
PERFORMANCE CONTRACTING AGREEMENT

between

City of Yuma, Arizona

and

**Siemens Industry, Inc.,
Building Technologies Division**

PERFORMANCE CONTRACTING AGREEMENT

Number: SAP JOB NUMBER

Article 1 AGREEMENT

THIS **PERFORMANCE CONTRACTING AGREEMENT** ("Agreement") is made this day of August, 2017 (the "Effective Contract Date", defined below), by and between Siemens Industry, Inc., Building Technologies Division ("SIEMENS") and the party identified below as the CLIENT.

The CLIENT: **City of Yuma, an Arizona municipal corporation**
 One City Plaza
 Yuma, AZ 85364

DESIGNATED REPRESENTATIVE:
PHONE: FAX:

Siemens Industry, Inc., Building Technologies Division
1000 Deerfield Parkway
Buffalo Grove, Illinois 60089

With offices at: [Insert branch address]

DESIGNATED REPRESENTATIVE:
PHONE: FAX:

For Work and Services in connection with the following project (the "Project"):

LED Street Lighting Conversion Project

PERFORMANCE CONTRACTING AGREEMENT

Articles and Attachments

Agreement means this document and the following Articles 2-13 and Exhibits A-F all of which are attached hereto and made a part hereof by reference. In interpreting this Agreement and resolving any ambiguities, the language in the Agreement takes precedence over the language in the Exhibits.

Articles

1. Agreement
2. Glossary
3. General
4. Performance Guarantee
5. Work BY SIEMENS
6. The CLIENT's Responsibilities
7. Changes and Delays
8. Compensation
9. Acceptance
10. Insurance and Allocation of Risk
11. Hazardous Material Provisions
12. Miscellaneous Provisions
13. Maintenance Services Program

Exhibits

Exhibit A	Scope of Work and Services
Exhibit B	Payment Schedule(s)
Exhibit C	Performance Assurance
Exhibit D1	Form of Certificate of Substantial Completion
Exhibit D2	Form of Certificate of Final Completion
Exhibit E	Arizona Contract

This Agreement, when executed by an authorized representative of the CLIENT and authorized representatives of SIEMENS, constitutes the entire, complete and exclusive agreement between the Parties relative to the project scope stated in Exhibit A. This Agreement supersedes all prior and contemporaneous negotiations, statements, representations, agreements, letters of intent, awards, or proposals between the Parties, either written or oral relative to the same, and may be modified only by a written instrument signed by authorized representatives of both Parties.

COMPENSATION/TERMS OF PAYMENT:

As full consideration for the performance of the Work and Services set forth in Exhibit A, and for the Performance Assurance set forth in Exhibit C, the CLIENT shall pay SIEMENS in such manner and amounts as agreed to in Exhibit B.

Agreed for **City of Yuma**

(Signature) by: _____

Print Name and Title: Gregory K. Wilkinson, City Administrator

ATTEST

(Signature) by: _____

Print Name and Title: Lynda L. Bushong, City Clerk

Agreed for **Siemens Industry, Inc.**

(Signature) by: _____

Print Name and Title: _____

(Signature) by: _____

Print Name and Title: _____

PERFORMANCE CONTRACTING AGREEMENT

Article 2

Glossary

The following terms shall for all purposes have the meanings stated herein, unless the context otherwise specifies or requires, or unless otherwise defined in the Agreement:

Acceptance means the CLIENT has signed, or is deemed to have signed as set forth in Section 9.2 of this Agreement, a Certificate of Final Completion.

Acceptance Date means the date on which the CLIENT signs or is deemed to have signed as set forth in Section 9.2 of this Agreement, a Certificate of Final Completion.

Annual Performance Assurance Report means the document prepared by SIEMENS and submitted to the CLIENT as part of the Performance Assurance Service Program, which identifies the Savings achieved for the applicable Annual Period.

Annual Period means a twelve (12) month period beginning on the Guarantee Date or on any anniversary date thereof.

Annual Realized Savings means the actual Savings achieved by the CLIENT during an Annual Period, calculated as the sum of the Measured & Verified Savings plus the Stipulated Savings.

Applicable Law means laws, ordinances, codes, rules and regulations applicable to the Work and in effect on the Effective Contract Date.

Baseline means the measurements of Facility energy usage taken prior to the Effective Contract Date, and the Facility operating practices in effect prior to the Effective Contract Date, as set forth in the Performance Assurance, Exhibit C.

Baseline Period means the period of time from which data is provided to SIEMENS to derive the Baseline measurements. The Baseline Period is set forth in the Performance Assurance, Exhibit C.

BTU means a British Thermal Unit and is a unit of thermal energy.

Capital Off-Set Savings means a sub-category of Operational Savings where Savings will result in a cost effective upgrade to the Facility to address one or more of the following issues: potential future increased costs, comfort, code non-compliance, usage requirements, user needs and/or expectations.

