

**GSA Areawide Public Utility Contract**

**for**

**Electric, Energy Management Services, and  
Services Provided Under the  
Appropriate Regulatory Authority**

**Contract No. 47PA0420D0013**

**between the**

**United States of America**

**and**

**El Paso Electric Company**

**Authorized Service Areas of Texas and New Mexico**

**Negotiated Areawide Contract  
No. 47PA0420D0013  
between the  
United States of America  
and  
El Paso Electric Company**

**TABLE OF CONTENTS**

<u>Article</u>	<u>Page</u>
PREAMBLE .....	1
ARTICLE 1. DEFINITIONS.....	2
ARTICLE 2. SCOPE AND DURATION OF CONTRACT.....	5
ARTICLE 3. EXISTING CONTRACTS.....	6
ARTICLE 4. AUTHORIZATION PROCEDURE AND SERVICE DISCONNECTION. ....	7
ARTICLE 5. RATES, CHARGES, AND PUBLIC REGULATION. ....	7
ARTICLE 6. BILLS AND BILLING DATA. ....	9
ARTICLE 7. PAYMENTS FOR SERVICES. ....	9
ARTICLE 8. CONTRACTOR-OWNED METERS.....	10
ARTICLE 9. EQUIPMENT AND FACILITIES.....	11
ARTICLE 10. LIABILITY.....	11
ARTICLE 11. ACCESS TO PREMISES.....	12
ARTICLE 12. PARTIES OF INTEREST.....	12
ARTICLE 13. REPRESENTATIONS AND CERTIFICATIONS. ....	13
ARTICLE 14. SUPPLEMENTAL CLAUSES. ....	13
ARTICLE 15. SMALL BUSINESS SUBCONTRACTING PLAN. ....	19
ARTICLE 16. NOTICES.....	20
ARTICLE 17. REPORTING.....	19
ARTICLE 18. UTILITY ENERGY SERVICE CONTRACTS. ....	20
ARTICLE 19. MISCELLANEOUS. ....	23
CERTIFICATE .....	26
EXHIBIT "A" .....	27
EXHIBIT "B" .....	29
EXHIBIT "C" .....	31

**Negotiated Areawide Contract**

**No. 47PA0420D0013**

**between the  
United States of America  
and  
El Paso Electric Company**

**PREAMBLE**

THIS AREAWIDE CONTRACT FOR Electric, Energy Management Services and Services Provided Under The Appropriate Regulatory Authority is executed this 7<sup>th</sup> day of February, 2020, between the UNITED STATES OF AMERICA, acting through the Administrator of General Services (hereinafter referred to as the "Government"), pursuant to the authority contained in Section 201(a) of the Federal Property and Administrative Services Act of 1949, as amended, 40 U.S.C. 501(b)(1), and El Paso Electric Company, a corporation organized and existing under the laws of the State of Texas, and having its principal office and place of business at 100 N. Stanton, El Paso, Texas 79901 (hereinafter referred to as the "Contractor");

WHEREAS, the Contractor is a public utility company that is regulated by the Public Utility Commission of Texas, the New Mexico Public Regulation Commission and the Federal Energy Regulatory Commission (hereinafter referred to collectively as the "Commissions"), and

WHEREAS, the Contractor now has on file with the Commissions all of its effective tariffs, rate schedules, riders, rules and regulatory terms and conditions of service, as applicable; and

WHEREAS, with some exceptions, the Government is generally required by Chapter 1 of Title 48 of the Federal Acquisition Regulation (FAR), 48 CFR 41.204, to enter into a bilateral contract for Electric, Energy Management Services and/or Services Provided Under the Appropriate Regulatory Authority at each Federal facility where the value of the Services provided is expected to exceed \$250,000 annually; and

WHEREAS, where the Government has an Areawide Contract in effect with a particular utility, then such service is normally to be procured thereunder; and

WHEREAS, the Government is now purchasing such electric, energy management services from the Contractor under the Areawide Public Utilities Contract No. GS-00P-09-BSD-0677 that expires on February 7, 2020, or under some other service arrangement; and

WHEREAS, the Contractor and the Government mutually desire that this Areawide Contract be used by the agencies of the Government in obtaining electric,

energy management services and/or services provided under the Appropriate Regulatory Authority from the Contractor and to facilitate the potential partnering arrangements as encouraged and authorized by 10 U.S.C. §§ 2911-2918 and 42 U.S.C. § 8256; and

NOW, THEREFORE, in consideration of the premises and mutual covenants herein contained, the Parties hereby agree as follows:

## ARTICLE 1. DEFINITIONS

1.1. As used in this Areawide Contract, the following terms have the meaning as prescribed below:

(a) "**Areawide Contract**" means this master contract entered into between the Government and Contractor to cover the Service acquisitions of all Federal agencies in the authorized service territory from Contractor which shall include without limitation to the Contractor Texas service area and the Contractor New Mexico service area for a period not to exceed ten (10) years.

(b) "**Appropriate Regulatory Authority**" means the Public Utility Commission of Texas, the New Mexico Public Regulation Commission and the Federal Energy Regulatory Commission having jurisdiction over the Contractor (hereinafter referred to collectively as the "Commissions").

(c) "**Agency**" means any Federal department, agency, or independent establishment in the executive branch of the Government, any establishment in the legislative or judicial branches of the Federal Government, or any wholly/mixed ownership Government corporation, as defined in the Government Corporation Control Act, a list of which Agencies may be found at ADM 4800.2E on the General Services Administration website.

(d) "**Ordering Agency**" means any Agency that enters into a bilaterally executed Authorization for procurement of Electric, Energy Management Services and/or Services provided under the Appropriate Regulatory Authority under this Areawide Contract.

(e) "**Authorization**" means an order form used to acquire Services under this Areawide Contract (see Exhibit "A" AUTHORIZATION FOR ELECTRIC SERVICE, Exhibit "B" ENERGY MANAGEMENT SERVICE, Exhibit "C" AUTHORIZATION FOR THE PROVISION OF SERVICES PROVIDED UNDER THE APPROPRIATE REGULATORY AUTHORITY), annexed hereto;

(f) "**Termination Authorization**" means an order form used to discontinue or disconnect Services under this Areawide Contract (see Exhibit "A" AUTHORIZATION FOR ELECTRIC SERVICE, Exhibit "B" ENERGY MANAGEMENT SERVICE,

**Exhibit "C" AUTHORIZATION FOR THE PROVISION OF SERVICES PROVIDED UNDER THE APPROPRIATE REGULATORY AUTHORITY);**

(g) "**Service(s)**" means any electric, energy management services and/or services provided under the Appropriate Regulatory Authority that are generally available from the Contractor pursuant to Contractor's Tariffs or the Contractor's Terms and Conditions, whichever is applicable.

(h) "**Electric Service**" means regulated electric commodities, transmission, distribution, and/or related services.

(i) "**Energy Conservation Measure**" means any specific energy related or water service intended to provide energy savings and/or demand reduction in Federal facilities (Reference Article 18 herein).

(j) "**Energy Management Service (EMS)**" means any project that is designed to reduce and/or manages energy demand in a facility as well as energy audits and any ancillary services necessary to ensure the proper operation of the energy conservation measure. Such measures include, but are not limited to, operating and maintenance and commissioning services (Energy Conservation Measure and Demand Side Management Measure are considered equivalent terms). To be considered an EMS measure, the measure must satisfy all of the following requirements:

- i. The EMS measure must be designed to produce measurable energy reductions or measurable amounts of controlled energy and/or water use;
- ii. The EMS measure must be directly related to the use of energy or directly control the use of energy or water;
- iii. The preponderance of work covered by the EMS measure (measured in dollars) must be for items i and ii above; and
- iv. The EMS measure must be an improvement to real property or any action that is necessary to ensure the functionality of the EMS measure.

(k) "**Contractor's Tariffs**" means El Paso Electric Company utility service tariffs, and includes rate schedules, riders, rules, regulations, and regulated terms and conditions of service as may be modified, amended or supplemented by the Contractor from time to time, and subject to review and approval by the Appropriate Regulatory Authority.

(l) "**Contractor's Terms and Conditions**" for this Areawide Contract, means the generic terms, conditions, policies, procedures, payment terms established by the Contractor for those services that are provided pursuant to this Contract, and as such, may be modified, amended, or supplemented by the Contractor from time to time, that

are under the Commission's jurisdiction, but are not required to be approved by the Appropriate Regulatory Authority and/or not specifically subject to Appropriate Regulatory Authority approval before they take effect. The definition of "Terms and Conditions" shall not include price-related matters or contract terms developed for specific Authorizations.

