (nn) Operation, maintenance, modification and/or extension of utility distribution and collection system,
- (oo) Training that will result in reduced energy costs,
- (pp) Power factor correction measures and equipment,
- (qq) Installation, maintenance and operation of standby propane facility,
- (rr) Installation, maintenance and operation of gas distribution system and associated

- equipment,
- (ss) Water distribution system leak detection, and cost effective repair,
 - (tt) Any other ECP that is cost effective using the then current DoD prescribed procedures and standards, and which encourages the use of renewable energy, reduces the Government's energy consumption or energy demand or results in other energy infrastructure improvements.

GC.17.1 ECM Restrictions. The Government shall not consider ECMs which include:

- (a) Measures which could jeopardize existing agency missions,
- (b) Measures which could jeopardize the operation of, or environmental conditions of, computers or computer rooms,
- (c) Unless waived by the Contracting Officer, measures that would result in increased water consumption (e.g., once-through fresh water cooling systems),
- (d) Measures which would violate any federal, state, or local laws or regulations,
- (e) Measures which degrade performance or reliability of existing Government equipment,
- (f) Unless waived by the Contracting Officer, measures that would reduce energy capacity currently reserved for future growth, mobilization needs, safety, emergency back-up, etc.,
- (g) Measures that violate the then current versions of the National Electric Code, the National Electric Safety Code, the Uniform Building Code or the Uniform Mechanical Code,
- (h) Utility financed measures that do not result in savings in the base utility expenditures sufficient to cover the project costs.

GC.17.2 Facility Performance Requirements of ECMs. ECMs proposed by the Utility shall conform to the following facility performance standards:

- (a) Lighting levels shall meet the minimum requirements of the then current Illuminating Engineering Society (IES) Lighting Handbook,
- (b) Heating and cooling temperature levels shall meet Government design standards,
- (c) ECMs shall permit flexible operation of energy systems for changes in occupancy levels and scheduling of facilities. In proposing an ECM, the Utility may assume the building function will remain constant unless otherwise indicated by the Government.

GC.18 Task Orders. Following the evaluation of the ECM proposal, the Government may elect to execute a T.O. with the Utility for the evaluation, implementation or operation and maintenance of the ECM. If requested by the Government, the Utility will provide or obtain financing on terms at least as good as those available to customers in a comparable service class, or with a comparable risk profile, considering the nature of the security interests to be granted, if any, and other conditions affecting the cost of financing.

The T.O. may have five phases; Audit (when applicable), Feasibility Study Phase, Engineering and Design Phase, Implementation Phase and Operation and Maintenance Phase. Because the extent of all the work is unlikely to be known at the time the T.O. is entered into, these phases shall be line items under the T.O., and shall be issued with an estimated Termination Schedule at the time the T.O. is executed. However, work will not commence on a particular phase unless and until a statement of work and a price for that phase have been agreed upon.

Following completion and Acceptance of the Feasibility or Engineering and Design Phases, the Government may elect to (i) pay the ECM Cost for each completed Phase within thirty (30) calendar days of being invoiced, or (ii) defer payments for that Phase until the end of the next Phase at which time the Government shall pay the ECM Cost for each completed Phase within thirty (30) calendar days of invoice, or (iii) include such amounts in the ECM Cost, if the Government elects to proceed with the Implementation Phase. If the Government elects not to proceed with the next Phase, it shall pay the Utility the ECM Cost for the prior completed Phases, plus a Carrying Charge as negotiated by the parties in the T.O. A decision to proceed or not to proceed with the next Phase must be made within sixty (60) days of receipt of a written request from the Utility. Only the Contracting Officer shall be authorized to exercise the Government's option to proceed to the next Phase, and such exercise shall be provided in writing within sixty (60) days of receipt of a statement of work and price.

Government finance payments for the Implementation Phase shall begin on the date of the first Utility bill following the 30 day period after the Government takes possession of all or part of the ECM as provided in FAR, Part 36, Subpart 36.511, and a satisfactory ECM Performance Verification as defined in the T.O. and pursuant to Section GC.12 of this Agreement.