Certificate of Final Completion means a document, in the form attached as Exhibit D2 hereto, indicating that all of the Work identified in Article 1 of the Scope of Work and Services-Exhibit A has been completed in accordance with the Agreement, including all items in the Outstanding Items List(s).

Certificate of Substantial Completion means a document, in the form attached as Exhibit D1 hereto, indicating that the Work, or a designated portion of the Work, is Substantially Complete in accordance with the Agreement. A Certificate of Substantial Completion may be accompanied by an Outstanding Items List.

CLIENT Representative means the person identified to SIEMENS by the CLIENT as the person authorized to make decisions on behalf of the CLIENT as set forth in Section 6.1(a) hereof.

Construction Period means the period between the Effective Contract Date and the Guarantee Date.

Construction Period Savings means the actual accumulated Measured & Verified Savings plus the Stipulated Savings achieved from the Effective Contract Date until the Guarantee Date.

Contracted Baseline means the post-FIM-implementation Facility operating profile based on parameters described in Exhibit C, which the CLIENT shall maintain throughout the Performance Guarantee Period and are relied upon by SIEMENS for the calculation of Guaranteed Savings as provided in the Performance Assurance, Exhibit C. The Contracted Baseline must also include stipulated hours of operation and plug-loads for all Facilities, and must include stipulated blended, or non-blended, utility rates.

Deferred Maintenance means a sub-category of Operational Savings where Savings result from a reduction of current or potential future repair and maintenance costs due to certain work being performed hereunder where such work had been previously postponed.

Deliverables shall mean collectively, (a) any Equipment and any Software Product deliverable to CLIENT from SIEMENS under or in connection with the Work, and (b) any Work Product Deliverables.

Effective Contract Date is the date appearing at the top of this Agreement, unless specifically indicated otherwise.

PERFORMANCE CONTRACTING AGREEMENT

Energy Conservation Measure or **ECM** means the SIEMENS Products and/or other third party equipment, devices, materials, and/or software as installed by SIEMENS at the Facilities, or as repaired or replaced by SIEMENS or the CLIENT hereunder, for the purpose of improving the efficiency of utility consumption.

Equipment means the installed physical equipment to be provided by SIEMENS as described in the Scope of Work and Services, Exhibit A.

Escalation Rate means an annual percentage increase to be applied to the previous Annual Period's energy savings, operational savings and service pricing, beginning and occurring on dates outlined in the Performance Assurance, Exhibit C. A different Escalation Rate may be applied to differing Savings calculations and/or payment schedules depending on the percentage agreed upon by the Parties.

Facility or Facilities means the **building(s)** or structure(s) where Work will be installed or implemented.

Facility Improvement Measures or **FIMs** means the (i) Instruments, know-how and Intellectual Property, including but not limited to methods and techniques for energy conservation, owned or licensed by SIEMENS and employed by SIEMENS to perform the Work and Services under this Agreement; and, (ii) the installation of Equipment and Software Products with the intent of generating net savings or efficiencies at or in connection with the operation of the Facilities. A FIM may include one or multiple ECMs as well as any non-conservation-related activities, means or methods.

FEMP means the Federal Energy Management Program managed by the United States Department of Energy.

FEMP Guidelines means the FEMP M&V Guidelines v. 3.0 published by FEMP as M&V Guidelines; Measurement and Verification for Federal Energy Management Projects.

Guarantee Date means the first day of the month following the Acceptance Date.

Guaranteed Annual Savings are the Guaranteed Measured & Verified Savings plus the Stipulated Savings that SIEMENS guarantees will be achieved in an Annual Period of the Performance Guarantee Period.

Guaranteed Measured & Verified Savings means the Measured & Verified Savings that SIEMENS guarantees will be achieved, as described in the Performance Assurance, Exhibit C.

Guaranteed Savings means the amount of Savings that SIEMENS guarantees will be achieved at the Facility during the Performance Guarantee Period, as identified in the Performance Assurance, Exhibit C as subject to the limitation identified in Section 4.8 of this Agreement.

Hazardous Materials refers to the definition found in Section 11.1 of this Agreement.

Instruments means all know-how, tools and related documentation owned or licensed by SIEMENS and used by SIEMENS to install or commission Equipment and Software Products for operation at the Facility, including but not limited to tools for installing any Software Products in Equipment, performing diagnostics on Equipment as installed in the Facility as well as any reports, notes, calculations, data, drawings, estimates, specifications, manuals, documents, all computer programs, codes and computerized materials prepared by or for SIEMENS and used by SIEMENS to provide an ECM or a FIM. Instruments excludes Work Product Deliverables.