(m) "**Connection Charge**" means a Contractor's charge for facilities on the Contractor's side of the delivery point which facilities (1) are required to make connections with the nearest point of supply and (2) are in accordance with the Contractor's Tariffs and the Contractor's rules and regulations, installed, owned, maintained and operated by the Contractor.

(n) "**Class of Service**" or "Service Classification" means those categories of service established in the Contractor's Tariff as filed with the Commissions.

(o) "**Hazardous Materials**" means those substances defined as "hazardous substances" pursuant to Section 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. Sections 9601 et seq.);

i. those substances designated as a "hazardous substance" pursuant to Section 311(b)(2)(A) or as a "toxic pollutant" pursuant to Section 307(a)(1) of the Clean Water Act (33 U.S.C. Sections 1251 et seq.);

ii. those substances defined as "hazardous materials" pursuant to Section 103 of the Hazardous Materials Transportation Act (49 U.S.C. Sections 1801 et seq.);

iii. those substances regulated as a "chemical substance or mixture" or as an "imminently hazardous chemical substance or mixture" pursuant to Section 6 or 7 of the Toxic Substances Control Act (15 U.S.C. Sections 2601 et seq.);

iv. those substances defined as "contaminants" pursuant to Section 1401 of the Safe Drinking Water Act (42 U.S.C. Sections 300f et seq.), if present in excess of permissible levels;

v. those substances regulated pursuant to the Oil Pollution Act of 1990 (33 U.S.C. Sections 2701 et seq.);

vi. those substances defined as a "pesticide" pursuant to Section 2(u) of the Federal Insecticide, Fungicide, and Rodenticide Act as amended by the Federal Environmental Pesticide Control Act of 1972 and by the Federal Pesticide Act of 1978 (7 U.S.C. Sections 136 et seq.);



vii. those substances defined as a "source", "special nuclear" or "by-product" material pursuant to Section 11 of the Atomic Energy Act of 1954 (42 U.S.C. Section 2014 et seq.);

viii. those substances defined as "residual radioactive material" in Section 101 of the Uranium Mill Tailings Radiation Control Act of 1978 (42 U.S.C. Sections 7901 et seq.);

ix. those substances defined as "toxic materials" or "harmful physical agents" pursuant to Section 6 of the Occupational Safety and Health Act (29 U.S.C. Section 651 et seq.);

x. those substances defined as "hazardous air pollutants" pursuant to Section 112(a)(6), or "regulated substance" pursuant to Section 112(a)(2)(B) of the Clean Air Act (42 U.S.C. Sections 7401 et seq.);

xi. those substances defined as "extremely hazardous substances" pursuant to Section 302(a)(2) of the Emergency Planning & Community Right-to-Know Act of 1986 (42 U.S.C. Sections 11001 et seq.);

xii. those other hazardous substances, toxic pollutants, hazardous materials, chemical substances or mixtures, imminently hazardous chemical substances or mixtures, contaminants, pesticides, source materials, special nuclear materials, by-product materials, residual radioactive materials, toxic materials, harmful physical agents, air pollutants, regulated substances, or extremely hazardous substances defined in any regulations promulgated pursuant to any environmental Law, and

xiii. all other contaminants, toxins, pollutants, hazardous substances, substances, materials and contaminants, polluted, toxic and hazardous materials, the use, disposition, possession or control of which is regulated by one or more Laws.

(p) **"Hazardous Wastes"** means those substances defined as "hazardous waste" pursuant to Section 1004(5) of the Resource, Conservation and Recovery Act (42 U.S.C. Section 6901 et seq.), and those other hazardous wastes defined in any regulations promulgated pursuant to any environmental Law.

1.2. This Article is hereby expanded to include the additional definitions contained in FAR Clause 52.202-1, Definitions (MAY 2001), 48 C.F.R. 52.202-1, which are incorporated herein by reference.





instrumentality of the Federal Government may not use amounts appropriated or made available by any law to purchase electricity in a manner inconsistent with state law governing the provision of electric utility service...".

### **ARTICLE 3. EXISTING CONTRACTS**

**3.1.** The parties agree that an Agency currently acquiring Service from the Contractor under a separate written contract may continue to do so until that contract expires or until such time as the Agency and the Contractor mutually agree to terminate that separate written contract and have such Service provided pursuant to this Areawide Contract by executing an appropriate Authorization or Authorizations.

**3.2.** Existing special rates and services of a special nature currently provided under a separate written contract may be continued under the Authorizations described in Article 3.1 if requested by the Ordering Agency and agreed upon by the Contractor.

### **ARTICLE 4. AUTHORIZATION PROCEDURE AND SERVICE DISCONNECTION**

**4.1.** To obtain or change Service under this Areawide Contract, the Ordering Agency shall complete the appropriate Authorization and forward it to the Contractor. Upon the request of the Ordering Agency, the Contractor shall endeavor to provide reasonable assistance to the Ordering Agency in selecting the applicable service classification which may be most favorable to the Ordering Agency. Upon execution of an Authorization by both the Contractor and the Ordering Agency, the date of initiation or change in Service shall be effective as of the date specified in the Authorization. An executed copy of the Authorization shall be transmitted by the Ordering Agency to GSA at the address provided in Article 1.1.

**4.2.** During the Term of this Areawide Contract, effective Authorizations need not be amended, modified, or changed by an Ordering Agency to reflect changes in: accounting and appropriation data, the Contractor's Tariff, the Contractor's cost of purchased fuel, or the estimated annual cost of Service. Where changes are required in effective Authorizations because of a change in the Service requirements of an Ordering Agency, an amended Authorization shall be mutually agreed upon and executed.

**4.3.** An Ordering Agency or the Contractor may discontinue Service provided pursuant to this Areawide Contract to a particular Federal facility or installation by delivering a written Termination Authorization to the other. Such discontinuance of Service by an Ordering Agency or the Contractor shall be in accordance with the terms of this Areawide Contract and the Contractor's Tariffs, or as otherwise provided under a particular Authorization.

**4.4.** In the event the Areawide Contract is not renewed at the expiration of the contract term, any active Authorizations for services shall be controlled by the Areawide Contract terms and conditions in effect at the time of award.

## **ARTICLE 5. RATES, CHARGES, AND PUBLIC REGULATION**

**5.1.** A complete listing of all Contractor's Tariffs, as amended, supplemented, modified and revised from time to time, is available to the Government and any Ordering Agency electronically at the Contractor's website accessible via <https://www.epelectric.com>.

**5.2.** Subject to the provisions of Article 2.3, all Electric, Energy Management Services and/or Services Provided Under the Appropriate Regulatory Authority purchased under this Areawide Contract, as well as any other action under this Areawide Contract shall be in accordance with, and subject to, the Contractor's Tariffs, except to the extent that same are preempted by Federal law. Throughout the Term of the Areawide Contract, the Government shall have full access to the Contractor's currently effective Tariffs. In the event the Contractor's Tariffs become inaccessible via the internet or the Ordering Agency does not have access to the internet, the Contractor agrees to provide newly effective or amended Tariffs in accordance with the Contractor's Tariff distribution practices, policies and procedures applicable to all customers. The failure of the Contractor to furnish its Contractor's Tariff or any part thereof in accordance with this Article 5.2 shall not be grounds for withholding or denying payment at the effective rates stated therein for any Services provided.

**5.3.** If, during the Term of this Areawide Contract, the Commissions approve a change in rates for services specified in Authorizations in effect hereunder, the Contractor agrees to continue to furnish, and the Ordering Agency agrees to continue to pay for, those Services at the newly approved rates from and after the date such rates are made effective. As provided in Article 4.2, modification of any Authorization hereunder is not necessary to implement higher or lower rates.

**5.4.** The Contractor hereby represents and warrants to the Government that the Service rates available to any Ordering Agency hereunder shall at all times not exceed those available to any other customer served under the same Service Classification for the same or comparable service, under like conditions of use. Nothing herein shall require the Contractor to apply service rates that are inapplicable to the Ordering Agency.

**5.5.** Reasonable written notice via an Authorization shall be given by the Ordering Agency to the Contractor, at the address provided in Article 16.2, of any material changes proposed in the volume or characteristic of utility services required by the Ordering Agency.