The timing and amount of Government payments of appropriated funds for the Operations and Maintenance Phase shall be determined in the T.O.

The T.O. shall be subject to any legally required Federal Acquisition Regulations. Because services may vary widely from one T.O. to another, the Contracting Officer will insure that the appropriate FAR clauses from the FAR matrix found at FAR, Part 52, Subpart 52.301, are incorporated into any contract entered into by the parties for services provided by the Utility under the T.O.

GC.19 ECM Feasibility Study Phase. The Task Order shall set forth a scope of work for a detailed study to determine whether particular ECMs proposed by the Utility are feasible (the "Feasibility Study"). The Task Order shall specify the terms for the completion of the Feasibility Study and establish a price for the Feasibility Study. The Government will pay the Utility the agreed-upon price for the Feasibility Study in accordance with the T.O. If the Government elects to proceed with the Engineering and Design Phase as set forth below in Paragraph GC.20, the cost of the Feasibility Study shall be rolled into the Engineering and Design Phase ECM Cost. The Feasibility Study will provide, at a minimum, the following information:

Technical Factors:

- (a) Audits of energy consumption of existing equipment and facilities, including estimated energy and cost savings, and proposed retrofit costs and financial incentives/rebates,
- (b) Water audits of supply and utilization facilities, if specified by the Government,
- (c) Equipment to be removed or replaced, and new equipment to be installed,
- (d) Specifications, including catalog cuts, for new equipment. Specifications should include (as applicable): power rating, estimated energy consumption, input/output, power ratio, lighting level and estimated equipment life,
- (e) Operation and maintenance procedures required after ECM implementation (if significantly altered by the ECM),
- (f) Training that will be provided for the proper operation and maintenance of ECPs, including details on how many hours of training will be provided and how many people will be trained,
- (g) Electrical and mechanical sketches for all ECPs that involve changes to existing systems, (sketches will not be required for ECPs involving only component replacement),
- (h) Government support (e.g. minor changes in Government operations, movement of

- (i) equipment, etc.) required during implementation of the ECM, Utility interruptions needed for implementation of each ECP by type (gas, electricity, water, etc.), extent (room number, entire building, etc.) and duration,
- (j) Identification of potential adverse environmental effects,
- (k) Any documentation required to comply with applicable environmental laws,
- (l) The estimated construction time in calendar days, showing significant milestones,
- (m) The estimated annual energy savings in kilowatt-hour and kilowatt demand of electricity, decatherms of natural gas and cubic feet of water for the life of each ECP, including all assumptions and detailed calculations showing how savings were determined,
- (n) The estimated equipment life for each ECP,
- (o) A proposed method to verify energy savings at the time of ECM Acceptance which shall be subject to Government approval,
- (p) Documentation that each proposed ECP has been recommended and selected without regard to fuel source;

Cost Factors:

- (q) Estimated annual operation costs (e.g. increased use of alternate fuel sources, replacement filters) and increased maintenance costs (e.g. relamping with a higher cost product, etc.),
- (r) Total estimated ECM Cost to the Government,
- (s) Estimated breakdown of financial incentives/rebates for each ECM (if any) in a format mutually agreeable to the Parties,
- (t) Estimated Cost-of-Money Rate (percent),
- (u) Estimated annual energy and operations and maintenance cost savings including details on estimated annual savings for each area of savings, such as lighting, controls, motors and transformers,
- (v) Estimated breakdown of implementation costs for each area of energy savings, such as lighting, controls, motors and transformers,
- (w) Estimated costs for replacing existing components and installing new components/systems shall be listed separately,
- (x) Estimated unit costs for major components and systems,
- (y) Estimated Life Cycle Cost Analysis prepared in accordance with the then current edition of the Energy Prices and Discount Factors for Life-Cycle-Cost Analysis, published as the annual supplement to the National Institute of Standards and Technology (NIST) Handbook 135.