Intellectual Property Rights or Intellectual Property means all trade secrets, patents and patent applications, trade marks (whether registered or unregistered and including any goodwill acquired in such trade marks), services marks, trade names, internet domain names, copyrights (including rights in computer software), moral rights, database rights, design rights, rights in know-how, rights in inventions (whether patentable or not) including, but not limited to, any and all renewals or extensions thereof, and all other proprietary rights (whether registered or unregistered, and any application for the foregoing), and all other equivalent or similar rights which may subsist anywhere in the world, including, but not limited to, any and all renewals or extensions thereof.

IPMVP means the International Performance Measurement and Verification Protocol, Volume 1, EVO 10000-1.2007 as prepared by the Efficiency Valuation Organization.

kW and **kWh** means kilowatt and kilowatt hour, respectively.

Maintenance Services Program or **MSP** means the Services performed by SIEMENS to maintain the Equipment in good working order. The MSP may also contain Services unrelated to the maintenance of the Equipment. If applicable, the MSP is more fully described in the Scope of Work and Services, Exhibit A.

Material Change means a measurable deviation by the CLIENT in the Contracted Baseline such that there is an adverse impact on the Annual Realized Savings which results or will result in a Savings Shortfall.

Measured & Verified Savings means those Savings that can be calculated and ascertained by the methodology set forth in the Performance Assurance, Exhibit C.

PERFORMANCE CONTRACTING AGREEMENT

Oil refers to the definition found in Section 11.1 of this Agreement.

Operational Savings means Savings derived from reduced operational expenses, including but not limited to, Deferred Maintenance, or Capital Off-Set Savings. Operational Savings can only be expressed in monetary value and are Stipulated Savings.

Outstanding Items List means a list of items in need of completion or correction that relates to the Work, or a designated portion thereof that is Substantially Complete. The absence of such items does not deprive the CLIENT of the ability to put such Work, or a designated portion thereof to beneficial use. An Outstanding Items List may be attached to a Certificate of Substantial Completion.

Party or Parties means the CLIENT and SIEMENS.

Performance Assurance is the process of ascertaining whether the FIMs are performing at the level necessary to achieve the Guaranteed Savings.

Performance Assurance Services Program or PASP means the Services required to monitor the operation of the FIMs so that SIEMENS can provide the Annual Performance Assurance Report detailing the Annual Realized Savings and comparing the same to the Annual Guaranteed Savings based upon the calculations agreed to by the Parties in the Performance Assurance, Exhibit C. The Services provided under the PASP are described in the Scope of Work and Services, Exhibit A.

Performance Guarantee means the guarantee that SIEMENS makes to the CLIENT which is reconciled and confirmed through the Performance Assurance process set forth in the Performance Assurance, Exhibit C.

Performance Guarantee Period means the timeframe from the Guarantee Date to the last day of the final Annual Period as described in Table 1.1 of the Performance Assurance, Exhibit C, or the period from the Guarantee Date until the termination of this Agreement, whichever occurs earlier.

Permitted Users means the CLIENT, its employees, and agents.

Savings means the Parties' intended result from implementing all FIMs. Savings can be derived from reductions in energy or utility consumption, reductions in operating expenses, a changed utility rate classification or a combination thereof. The Savings that are achieved from reduced energy or utility consumption are converted to a dollar figure based upon the calculation in Article 4.1.1 and as detailed in the Performance Assurance, Exhibit C. When converted to a dollar figure, these Savings become energy cost savings. Operational Savings are only expressed in a dollar figure.

Savings Shortfall means the Annual Realized Savings less the Guaranteed Annual Savings for the Annual Period resulting in an amount less than zero.

Services means those services to be provided by SIEMENS as described in the Scope of Work and Services, Exhibit A.

SIEMENS Pre-existing Intellectual Property means any Intellectual Property: (i) that has been conceived or developed by an employee or subcontractor of SIEMENS before SIEMENS performs any Work or Services under this Agreement; (ii) that is conceived or developed by such employee or subcontractor at any time wholly independently of SIEMENS performing the Work under this Agreement; or, (iii) if developed while performing the Work under this Agreement, where the development of Intellectual Property for the benefit of the CLIENT is not expressly identified as a FIM or part of a FIM. SIEMENS Pre-existing Property is included in all reports, notes, calculations, data, drawings, estimates, specifications, manuals, documents, all computer programs, codes and computerized materials prepared by or for SIEMENS.

SIEMENS Product means a product, including Software Product and/or Equipment, offered for sale or license by SIEMENS or its affiliates or subsidiaries and developed prior to performing the Work or SIEMENS rendering services in connection with this Agreement. A SIEMENS Product also includes improvements or modifications to any Equipment and any Software Product developed by SIEMENS or developed as part of the Work, including any SIEMENS Product that is configured or modified for operation at a site specified by the CLIENT. Any information that is provided by the CLIENT and incorporated into a SIEMENS Product is not, by itself, a SIEMENS Product. A compilation of such information and the product of such compilation, however, is a SIEMENS Product.