**5.6.** To the extent required by the Contractor's Tariffs, the Contractor's rules and regulations, or the Contractor's policies and practices applicable to all customers, and in accordance therewith, or unless otherwise agreed to between Contractor and an Ordering Agency, any Service, including but not limited to, a necessary extension, alteration, relocation, or reinforcement of the Contractor's transmission or distribution lines, related special facilities, Service arrangements, demand side management

services (including any rebates to which the Ordering Agency may be entitled), energy audit services, or other Services required or requested by an Ordering Agency shall be provided and, as applicable, billed for, by the Contractor. To the extent available from the Contractor, the Contractor shall provide and, as applicable, bill for such technical assistance on or concerning an Ordering Agency's equipment (such as the inspection or repair of such equipment) as may be requested by such Ordering Agency. The charges for such technical assistance shall be calculated at the time the technical assistance is rendered, as mutually agreed upon by the Contractor and the Agency, and shall comply with Contractor's Tariffs, if applicable. The Authorization or any other agreement used to obtain and provide the matters, Services, or technical assistance described in this Article 5.6 shall contain information descriptive of the matters, Services, or technical assistance required or requested, including the amount of (or method to determine) any payment to be made by the Ordering Agency to the Contractor for the provision of said matters, Services, or technical assistance.

5.7. Any charges for matters or Services referenced in Article 5.6 hereof which are not established by the Contractor's Tariffs shall be subject to audit by the Ordering Agency for a period of one (1) year after the provision of matters or services rendered. Payment for the matters and Services referenced in Article 5.6 thereof shall not be unreasonably withheld or denied. The Contractor further warrants and represents to the Government that charges for the matters or Services referenced in Article 5.6 hereof will not exceed the charges billed to other customers of the Contractor served under the same Service Classification for like matters or Services provided under similar circumstances.

5.8. The requirements of the Disputes clause at FAR 52.233-1 are supplemented to provide that matters involving the interpretation of Contractor's Tariff(s) are subject to the jurisdiction and regulation of the Appropriate Regulatory Authority having jurisdiction.

## **ARTICLE 6. BILLS AND BILLING DATA**

6.1. The Electric, Energy Management Services and/or Services Provided Under the Appropriate Regulatory Authority supplied hereunder shall be billed to the Ordering Agency at the address specified in each Authorization. Bills shall be submitted in original only, unless otherwise specified in the Authorization. All bills shall contain such data as is required by the Commissions to substantiate the billing and such other reasonable and available data as may be requested by the Ordering Agency, provided that such other data are contained in bills provided to other customers of the Contractor served under the same Service Classification as the Ordering Agency.

## **ARTICLE 7. PAYMENTS FOR SERVICES**

7.1. The Ordering Agency shall effect payment of all bills for regulated Services rendered under this Areawide Contract in accordance with the terms of the Contractor's Tariffs. Changes in the Contractor's Tariff provisions for the payment of bills shall

supersede the provisions of this paragraph to the extent of the applicability of such changes.

**7.2.** The Ordering Agency will make invoice payments for Services not subject to the direct oversight of the Commissions in accordance with the provisions of the FAR Subpart 52.232-25 (Article 14.1-16).

**7.3.** Payments hereunder shall not normally be made in advance of services rendered in accordance with 48 C.F.R. Subpart 32.4, unless required by the Contractor's Tariff. The applicability of this provision is limited to connection charge, relocations, interconnections, method of service studies, and line extension payments specifically cited in the Contractor's Tariff.

**7.4.** Each payment made by Treasury check to the Contractor shall include the Contractor's billing stub(s), or a Government or Ordering Agency payment document, that clearly and correctly lists all of the Contractor's account numbers to which the payment applies and the dollar amount applicable to each account. If payment is by Electronic Funds Transfer either through the Automated Clearing House (ACH) or the Federal Reserve Wire Transfer System, the provisions of FAR Subpart 52.232-34 shall apply (See Article 14) and the Ordering Agency must specify the method of payment and the designated payment office on the Authorization form.

## **ARTICLE 8. CONTRACTOR-OWNED METERS**

**8.1.** Metering equipment of standard manufacture suitable to measure all utility services supplied by the Contractor hereunder shall be furnished, installed, calibrated and maintained by the Contractor at its expense. In the event any meter fails to register or registers incorrectly, as determined by the regulations of the Commissions, billing adjustments shall be made in accordance with such regulations.

**8.2.** The Contractor, so far as possible, shall read all meters monthly in accordance with the Contractor's Tariff and the Commissions' regulations.

**8.3.** Meters shall be inspected upon installation at no direct charge to the Ordering Agency. Subsequent inspection, periodic testing, repair, and replacement of meters shall be done in such place and manner as provided by the Commissions' regulations. Upon notice that a meter is failing to register correctly, the Contractor shall take immediate steps to effect replacement or repair. Ordering Agencies shall have the right to request a meter test in accordance with the procedures prescribed in the Commissions' regulations. The tests and applicable meter accuracy standards are those set forth in the Commissions' regulations. The expense of meter tests shall be borne by the party designated as responsible therefore in the Commissions' regulations.

**8.4.** For the purposes of this Article 8, references to meters shall apply only to Contractor-owned metering devices installed and maintained by the Contractor in accordance with Commissions guidelines for utility service(s). References to meters

under this Article shall not apply to meters that are to be installed by the Contractor at the request of an Ordering Agency, to be owned by the Government as a part of an Authorization for Energy Management Service or other Service.

## **ARTICLE 9. EQUIPMENT AND FACILITIES**

9.1. Subject to the provisions of Article 5.6 hereof, the responsibility for owning, furnishing, installing, and maintaining all equipment and facilities (other than meters) required to supply Service at the delivery point(s) specified in an Authorization shall be determined in accordance with the Contractor's Tariffs. The Ordering Agency shall provide, free of charge to the Contractor, mutually agreeable locations on its premises for the installation of meters and such other equipment furnished and owned by the Contractor and necessary to supply Service hereunder. The Contractor shall, at all times during the Term of this Areawide Contract, operate and maintain at its expense such equipment or facilities as for which it owns and for which it has responsibility in accordance with this Article 9.1, and shall assume all applicable taxes and other charges in connection therewith; provided however, the foregoing shall in no way diminish any tax or tax-related reimbursement owed to the Contractor by the Government or Ordering Agency pursuant to an Authorization or a separate agreement. Notwithstanding anything to the contrary in FAR 52.241-5 (Contractor's Facilities (FEB 1995)), to the extent required by the Contractor's Tariffs and the Commissions' rules and regulations, and in accordance thereof, such equipment and facilities as for which the Contractor has responsibility in accordance with this Article 9.1 may be removed or abandoned in place. In both cases, to the extent required by Contractor's Tariffs, the Agency's premises shall be restored by the Contractor at its expense within a reasonable time after discontinuance of service to the Ordering Agency.

9.2. All necessary rights-of-way, easements and such other rights necessary to permit the Contractor to perform under this Areawide Contract shall be obtained and the expense for same borne in accordance with the Contractor's Tariffs and the Contractor's rules and regulations or as otherwise agreed by the Parties.

## **ARTICLE 10. LIABILITY**

10.1. If the Government and/or an Ordering Agency has limited or restricted the Contractor's right of access under Article 11 and thereby interfered with the Contractor's ability to supply service or to correct dangerous situations which are a threat to public safety, the Government shall indemnify and hold the Contractor harmless from any liability resulting from such restricted or limited access to the extent permitted by law and subject to Article 19.2 of this agreement. This Article (10.1) shall not be construed to limit the Government's liability under applicable law.

10.2. The Contractor's liability to the Government and to any Ordering Agency for any failure to supply Service, for any interruptions in Service, and for any irregular or defective Service shall be determined in accordance with the Contractor's Tariffs.



**10.3.** Except as provided above, and in accordance with the Contractor's Tariff and Terms and Conditions of Service, the Government shall not be liable for damage or injury to any person or property, including death, occasioned solely by the Contractor's, its employees' or agents' negligent installation, use, operation or intentional misuse of the Contractor's equipment or facilities.

**10.4.** In accordance with the Contractor's Tariff and/or Terms and Conditions of Service, neither the Contractor nor its employees or agents, shall be liable for damage or injury to any person or property, including death, occasioned solely by the negligent installation, use, operation or intentional misuse of Contractor's equipment or facilities by the Government, its employees or agents.