GC.20 ECM Engineering and Design Phase. After evaluation and Acceptance of the feasibility study, the Government may elect to proceed with the Engineering and Design Phase. Prior to proceeding, the Parties shall agree upon a statement of work for all engineering and design services necessary for the implementation of a particular ECM, a time frame for completion of the work, and a price or cost cap for engineering and design work for the ECM. If the Government elects to proceed with the Implementation Phase as set forth below, the cost of the engineering and design work shall be rolled into the total ECM Cost. This T.O. shall include an estimated amortization schedule for the ECM.

GC.20.1 Verification of Floor Plans. The Utility will verify the accuracy of any floor plans provided by the Government.

GC.20.2 Government Design Review. Task Orders shall permit adequate time for Government review of engineering and design work at 35% and 95% design completion, or at any other stage, as negotiated in the T.O.

GC.20.3 Site Plans. If proposed ECMs require installation outside existing buildings or structures, a site plan showing recommended siting of ECMs shall be prepared for Government review and approval. Site plans shall be submitted as part of the Utility's proposal. It is recommended that the Utility propose alternate sites for review in case the primary site is unavailable.

GC.20.4 ECM Implementation Proposal. Upon completion and Acceptance of the Engineering and Design Phase, the Utility will submit to the Government an ECM implementation proposal (the "Proposal"). If requested by the Contracting Officer, the Utility will be required to present a briefing to the Government explaining the Proposal. At a minimum, the Proposal shall include all pertinent technical and cost factors listed in Paragraph GC.19 of this Agreement plus a copy of subcontractor(s) bid(s). The Proposal shall also set forth negotiated pricing criteria that describes the method for determining the prices to be paid to the Utility for supplies or services. The Government shall evaluate the Proposal for technical soundness and price reasonableness.

If the Government elects to proceed with the ECM, the Utility and Government shall agree upon a complete scope of work with specifications, time for performance, ECM Cost, source and cost of capital or financing, payment terms, amortization schedule and final Termination Schedule. If the Contracting Officer deems it appropriate, the Utility will provide acceptable performance and payment bonds.

GC.21 ECM Implementation Phase. The Utility shall perform work in accordance with the T.O. The following provisions shall apply to ECM implementation work performed pursuant to T.O.s executed under this Agreement, unless exceptions are provided in the T.O.

GC.21.1 Pre-Work Requirements. Prior to commencing ECM implementation Work on a T.O., the Utility shall meet with the Contracting Officer or COR at a time mutually agreeable to the Utility and the Contracting Officer, to discuss and develop mutual understandings relative to safety, scheduling, performance, obtaining necessary permits, and administration of the Implementation Phase. Prior to commencement of on-site work, written approval of the following shall be obtained from the Contracting Officer by the Utility:

- (a) Utility's proposed implementation schedule indicating the installation period and time required for delivery of equipment,
- (b) Evidence that the required insurance has been obtained.

GC.21.2 Interruptions. The Utility shall arrange on-site work to minimize interference with normal Government operations. All interruptions shall be made outside occupied periods whenever possible and coordinated with the Contracting Officer or COR. The Utility shall endeavor to keep the duration of utility interruptions to a minimum. Requests for utility outages shall be submitted for approval, in writing, as specified in the T.O. The request shall include the approximate duration, date, time and reason for the interruption. Utility interruptions include, but are not necessarily limited to, the following systems:

- (a) Electrical,
- (b) Natural Gas,
- (c) Sewer,
- (d) Steam,
- (e) Water,
- (f) Telephone,
- (g) Computer cables.

GC.21.3 Construction Documentation. The Utility shall provide construction drawings and specifications, certified by a registered engineer or architect, as applicable, to ensure compliance with all applicable federal, state and local codes and regulations as required by individual T.O.s.

GC.21.4 Standardization of Materials. All materials proposed to be installed pursuant to this Agreement shall be readily, commercially available, and as similar in form, fit and function to each other as is practicable to allow efficient provisioning of replacement parts.

GC.21.5 Water Conservation Measures. The Utility will consider water conservation in all ECMs. The Utility will obtain rebates from the local water utility if available. Rebates, if any, shall be applied to the cost of the project.