**10.5.** The Contractor shall not be liable for incidents arising out of or in any way connected with the violation or compliance with any local, state or federal environmental law or regulation resulting from pre-existing conditions at a Government job site, release or spill of any pre-existing Hazardous Materials or Hazardous Waste, or out of the management and disposal of any pre-existing contaminated soils or ground water, hazardous or non-hazardous, removed from the ground as a result of work performed by the Contractor.

**10.6.** The Government agrees to accept full responsibility for and bear all costs associated with pre-existing environmental liability. Responsibility for testing, abatement, remediation, and/or disposal of Hazardous Material, including, but not limited to, contaminated soil, lead paint, asbestos, fuel oil, or underground fuel oil tanks, shall remain with the Government. Where there is reason to suspect that Hazardous Material is present at the work site, or where Hazardous Material is encountered during the course of work being performed, the Contractor shall stop work, notify the Contracting Officer and Activity personnel, and request that the Government test the work site for such Hazardous Material and appropriately abate and dispose of such Hazardous Material. Once the work site has been cleared of all Hazardous Material, the Contractor shall resume work in that area. Contractor shall be entitled to compensation for any increased costs associated with the delay.

#### **ARTICLE 11. ACCESS TO PREMISES**

**11.1.** The Contractor, shall have access to the premises served at all reasonable times during the Term of this Areawide Contract and at its expiration or termination for the purpose of reading meters, making installations, repairs, or removals of the Contractor's equipment, or for any other proper purposes hereunder provided, however, that proper military or other governmental authority may limit or restrict such right of access in any manner considered by such authority to be reasonably necessary or advisable.

#### **ARTICLE 12. PARTIES OF INTEREST**

**12.1.** This Areawide Contract shall be binding upon and inure to the benefit of the successors, legal representatives, and assignees of the respective parties hereto.

**12.2.** When the Contractor becomes aware that a change in ownership of the Contractor ("change in ownership" for purposes of this Areawide Contract being defined as a sale by the Contractor's parent corporation of more than fifty percent of the outstanding voting stock of the Contractor) or a change in the name of the Contractor has occurred, the Contractor shall notify the Contracting Officer at the address provided in Article 16.1 not later than thirty (30) days after the effectiveness of any such ownership or name change.

### **ARTICLE 13. REPRESENTATIONS AND CERTIFICATIONS**

**13.1.** This Areawide Contract incorporates by reference the representations and certifications made by the Contractor which are on file electronically at <https://www.sam.gov>.

**13.2.** Contractor represents that the following persons (or their applicable successors or delegates) are currently authorized to negotiate and execute on its behalf with the U.S. Government in connection with this Areawide Contract, including any Exhibits executed under this Areawide Contract:

- (a) James Schichtl, Vice President of Regulatory Affairs, Tel. (915) 521-4697;
- (b) Susanne Stone, Director of Energy Efficiency and Commercial Services, Tel. (915) 543-2272;
- (c) Adrian Rodriguez, Interim CEO, Senior Vice President, and General Counsel, Tel. (915) 543-5735.

Contractor reserves the right to amend the above-list of persons at any time by delivering written notice to the Government at the address provided in Article 16.1.

**13.3.** Contractor makes no representations or warranties except for those expressly provided in Articles 13.1 and 13.2 of this Areawide Contract agreement. To the fullest extent permitted by law, all other representations and warranties, express or implied, are expressly disclaimed.

### **ARTICLE 14. SUPPLEMENTAL CLAUSES**

**14.1.** 52.252-2 Clauses Incorporated by Reference. (FEB 1998)

This Areawide Contract incorporates one or more clauses by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. Also, the full text of a clause may be accessed electronically at <https://www.acquisition.gov>.

<u>FAR REF</u>	<u>Federal Acquisition Regulation</u>
1. 52.203-3	GRATUITIES (APR 1984)
2. 52.203-5	COVENANT AGAINST CONTINGENT FEES (MAY 2014)
3. 52.203-6	RESTRICTIONS ON SUBCONTRACTOR SALES TO THE GOVERNMENT (SEPT 2006)
4. 52.203-7	ANTI-KICKBACK PROCEDURES (MAY 2014)
5. 52.203-8	CANCELLATION, RESCISSION, AND RECOVERY OF FUNDS FOR ILLEGAL OR IMPROPER ACTIVITY (MAY 2014)
6. 52.203-11	CERTIFICATION AND DISCLOSURE REGARDING PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (SEPT 2007)
7. 52.203-12	LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (OCT 2010)
8. 52.212-3	OFFEROR REPRESENTATIONS AND CERTIFICATIONS – COMMERCIAL ITEMS (OCT 2018)
9. 52.212-5	CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS – COMMERCIAL ITEMS (OCT 2019)
10. 52.219-1	SMALL BUSINESS PROGRAM REPRESENTATIONS (SEP 2015)
11. 52.219-8	UTILIZATION OF SMALL BUSINESS CONCERNS (OCT 2018)
12. 52.219-9	SMALL BUSINESS SUBCONTRACTING PLAN (AUG 2018)
13. 52.222-21	PROHIBITION OF SEGREGATED FACILITIES (APR 2015)
14. 52.222-26	EQUAL OPPORTUNITY (SEP 2016)
15. 52.222-35	EQUAL OPPORTUNITY FOR VETERANS (OCT 2015)
16. 52.222-36	EQUAL OPPORTUNITY FOR WORKERS WITH DISABILITIES (JUL 2014)
17. 52.222-50	COMBATING TRAFFICKING IN PERSONS (JAN 2019)
18. 52.232-23	ASSIGNMENT OF CLAIMS (MAY 2014)
19. 52.232-25	PROMPT PAYMENT (JAN 2017)
20. 52.232-33	PAYMENT BY ELECTRONIC FUNDS TRANSFER—SYSTEM FOR AWARD MANAGEMENT (OCT 2018)
21. 52.232-34	PAYMENT BY ELECTRONIC FUNDS TRANSFER-OTHER THAN SYSTEM FOR AWARD MANAGEMENT (JUL 2013)
22. 52.233-1	DISPUTES (MAY 2014)
23. 52.233-4	APPLICABLE LAW FOR BREACH OF CONTRACT CLAIM (OCT 2004)
24. 52.237-2	PROTECTION OF GOVERNMENT BUILDINGS, EQUIPMENT, AND VEGETATION (APR 1984)
25. 52.241-2	ORDER OF PRECEDENCE—UTILITIES (FEB 1995)
26. 52.241-4	CHANGE IN CLASS OF SERVICE (FEB 1995)
27. 52.241-7	CHANGE IN RATES OR TERMS AND CONDITIONS OF SERVICE FOR REGULATED SERVICES (FEB 1995)

**FAR REF    Federal Acquisition Regulation**

- 28. 52.242-13    BANKRUPTCY (JUL 1995)
- 29. 52.243-1    CHANGES—FIXED PRICE (AUG 1987)
- 30. 52.244-5    COMPETITION IN SUBCONTRACTING (DEC 1996)
- 31. 52.244-6    SUBCONTRACTS FOR COMMERCIAL ITEMS (AUG 2019)
- 32. 552.241-70    AVAILABILITY OF FUNDS FOR THE NEXT FISCAL YEAR OR QUARTER (AUG 2010)
- 33. 552.241-71    DISPUTES (UTILITY CONTRACTS) (AUG 2010)

**14.2. Unregulated Services**

Pursuant to this Areawide Contract, the Contractor may provide energy related services that are not subject to rate and tariff regulations by the Commissions under a pre-approved alternative (FAR 52.241-8) that demonstrates the Contractor will provide these services under terms and conditions that are competitive and otherwise in the best interests of the Ordering Agency. If, as demonstrated by the Ordering Agency, the conditions for use of this pre-approved alternative cannot be satisfied, then the Ordering Agency should consider the requirement of the Competition in Contracting Act of 1984 and the extent to which a competitive acquisition process is required to select and award a contract for these unregulated services. If an Authorization under this Areawide Contract is utilized, the prices and terms and conditions for unregulated services offered by the Contractor shall be negotiated subject to the requirements of FAR 41.5, subject to the general requirements of FAR 52.241-8.

**14.3. Repeal of Clauses During Term of Areawide Contract**

If, during the Term of this Areawide Contract, any of the clauses contained in Article 14.1 of Article 14 are repealed, revoked, or dissolved by the Government, then such clauses shall no longer be part of this Areawide Contract as of the date of such repeal, revocation, or dissolution. The elimination of these clauses by reason of such repeal, revocation, or dissolution shall not affect the continuing validity and effectiveness of the remainder of this Areawide Contract or other clauses referenced in this Article. The Parties' conduct thereafter shall be modified accordingly and reflect the repeal, revocation, or dissolution as related to their respective rights and obligations hereunder.

**14.4. Clauses Incorporated in Full Text**

**52.241-7 – Change in Rates or Terms and Conditions of Service for Regulated Services (FEB 1995)**

(a) This clause applies to the extent Services furnished under this Areawide Contract are subject to regulation by an Appropriate Regulatory Authority. The Contractor agrees to give any Ordering Agencies written notice of the filing of an

application to change Contractor's rate schedules applicable to such federal customers in a manner that is consistent with Contractor's standard business practices and complies with the Appropriate Regulatory Authority's regulatory requirements. If, during the Term of this Areawide Contract, the Appropriate Regulatory Authority approves any such changes to Contractor's rate schedules, the Contractor shall make such changes available to the public, including the Contracting Officer and any Ordering Agency, at the Contractor's website, [www.epelectric.com](http://www.epelectric.com). The Contractor agrees to continue furnishing Service under this Areawide Contract in accordance with the amended Tariff, and the Government agrees to pay for such Service at the higher or lower rates as of the date when such rates are made effective.

(b) The Contractor agrees that throughout the life of this Areawide Contract the applicable published and unpublished rate schedule(s) shall not be in excess of the lowest cost published and unpublished rate schedule(s) available to any other customers of the same class under similar conditions of use and service.

(c) In the event that the Appropriate Regulatory Authority promulgates any regulation concerning matters other than rates which affects this Areawide Contract, the Contractor shall immediately provide a copy to the Contracting Officer. The Government shall not be bound to accept any new regulation inconsistent with federal laws or regulations.

(d) Any changes to rates or terms and conditions of Service shall be made a part of this Areawide Contract by the issuance of a contract modification unless otherwise specified in the Areawide Contract. The effective date of the change(s) shall be the effective date by the Appropriate Regulatory Authority. Any factors not governed by the Appropriate Regulatory Authority will have an effective date as agreed by the Parties.

(End of clause)

The items included in Contractor's Tariff are available to the government and any Ordering Agency electronically at the Contractor's website, <https://www.epelectric.com>. Contractor shall comply with the Commissions regulatory requirements applicable to notifications to Contractor customers for changes to Contractor's Tariff.

#### **52.233-1 – Disputes**

The requirements of the Disputes clause at Federal Acquisition Regulation (FAR) 52.233-1 are supplemented to provide that matters involving the interpretation of tariffed retail rates, tariff rate schedules, and tariffed terms provided under this Areawide Contract are subject to the jurisdiction and regulation of the Appropriate Regulatory Authority.



**52.244-6 – Subcontracts for Commercial Items (AUG 2019)**

**(a) Definitions. As used in this clause—**

"Commercial item" and "commercially available off-the-shelf item" have the meanings contained in Federal Acquisition Regulation 2.101, Definitions.

"Subcontract" includes a transfer of commercial items between divisions, subsidiaries, or affiliates of the Contractor or subcontractor at any tier.

**(b)** To the maximum extent practicable, the Contractor shall incorporate, and require its subcontractors at all tiers to incorporate, commercial items or non-developmental items as components of items to be supplied under this contract.

**(c)(1)** The Contractor shall insert the following clauses in subcontracts for commercial items:

**(i)** 52.203-13, Contractor Code of Business Ethics and Conduct (Oct 2015) (41 U.S.C. 3509), if the subcontract exceeds \$5.5 million and has a performance period of more than 120 days. In altering this clause to identify the appropriate parties, all disclosures of violation of the civil False Claims Act or of Federal criminal law shall be directed to the agency Office of the Inspector General, with a copy to the Contracting Officer.

**(ii)** 52.203-15, Whistleblower Protections Under the American Recovery and Reinvestment Act of 2009 (Jun 2010) (Section 1553 of Pub. L. 111-5), if the subcontract is funded under the Recovery Act.

**(iii)** 52.203-19, Prohibition on Requiring Certain Internal Confidentiality Agreements or Statements (Jan 2017).

**(iv)** 52.204-21, Basic Safeguarding of Covered Contractor Information Systems (Jun 2016), other than subcontracts for commercially available off-the-shelf items, if flow down is required in accordance with paragraph (c) of FAR clause 52.204-21.

**(v)** 52.204-23, Prohibition on Contracting for Hardware, Software, and Services Developed or Provided by Kaspersky Lab and Other Covered Entities (Jul 2018) (Section 1634 of Pub. L. 115-91).

**(vi)** 52.204-25, Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment (Aug 2019) (Section 889(a)(1)(A) of Pub. L. 115-232).

(vii) 52.219-8, Utilization of Small Business Concerns (Oct 2018) (15 U.S.C. 637(d)(2) and (3)), if the subcontract offers further subcontracting opportunities. If the subcontract (except subcontracts to small business concerns) exceeds \$700,000 (\$1.5 million for construction of any public facility), the subcontractor must include 52.219-8 in lower tier subcontracts that offer subcontracting opportunities.

(viii) 52.222-21, Prohibition of Segregated Facilities (Apr 2015).

(ix) 52.222-26, Equal Opportunity (Sept 2016) (E.O. 11246).

(x) 52.222-35, Equal Opportunity for Veterans (Oct 2015) (38 U.S.C. 4212(a)).

(xi) 52.222-36, Equal Opportunity for Workers with Disabilities (Jul 2014) (29 U.S.C. 793).

(xii) 52.222-37, Employment Reports on Veterans (Feb 2016) (38 U.S.C. 4212).

(xiii) 52.222-40, Notification of Employee Rights Under the National Labor Relations Act (Dec 2010) (E.O. 13496), if flow down is required in accordance with paragraph (f) of FAR clause 52.222-40.

(xiv) (A) 52.222-50, Combating Trafficking in Persons (Jan 2019) (22 U.S.C. chapter 78 and E.O. 13627); or (B) Alternate I (Mar 2015) of 52.222-50 (22 U.S.C. chapter 78 and E.O. 13627).

(xv) 52.222-55, Minimum Wages under Executive Order 13658 (Dec 2015), if flowdown is required in accordance with paragraph (k) of FAR clause 52.222-55.

(xvi) 52.222-62, Paid Sick Leave Under Executive Order 13706 (Jan 2017) (E.O. 13706), if flowdown is required in accordance with paragraph (m) of FAR clause 52.222-62.

(xvii) (A) 52.224-3, Privacy Training (Jan 2017) (5 U.S.C. 552a) if flow down is required in accordance with 52.224-3(f); or (B) Alternate I (Jan 2017) of 52.224-3, if flow down is required in accordance with 52.224-3(f) and the agency specifies that only its agency-provided training is acceptable).

(xviii) 52.225-26, Contractors Performing Private Security Functions Outside the United States (Oct 2016) (Section 862, as amended, of the National Defense Authorization Act for Fiscal Year 2008; 10 U.S.C. 2302 Note).

(xix) 52.232-40, Providing Accelerated Payments to Small Business Subcontractors (Dec 2013), if flow down is required in accordance with paragraph (c) of FAR clause 52.232-40.

(xx) 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (Feb 2006) (46 U.S.C. App. 1241 and 10 U.S.C. 2631), if flow down is required in accordance with paragraph (d) of FAR clause 52.247-64).

(c)(2) While not required, the Contractor may flow down to subcontracts for commercial items a minimal number of additional clauses necessary to satisfy its contractual obligations.

(d) The Contractor shall include the terms of this clause, including this paragraph (d), in subcontracts awarded under this contract.

#### **14.5. State Taxes.**

The contract price excludes all state and local taxes levied on or measured by the contract or sales price of the Services or completed supplies furnished under this contract. The Government agrees either to pay the amount of the state or local taxes to the Contractor, including any related penalties or interest thereon, or provide evidence necessary to sustain an exemption from such taxes.