GC.21.6 Operation and Maintenance Manuals. At the time of Government Acceptance of a completed ECM, the Utility shall furnish, for the equipment specified, operation and maintenance manuals and recommended spare parts lists identifying components adequate for competitive supply procurement for operation and maintenance of ECM equipment. The operation and maintenance manuals shall include maintenance schedules for all equipment. The scope of each manual shall be agreed upon in the T.O.

GC.21.7 Government Personnel Training for ECPs. The Utility shall train Government personnel, as required, to operate, maintain, and repair ECM equipment and systems. The date and time of training shall normally be coordinated with the Contracting Officer or COR prior to Acceptance of the ECM. The cost for such training shall be included in the ECM Cost.

GC.21.8 As-Built Drawings. Within forty-five (45) calendar days after Government Acceptance of each installed ECM, the Utility shall submit as-built drawings to the Contracting Officer or COR. Drawings will not be required for component replacement. Drawings shall include at a minimum:

- (a) The installation (i.e., form, fit, and attachment details) of the interface between ECM equipment and existing Government equipment,
- (b) The location and rating of installed equipment on building floor plans.

GC.21.9 Installation. The Utility will arrange for the installation of approved ECMs and construction oversight and verify that the designed and specified energy efficiency equipment and/or system modifications are properly supplied or installed in a manner that will give the intended long term demand and energy reductions. The Utility will select Subcontractors in accordance with Paragraph GC.7 above.

GC.22 Operation and Maintenance Phase. The Government may elect to have the Utility perform the operation and maintenance on part or all of the ECM. Before

exercising its option for this Phase, the Government and Utility shall agree upon a complete scope of work with specifications, schedules, warranties and cost.

GC.23 Required FAR Clauses. The following FAR clauses are required to be included in any contract with the Government:

- 52.203-3 Gratuities,
- 52.203-5 Covenant Against Contingent Fees,
- 52.203-7 Anti-Kickback Procedures,
- 52.222-3 Convict Labor,
- 52.222-25 Affirmative Action Compliance,
- 52.222-26 Equal Opportunity,
- 52.223-6 Drug Free Workplace,
- 52.233-1 Disputes.

Warranties and Remedies

WR.1 Warranties. The Utility shall pass through to the Government all warranties on equipment installed pursuant to a T.O. In addition, the Utility will provide, from the date of Acceptance or Government Possession of an ECP, whichever is earlier, a one year comprehensive wrap-around warranty guaranteeing that the equipment installed shall perform in accordance with the specifications agreed upon between Government and Utility, as set forth in the applicable T.O.

In the event the Utility provides O&M services, a separate warranty will be negotiated for such services, in accordance with FAR Part 52, Subpart 52.246-20.

WR.2 No Other Warranties. The warranties set forth in WR.1 are exclusive and in lieu of all other warranties. The Utility makes no other representations or warranties of any kind with respect to the services and products it provides pursuant to this Agreement and subsequent T.O.s., The Utility does not guarantee any level of energy or water savings or cost reductions.

WR.3 Utility Limitation of Liability. The Utility shall not be liable for any special, incidental, indirect, or consequential damages, connected with or resulting from the performance or non-performance of work under this Agreement or subsequent T.O.s. In addition, the Utility shall not be liable under its warranty to the extent that damages are caused by Government negligence.

WR.4 Utility Default. The Government and Utility agree that Utility default provisions will be governed by those FAR clauses applicable to specific circumstances. A determination of applicable FAR default clauses will be made by the Contracting Officer for a specific T.O.

WR.5 Prompt Payment. As required in FAR, Part 32, Subpart 32.903, the Government shall promptly pay ECM utility bills. Late payments shall accrue interest as provided in FAR, Part 32, Subpart 32.907.

WR.6 Disputes. Disputes that arise under this Agreement and subsequent T.O.s shall be governed by the applicable dispute provisions found at FAR, Part 33, Subpart 33.2.

WR.7 Differing Site Conditions. In the event site conditions differ materially from those contained in the T.O. additional costs incurred by the Utility due to the differing conditions shall be negotiated prior to work, and the ECM Cost shall be increased to reflect an equitable adjustment as permitted in FAR, Part 36, Subpart 36.502.

WR.8 Suspension of Work. In the event Work is delayed, suspended or stopped by the Government, FAR, Part 42, Subpart 42.13 shall apply.

FINANCING AND PAYMENT PROVISIONS

FP.1 Energy Savings and Financing. It is intended that the annual energy savings achieved from the implementation of a Utility financed ECM under this Agreement will produce financial savings to the Government which are greater than the cost of implementing the ECM, including the cost of financing provided under this Agreement. The payment term cannot exceed ten years.

FP.2 Financial Incentives, Rebates, and Design Assistance: The Utility will provide to the Government the same financial incentives, rebates, design review, goods, services, and/or any other assistance provided without charge, that is generally available to customers of a similar rate class or size. Incentives that may be available are to be identified in the preliminary audit report provided according to Paragraph GC.15 and the ECM implementation proposal provided according to Paragraph GC.20.4.

FP.3 Calculation of Payment. Payment for accepted ECMs shall be equal to the ECM Cost amortized over a negotiated term. In accordance with 10 U.S.C. Section 2865, the

cost of financing, if any, for any completed ECM shall be recovered under terms and conditions no less favorable than those for others in the same customer class. Monthly payments will commence on the date of the first Utility bill following the 30 day period after the date the Government takes Possession of the ECM and ECM Performance Verification Testing, as required by GC.12 and negotiated in the T.O., is satisfactorily completed.

FP.4 Buydown. The Government reserves the right, at any time following Acceptance, but prior to final payment, to buydown the outstanding T.O. payments without penalty by giving thirty (30) days written notice to the Utility. Upon such buydown, the Government shall pay to the Utility a negotiated percentage of the Termination Schedule amount. Monthly payments will continue at the same level but the term of ECM financing will be shortened to reflect the amount of the buydown payments.

FP.5 Pre-Acceptance Termination. In the event the Government desires to terminate a Task Order for any reason (including, without limitation, for convenience) prior to Acceptance, the Government may do so by giving written notice to the Utility thirty (30) days prior to the effective date of such termination. The Government shall pay the Utility an amount calculated using a formula agreed to by the Government and Utility and which will be Attachment A of the Task Order. If a termination occurs for the convenience of the Government, the amount payable pursuant to this paragraph shall be deemed as an allowable cost under FAR. (See Part 17 and Part 52, Subpart 52.249-2.)

FP.6 Post-Acceptance Termination. In the event the Government desires to terminate a Task Order for any reason (including, without limitation, for convenience) after Acceptance, the Government may do so by giving written notice to the Utility thirty (30) days prior to the effective date of such termination. The Government shall pay the Utility the amount set forth in the Termination Schedule which shall be Attachment B of the Task Order. If a termination occurs for the convenience of the Government, the amount payable pursuant to this paragraph shall be deemed as an allowable cost under FAR. (See Part 17 and Part 52, Subpart 52.249-2.)

FP.7 Assignment of Claims. Government payments under each T.O. executed pursuant to this Agreement may be assigned pursuant to FAR, Part 52, Subpart 52.232.23 "Assignment of Claims." Any bank, trust company or other financing institution that participates in financing an ECM shall not be considered a Subcontractor of the Utility. Any "Assignment of Claims" must comply with the provisions of FAR, Part 32, Subpart 32.8.

FP.8 Novation. The Parties agree that if, subsequent to the execution of this Agreement, it should become necessary, or desirable, to execute a “Novation Agreement,” said Novation Agreement will comply with the provisions of FAR, Part 42, Subpart 42.12 and will be in the form as provided at FAR, Part 42, Subpart 42.1204.