### **ARTICLE 15. SMALL BUSINESS SUBCONTRACTING PLAN.**

**15.1.** Attached hereto and made a part hereof by reference is a SUBCONTRACTING PLAN FOR SMALL BUSINESS CONCERNS, SMALL BUSINESS CONCERNS OWNED AND CONTROLLED BY SOCIALLY & ECONOMICALLY DISADVANTAGED INDIVIDUALS, HUB ZONE BUSINESS CONCERNS, WOMAN OWNED SMALL BUSINESS CONCERNS, VETERAN-OWNED SMALL BUSINESSES CONCERNS AND DISABLED VETERAN-OWNED BUSINESSES negotiated between the Contractor and the Government, which is applicable on a company wide basis pursuant to the requirements of Section 211 of P.L. 95-507, as amended (15 U.S.C. 637(d)). The Contractor expressly understands that this subcontracting plan is an annual plan and hereby agrees to submit a new subcontracting plan by November 30th of each year during the Term of this Areawide Contract.

**15.2.** Information and announcements concerning current developments in the GSA Small Business Subcontracting Program are available on the GSA Energy Division web site accessible via <http://www.gsa.gov/energy>.

## ARTICLE 16. NOTICES.

16.1. Unless specifically provided otherwise, all notices required to be provided to the Government under this Areawide Contract shall be mailed to: U. S. General Services Administration, PBS, Office of Facilities, Energy Division (PMA), 1800 F Street, NW, Washington, DC 20405 or via email at [energy@gsa.gov](mailto:energy@gsa.gov).

16.2. All inquiries and notices to the Contractor regarding this Areawide Contract shall be mailed to: El Paso Electric Company's Commercial Services Department, [CommercialServices@epelectric.com](mailto:CommercialServices@epelectric.com), or to such person as the Contractor may hereafter designate in writing.

16.3. The Ordering Agency shall provide GSA with a copy of all fully executed Exhibits including any applicable attachments at the address provided in Article 16.1.

## ARTICLE 17. REPORTING.

17.1 The Contractor shall provide, as prescribed and directed by the Contracting Officer, an annual report on subcontracting plan achievements, in accordance with the approved subcontracting plan for small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals by October 30 of each year during the Term of this Areawide Contract. The report shall be submitted electronically utilizing the Small Business Administration's Electronic Subcontracting Reporting System. The website address of system can be found at <http://www.esrs.gov>.

## ARTICLE 18. UTILITY ENERGY SERVICE CONTRACTS.

18.1. The provisions in Article 18 apply only to Utility Energy Service Contracts.

18.2 Measurement and verification: Energy Conservation Measures (ECM) will not be normally considered unless a net overall energy usage or cost reduction can be demonstrated and verified. Verification standards for energy projects are established in the North-American Energy Measurement and Verification Protocol (NEMVP), published by the Department of Energy's Federal Energy Management Program (FEMP), or as agreed in the Authorization.

18.3. Unless otherwise agreed to by the Parties or prohibited by applicable law, the following provisions shall apply:

(a) Payment for energy conservation measures, when authorized as Energy Management Service (EMS), shall be equal to the direct cost of capital or financing amortized over a negotiated payment term commencing on the date of acceptance of the completed installation;

(b) The payment term for Authorizations involving energy conservation measures should be calculated to enable the Ordering Agency's payment(s) to be lower than the estimated cost savings to be realized from its implementation. In no event, however, shall this term exceed eighty percent (80%) of the useful life of the equipment/material to be installed.

**18.4. Subcontracting:** The Contractor may perform any or all of its requested Services through subcontractors, including its unregulated affiliates. ECM subcontractors shall be competitively selected in accordance with FAR 52.244-5 (Competition in Subcontracting) (DEC 1996) (See Article 14). Subcontractor selection shall be based on cost, experience, past performance and other such factors as the Contractor and the Ordering Agency may mutually deem appropriate and reasonably related to the Government's minimum requirements. Upon request by the Government, the Contractor shall make available to the contracting officer all documents related to the selection of a subcontractor. In no event shall the Service be provided by subcontractors listed as excluded from Federal Procurement Programs maintained by GSA pursuant to 48 C.F.R. 9.404 in accordance with 52.209-6 (Protecting the Government's Interest when Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment (AUG 2013) (See Article 14)).

**18.5.** For all Authorizations involving Energy Conservation Measures, it is desirable to have a Warranty Clause that addresses the specific needs and requirements of the work being performed and equipment that is to be provided by the Contractor; however, in the absence of a Warranty Clause in the Authorization, the following language will serve as the default Clause:

If applicable and to the extent feasible, the Contractor shall pass through to the Agency all warranties on equipment installed on Government property with the following representation:

EL PASO ELECTRIC COMPANY ACKNOWLEDGES THAT THE UNITED STATES OF AMERICA WILL OWN OR LEASE THE EQUIPMENT AND/OR MATERIALS BEING INSTALLED OR SUPPLIED HEREUNDER, AND, ACCORDINGLY, AGREES THAT ALL WARRANTIES SET FORTH HEREIN, OR OTHERWISE PROVIDED BY LAW IN FAVOR OF GOVERNMENT SHALL INURE ALSO TO THE BENEFIT OF THE UNITED STATES AND THAT ALL CLAIMS ARISING FROM ANY BREACH OF SUCH WARRANTIES OR AS A RESULT OF DEFECTS IN OR REPAIRS TO SUCH EQUIPMENT OR SUPPLIES MAY BE ASSERTED AGAINST CONTRACTOR OR MANUFACTURER DIRECTLY BY THE UNITED STATES OF AMERICA.

**18.6.** The Ordering Agency shall submit to GSA a copy of all preliminary energy audit results or energy conservation measure analysis for review and compliance with Federal regulations and policy. Upon written acknowledgement from GSA of receipt of the aforementioned information, a copy of which shall be provided by the Ordering



Agency to the Contractor, the Ordering Agency may negotiate Task Orders with the Contractor for the implementation of the energy conservation measures described in the preliminary documents. The Ordering Agency shall provide GSA and Contractor with copies of fully executed Exhibit "B" Authorizations for any Energy Management Services resulting from confirmed/approved energy audits, including any applicable attachments, at the address provided in Articles 16.1 and 16.2. Failure by the Ordering Agency to comply with the provisions of Article 18.6 will not impact the rights of Contractor under this Areawide Contract or any Authorization.

**18.7. Contractor's Responsibilities under this Areawide Contract:**

(a) The Contractor shall not provide Energy Management Service (EMS) to Federal facilities unless the facility is a current customer or prospective customer of the regulated utility within the franchised service territory of the utility company providing such services.

(b) The work that is to be performed under the Authorization for Energy Management Services shall be limited to work resulting in a direct reduction in energy usage (see Article 1.1(j)) and any modification or repair that is necessary as a direct result of the installation of the ECM.

**18.8. Guaranteed Savings and Scoring of UESC's by the Ordering Agency(ies):** UESC's that meet the definition of "Energy Management Service" ("EMS") prescribed in Article 1.1(k) of this Areawide Contract, and which follow the guidance prescribed in OMB Memoranda M-12-21 and M-98-13, may be scored for budgetary purposes by the Ordering Agency(ies) on an annual basis if the UESC requires:

(a) Energy savings performance assurances or guarantees of the savings to be generated by improvements, which must cover the full cost of the Federal investment for the improvements;

(b) Measurement and verification (M&V) of savings through commissioning and retro-commissioning; and

(c) Competition or an alternatives analysis as part of the selection process prior to entering into a UESC.

**18.9.** In order to assure the necessary fiscal responsibility consistent with sound program management, alternatively financed UESCs should include a plan for continued action during the contract to assure continued accomplishment of expected performance (this is referred to as a Performance Assurance or Performance Verification Plan). The level of performance assurance (M&V) and its associated costs should be worth the level of certainty of cost savings that the Ordering Agency reasonably deems to be necessary. Each alternatively financed UESC should have a Performance Assurance Plan to accomplish this. Such plans should provide for the separate evaluation of each energy conservation measure and combination of

measures in order to identify the appropriate level of needed performance assurance activity based on the technical complexity, potential savings magnitude, and specific situation. (See Overview of the Measurement and Verification for Federal Energy Projects Guidelines Version 2.2 or FEMP Fact Sheet - Performance Assurance for Multi-Year Contracts Under the Utility Incentive Program for further guidance.) Inclusion of and compliance with the Performance Assurance Plan in the specific project task order satisfies the requirements of Contractor under Sections 18.2 and 18.9.

## **ARTICLE 19. MISCELLANEOUS.**

**19.1. Contract Administration:** The Ordering Agency shall assist in the day-to-day administration of the Service being provided to it under an Authorization.

**19.2. Anti-Deficiency:** Unless otherwise authorized by Public Law or Federal Regulation, nothing contained herein shall be construed as binding the Government to expend, in any one fiscal year, any sum in excess of the appropriation made by the United States Congress for that fiscal year in furtherance of the matter of any Authorization executed in accordance with this Areawide Contract or to involve the Government in an obligation for the future expenditure of monies before an appropriation is made (Anti-Deficiency Act, 31 U.S.C. 1341.A.1).

**19.3. Obligation to Serve:** Nothing contained in this Areawide Contract shall obligate the Contractor to take any action which it may consider to be detrimental to its obligations as a public utility.

**19.4. Term of Authorizations:** It is recognized that during the Term of this Areawide Contract, situations and/or requirements may arise where it may be desirable that the term of service to an Ordering Agency's facility extend beyond the Term of this Areawide Contract. In such event, the particular Authorization involved may specify a term extending beyond the Term of this Areawide Contract, provided that it is within the contracting authority of the Ordering Agency and appropriate termination liability provisions have been negotiated between the Contractor and Ordering Agency to address unamortized balances for connection charge or energy management service projects. In the event of a conflict or inconsistency between this Areawide Contract and any Authorization, the terms of this Areawide Contract shall prevail.

**19.5. Exhibit Procedure:** The execution of an exhibit by Contractor and an Ordering Agency shall not supersede a previously executed exhibit addressing the same service unless specifically stated. Allowable terms of exhibits shall be consistent with the guidance and policy set forth in Article 2.2 of this Areawide contract.

**19.6. Indemnification:** Any indemnification language contained in standard form agreements executed between the Ordering agency and the Contractor shall be binding upon the Federal Government except to the extent prohibited by applicable law.

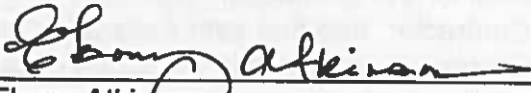
**19.7. Construction Wage Rate Requirements:** Since this Areawide Contract does not involve the Contractor performing on a federally funded or assisted contract for the

construction, alteration, or repair of a public work and/or public facility, the Construction Wage Rate Requirements (previously known as the Davis Bacon Act) do not apply to the work to be performed by Contractor in connection with the provision of Electric Service.

(Signatures follow)

IN WITNESS WHEREOF, the parties have executed this Areawide Contract as of the day and the year first above written.

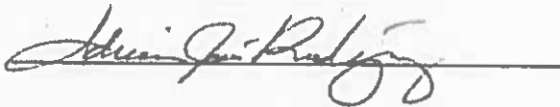
**UNITED STATES OF AMERICA**  
Acting through the Administrator  
of General Services

By:   
Ebony Atkinson  
Contracting Officer  
GSA, PBS, Energy Division

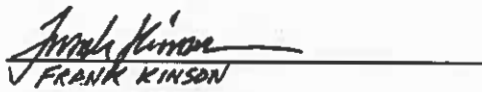
ATTEST:

By: J. Butler  
Jerard L. Butler  
GSA, PBS, Energy Division

**EL PASO ELECTRIC COMPANY**

By:   
Title: INTERIM CEO, GENERAL COUNSEL

ATTEST:

By:   
FRANK KINSON  
Title: Principal Attorney

**CERTIFICATE**

I, ADRIAN JOSE RODRIGUEZ, certify that I am INTERIM CEO, GENERAL COUNSEL  
of EL PASO ELECTRIC COMPANY,  
named as Contractor in the negotiated Areawide Contract No. 47PA0420D0013;  
that ADRIAN JOSE RODRIGUEZ, who signed said Areawide Public Utility Contract  
on behalf of the Contractor, was then INTERIM CEO, GENERAL COUNSEL of  
said Contractor; and that said Areawide Contract was duly signed for and on behalf of  
said Contractor and is within the scope of its corporate powers.

/s/ *Adrian Jose Rodriguez*

(Corporate Seal)





**EXHIBIT "A"**

Contractor's ID NO. \_\_\_\_\_ (Optional)  
Ordering Agency's ID \_\_\_\_\_ (Optional)

**EL PASO ELECTRIC COMPANY**

**AUTHORIZATION FOR ELECTRIC SERVICE, CHANGE IN ELECTRIC SERVICE, OR  
DISCONNECTION AND/OR TERMINATION OF ELECTRIC SERVICE UNDER**

**CONTRACT NO. 47PA0420D0013**

Ordering Agency: \_\_\_\_\_

Address: \_\_\_\_\_

Pursuant to Contract No. 47PA0420D0013 between the Contractor and the United States Government and subject to all the provisions thereof, service to the United States Government under such contract shall be rendered or modified as hereinafter stated. Contract Articles 2 and 4 shall be followed for the initiation of service under this contract.

PREMISES TO BE SERVED: \_\_\_\_\_

SERVICE ADDRESS: \_\_\_\_\_

**NATURE OF SERVICE:**

- Connect     Change     Disconnect     Continue Service     DSM Work  
 Line Extension, Alteration, Relocation, or Reinforcement     Special Facilities

OTHER TERMS AND CONDITIONS: \_\_\_\_\_

Attach any other relevant terms and conditions under which service will be provided.

**CONNECTION:** If this exhibit is used for connection of utility service, the connection charges established in El Paso Electric Company tariffs shall apply. If "Connect" is selected above, the estimated connection charges shall be included in the executed Exhibit. Estimated Connection Charges \$ \_\_\_\_\_.

POINT OF DELIVERY: \_\_\_\_\_

TERM OF SERVICE: From \_\_\_\_\_ through \_\_\_\_\_.

SERVICE HEREUNDER SHALL BE UNDER RATE SCHEDULE NO. \_\_\_\_\_\*,  
Hereafter, amended or modified by the regulatory body having jurisdiction. (See Article 5 of this contract.)

ESTIMATED ANNUAL ENERGY USAGE: \_\_\_\_\_ KWH,

ESTIMATED DEMAND: \_\_\_\_\_ KW

ESTIMATED ANNUAL SERVICE COST: \$ \_\_\_\_\_

ESTIMATED CONNECTION/SPECIAL FACILITIES CHARGE: \$ \_\_\_\_\_ (if applicable)\*\*

ACCOUNTING AND APPROPRIATION DATA FOR SERVICE: \_\_\_\_\_

FOR CONNECTION/SPECIAL FACILITIES CHARGE: \_\_\_\_\_

**Exhibit A (Cont'd)**

**CLAUSES INCORPORATED BY REFERENCE (Check applicable clauses):**

- |      |       |           |  |
|------|-------|-----------|--|
| (1)  | _____ | 52.211-10 | Commencement, Prosecution and Completion of Work (APR 1984)  |
| (2)  | _____ | 52.236-5  | Material and Workmanship (APR 1984)  |
| (3)  | _____ | 52.241-4  | Change in Class of Service (FEB 1995)  |
| (4)  | _____ | 52.241-3  | Scope and Duration of Contract (FEB 1995)  |
| (5)  | _____ | 52.241-5  | Contractor's Facilities (FEB 1995)   |
| (6)  | _____ | 52.241-7  | Change in Rates or Terms and Conditions of Service for Regulated Services (FEB 1995) (Use Full Text of Clause) |
| (7)  | _____ | 52.241-11 | Multiple Service Locations (FEB 1995)  |
| (8)  | _____ | 52.243-1  | Changes-Fixed Price (AUG 1987)   |
| (9)  | _____ | 52.249-   | Default (_____) (Specify appropriate Clause)   |
| (10) | _____ | 52.241-12 | Nonrefundable, Nonrecurring Service charge (FEB 1995)  |
| (11) | _____ | 52.232-18 | Availability of funds (APR 1984)   |
| (12) | _____ | 52.232-19 | Availability of Funds for the Next Fiscal Year (APR 1984)  |

**BILLS WILL BE RENDERED TO THE ORDERING AGENCY FOR PAYMENT AT THE FOLLOWING ADDRESS:**

\_\_\_\_\_ in \_\_\_\_\_ copies.

The foregoing shall be effective upon the return of the fully executed original Authorization by the Contractor to the ordering Agency.