SPECIAL REQUIREMENTS

SR.1 Environmental Protection. The Utility shall comply with all applicable federal, state and local laws, regulations and standards regarding environmental protection ("Environmental Laws"). All environmental protection matters shall be coordinated with the Contracting Officer or designated representative. The Utility shall immediately notify the Contracting Officer of, and immediately clean up, in accordance with all federal, state and local laws and regulations, all oil spills, hazardous wastes, (as defined at 42 U.S.C. §9601), and hazardous materials (as defined at 49 C.F.R. Pt. 172) collectively referred to as “Hazardous Materials,” resulting from its operations on Government property in connection with the implementation of ECMs. The Utility shall comply with the instructions of the Government with respect to avoidance of conditions that create a nuisance or create conditions that may be hazardous to the health of military or civilian personnel.

SR.2 Environmental Permits. Unless otherwise specified, the Utility shall provide, at its expense, all required environmental permits and/or permit applications necessary to comply with all applicable federal, state and local requirements prior to implementing any ECM in the performance of a T.O. executed pursuant to this Agreement. If any such permit or permit application requires the signature or other cooperation of the Government as owner/operator of the property, the Government agrees to cooperate with the Utility in obtaining the necessary permit or permit application.

SR.3 Handling and Disposal of Hazardous Materials. Notwithstanding the provisions of the FAR, Part 52, Subparts 52.236-2 “Differing Site Conditions” and 52.236-3 “Site Investigations and Conditions Affecting Work”, the Government understands and agrees that (i) the Utility has not inspected, and will not inspect, the project site in connection with a proposed ECM for the purpose of detecting the presence of pre-existing Hazardous Materials that relate to an ECM or any project site, and (ii) the Government shall retain sole responsibility for the proper identification, removal, transport and disposal of any fixtures, components thereof, or other equipment or substances incidentally containing pre-existing Hazardous Materials, except as specifically agreed to by the Utility pursuant to Paragraphs SR.4 and SR.5 (below).

If the Utility, during performance of the work under a T.O. executed pursuant to this Agreement, has reason to believe that it has encountered or detected the presence of pre-existing Hazardous Materials, the Utility shall stop work and shall notify the Government. The Government will evaluate the site conditions and notify the contractor of the results of this evaluation. The Utility shall not be required to recommence work until this situation has been resolved. Any delay resulting therefrom shall be grounds to request an increase in the ECM Cost to the extent that such delay increases ECM Costs.

SR.4 Asbestos and Lead-Based Paint. To the extent provided for in a T.O. executed pursuant to this Agreement, in connection with the implementation of any ECM, the Utility may agree to remove pre-existing asbestos containing material or lead-based paint, incidental to implementation of an ECM. However, unless the Utility explicitly agrees in said T.O. to perform any portion of the testing, removal or abatement of the pre-existing asbestos or lead-based paint as part of the scope of work for any ECM, and unless the T.O. specifically references this Paragraph SR.4, the Government shall be deemed to be solely responsible as provided for in Paragraph SR.3.

If the Utility in the course of ECM implementation disturbs suspected lead-based paint or asbestos containing material, the Utility may propose to the Government that the Utility will perform any portion of the testing, removal, or abatement of the lead-based paint or asbestos containing material. Said proposal will include the requested increase in the ECM Cost on account of such additional work. The Utility will not commence work involving additional cost without approval of the Contracting Officer. In the absence of an agreement to the contrary, the provisions of Paragraph SR.3. (above) shall apply.

In the event the Utility agrees to include any portion of the testing, removal or abatement of the asbestos within the scope of work for an ECM implemented as described above in this Paragraph, the hazardous waste manifests or other shipping papers shall identify the Government as the sole generator of the Hazardous Materials.

SR.5 Refrigerants, Fluorescent Tubes and Ballasts. To the extent provided for in a T.O. executed pursuant to this Agreement in connection with the implementation of any ECM, the Utility shall remove and/or dispose of all ozone depleting refrigerants, fluorescent tubes and fluorescent magnetic core and coil ballasts incidental to an ECM to the Hazardous Materials Disposal site (HAZMAT) on the installation. If there is no HAZMAT on the installation, the above Hazardous Materials will be disposed in accordance with all applicable federal, state and local laws and regulations, provided

however, that the hazardous waste manifests or other shipping papers shall identify the Government as the sole generator of the Hazardous Materials.