**ACCEPTED:**

\_\_\_\_\_  
(Ordering Agency)

**EL PASO ELECTRIC COMPANY**  
(Contractor)

By: \_\_\_\_\_  
Authorized Signature

By: \_\_\_\_\_  
Authorized Signature

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

\*Include a reference to the applicable rate schedule, and attach a copy of such schedule.  
\*\*If necessary, attach and make part hereof supplemental agreements or sheets that cover required connection or extension charges and special facilities or service arrangements. (See Article 5 of this Contract for instructions.)

**NOTE:** A fully executed copy of this Authorization shall be transmitted by the ordering Agency to U.S. General Services Administration, PBS, Office of Facilities Management, Energy Division, 1800 F Street, NW, Washington, DC 20405 or via email at [energy@gsa.gov](mailto:energy@gsa.gov).

**EXHIBIT "B"**

Contractor's ID NO. \_\_\_\_\_ (Optional)  
 Ordering Agency's ID \_\_\_\_\_ (Optional)

**EL PASO ELECTRIC COMPANY**

**AUTHORIZATION FOR, OR TERMINATION OF, ENERGY MANAGEMENT SERVICES  
 CONTRACT NO. 47PA0420D0013**

Ordering Agency: \_\_\_\_\_

Address: \_\_\_\_\_

Pursuant to Contract No. 47PA0420D0013 between the Contractor and the United States Government and subject to all the provisions thereof, service to the United States Government under such contract shall be rendered or modified as hereinafter stated. Contract Articles 2 and 4 shall be followed for the initiation of service under this contract.

PREMISES TO BE SERVED: \_\_\_\_\_

SERVICE ADDRESS: \_\_\_\_\_

**NATURE OF SERVICE:**

- Preliminary Energy Audit       ECP Feasibility Study       ECP Engineering & Design Study  
 Energy Conservation Project (ECP) Installation       Demand Side Management (DSM) Project  
 Other (See Remarks Below)

SERVICE HEREUNDER shall be provided consistent with the Contractor's applicable tariffs, rates, rules, regulations, riders, practices, and/or terms and conditions of service, as modified, amended or supplemented by the Contractor and approved, to the extent required, by the Council. (See Article 5 of this contract.)

POINT OF DELIVERY: \_\_\_\_\_

ESTIMATED PROJECT COST: \$ \_\_\_\_\_

ACCOUNTING AND APPROPRIATION DATA: \_\_\_\_\_

**LIST OF ATTACHMENTS:**

- General Conditions       Payment Provisions       Special Requirements       Economic Analysis  
 Facility/Site Plans       Historical Data       Utility Usage History       ECP Feasibility Study  
 Design Drawings       Design Specifications       Certifications       Commission Schedules

**CLAUSES INCORPORATED BY REFERENCE (Check applicable clauses):**

Check	Applicable FAR Provision
<input type="checkbox"/>	52.211-10 Commencement, Prosecution And Completion Of Work (APR 1984)
<input type="checkbox"/>	52.232-5 Payments Under Fixed-Price Construction Contracts (SEP 2002) --Supersedes Provisions Of Payment Clauses In Article 14.
<input type="checkbox"/>	52.232-27 Prompt Payment for Construction Contracts (FEB 2002)
<input type="checkbox"/>	52.236-5 Material and Workmanship (APR 1984)
<input type="checkbox"/>	52.241-8 Change in Rates or Terms and Conditions of Service for Unregulated Services (FEB 1995) (Use full Text of Clause)
<input type="checkbox"/>	52.243-1 Changes-Fixed Price (AUG 1987)
<input type="checkbox"/>	52.249-__ Default (_____) (Specify Appropriate Clause)
<input type="checkbox"/>	52.204-9 Personal Identity Verification of Contractor Personnel (JAN 2011)
<input type="checkbox"/>	52.215-12 Subcontractor Cost Or Pricing Data (Oct 2010)1
<input type="checkbox"/>	52.223-15 Energy Efficiency In Energy-Consuming Products (Dec 2007)
<input type="checkbox"/>	52.223-17 Affirmative Procurement of EPA-Designated Items In Service And Construction Contracts (May 2008)1
<input type="checkbox"/>	52.232-17 Interest (MAY 2014)
<input type="checkbox"/>	52.236-9 Protection of Existing Vegetation, Structures, Equipment, Utilities, and Improvements (APR 1984)
<input type="checkbox"/>	52.241-10 Termination Liability (FEB 1995)
<input type="checkbox"/>	52.241-12 Nonrefundable, Nonrecurring Service Charge (FEB 1995)
<input type="checkbox"/>	52.232-11 Extras (APR 1984)

52.249-4 Termination for Convenience of the Government (APR 1984)

(FIXED SUPPLY AND SERVICE)  
 (APR 1984)

52.249-8 Default  
 SERVICE (APR 1984)

**Exhibit B (Cont'd)**

*In addition, the Contracting Officer negotiating the terms and conditions under this authorization shall supplement the above-referenced clauses with clauses for the appropriate type of contract.*

REMARKS:

ACCEPTED:

\_\_\_\_\_  
(Ordering Agency)

**EL PASO ELECTRIC COMPANY**  
(Contractor)

By: \_\_\_\_\_  
Authorized Signature

By: \_\_\_\_\_  
Authorized Signature

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date \_\_\_\_\_

Date: \_\_\_\_\_

**NOTE:** A fully executed copy of this Authorization shall be transmitted by the ordering Agency to U.S. General Services Administration, PBS, Office of Facilities Management, Energy Division, 1800 F Street, NW, Washington, DC 20405 or via email at [energy@gsa.gov](mailto:energy@gsa.gov).

EXHIBIT "C"

Contractor's ID NO. \_\_\_\_\_ (Optional)  
Ordering Agency's ID \_\_\_\_\_ (Optional)

EL PASO ELECTRIC COMPANY

AUTHORIZATION FOR THE PROVISION OF SERVICES PROVIDED UNDER  
(insert appropriate Regulatory Authority) \_\_\_\_\_  
AREAWIDE CONTRACT NO. 47PA0420D0013

Ordering Agency: \_\_\_\_\_

Address: \_\_\_\_\_

Pursuant to Areawide Contract No. 47PA0420D0013 between EL PASO ELECTRIC COMPANY ("Contractor") and the United States Government and subject to all the provisions thereof, service to the United States Government under such contract shall be rendered or modified as hereinafter stated. Contract Articles 2 and 4 shall be followed by the Ordering Agency in initiating service under this contract as described below.

PREMISES TO BE SERVED: \_\_\_\_\_

SERVICE ADDRESS: \_\_\_\_\_

NATURE OF SERVICE: \_\_\_\_\_ [add description of the specific service requested by the Ordering Agency. For example, interconnection of the Ordering Agency's renewable energy project.]

OTHER TERMS AND CONDITIONS:  
[Describe or attach description]

[Attached as Exhibit C.1 are, if applicable, Contractor's terms and conditions for the specific service identified above, which may include modifications that have been made by Contractor for the Ordering Agency with the approval of the (insert appropriate Regulatory Authority) \_\_\_\_\_]

TERM OF SERVICE: From \_\_\_\_\_ through \_\_\_\_\_

BILLS WILL BE RENDERED TO THE ORDERING AGENCY FOR PAYMENT AT THE FOLLOWING ADDRESS:

\_\_\_\_\_ in \_\_\_\_\_ copies.  
The foregoing shall be effective upon the return of the fully executed original Authorization by the Contractor to the ordering Agency.

ACCEPTED:

\_\_\_\_\_  
(Ordering Agency)

EL PASO ELECTRIC COMPANY  
(Contractor)

By: \_\_\_\_\_  
Authorized Signature

By: \_\_\_\_\_  
Authorized Signature

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date \_\_\_\_\_

Date: \_\_\_\_\_

NOTE: A fully executed copy of this Authorization shall be transmitted by the ordering Agency to U. S. General Services Administration, PBS, Office of Facilities Management, Energy Division, 1800 F Street, NW, Washington, DC 20405 or via email at [energy@gsa.gov](mailto:energy@gsa.gov).

\*Include a reference to the applicable rate schedule and attach a copy of such schedule.

\*\*If necessary, attach and make part hereof supplemental agreements or sheets that cover required connection or extension charges and special facilities or service arrangements. (See Article 5 of this Contract for instructions.)