Software Product means any software that is owned or licensed by SIEMENS or its affiliates and that is either separately deliverable for use in the Equipment or for use in a computer system owned by the CLIENT or delivered as firmware embedded in the Equipment.

Stipulated Savings are a sub-category of Guaranteed Savings that do not require post-FIM implementation measurement and verification because they are agreed upon by the Parties based upon representations made to SIEMENS by the CLIENT and through the application of generally accepted analytical formulae. As such, Stipulated Savings are agreed upon in advance by the Parties and cannot be changed. When used as a methodology for representing a FIM's energy savings, such methodology is not recognized as a measurement and verification methodology under IPMVP. Therefore, where the

PERFORMANCE CONTRACTING AGREEMENT

IPMVP measurement methodologies are required, a methodology other than Stipulated Savings must be used to calculate energy savings.

Substantial Completion or Substantially Complete means the Work, or any identifiable portion thereof, which is sufficiently complete, in accordance with the provisions of this Agreement relating to the Scope of the Work and Services, Exhibit A, such that the CLIENT will be able to realize from such Work substantially all of the practical benefits intended to be gained therefrom, or otherwise employ the Work or the FIMs for their intended purposes.

Therm is a measure of energy equal to 100,000 BTUs.

Total Guaranteed Savings means the sum of the Savings that are guaranteed for all Annual Periods during the Performance Guarantee Period (inclusive of the Construction Period, if applicable). The Total Guaranteed Savings are reflected in Tables 1.1 and 1.2 in the Performance Assurance, Exhibit C.

Work means collective labor, Equipment and services comprising the FIMs to be performed by SIEMENS, as described in the Scope of Work and Services, Exhibit A.

Work Product Deliverable means the tangible form of a report or drawing specifically developed for, commissioned by and deliverable to the CLIENT in connection with the Work to be performed by SIEMENS under this Agreement. Work Product Deliverables include providing complete written documentation regarding Equipment, including but not limited to manufacturer's warranties, operation and maintenance information, such as manufacturer's recommendations, manufacturer's operating manuals and instructions

Article 3 General

- 3.1 The Parties hereto acknowledge and agree that this Agreement has been negotiated at arm's length and among the Parties equally sophisticated. Each party has conferred, or has had the opportunity to confer, with their respective legal counsel. Accordingly, in the event any claim is made relating to any conflict, omission, or ambiguity in this Agreement, no presumption, burden of proof, or persuasion shall be implied by virtue of the fact that this Agreement was drafted by or at the request of a particular party or its legal counsel.
- 3.2 The CLIENT hereby engages and SIEMENS hereby accepts the engagement to perform and to provide the Work and Services set forth in Exhibit A in accordance with (i) the terms and conditions of this Agreement and (ii) the term and conditions set forth in the State of Arizona Contract No. ADSP014-069037, awarded to Siemens on April 7, 2014 (the "Arizona Contract"), attached as Exhibit E and incorporated herein by reference.
- 3.3 SIEMENS shall perform the Work as an independent contractor with exclusive control of the manner and means of performing the Work in accordance with the requirements of this Agreement. SIEMENS has no authority to act or make any agreements or representations on behalf of the CLIENT. This Agreement is not intended, and shall not be construed to create, between the CLIENT and SIEMENS, the relationship of principal and agent, joint-venturers, co-partners or any other such relationship, the existence of which is hereby expressly denied. No employee or agent of SIEMENS shall be, or shall be deemed to be, an employee or agent of the CLIENT.
- 3.4 SIEMENS represents, warrants and covenants to the CLIENT that:
- (a) SIEMENS has all requisite corporate power to enter into this Agreement, and that its execution of this Agreement has been duly authorized and does not and will not constitute a breach or violation of any of SIEMENS' organizational documents, any Applicable Law, or any agreements with third parties;
 - (b) SIEMENS has done and will continue to do all things necessary to preserve and keep in full force and effect its existence and the Agreement;
 - (c) This Agreement is the legal, valid and binding obligation of SIEMENS, in accordance with its terms, and all requirements have been met and procedures have been followed by SIEMENS to ensure the enforceability of the Agreement;
 - (d) To SIEMENS best knowledge, there is no pending or threatened, suit, action, litigation or proceeding against or affecting SIEMENS that affects the validity or enforceability of this Agreement; and,
 - (e) SIEMENS is duly authorized to do business in all locations where the Work and Services are to be performed.
- 3.5 The CLIENT represents, warrants and covenants to SIEMENS that:

PERFORMANCE CONTRACTING AGREEMENT

- (a) The CLIENT has all requisite corporate power and/or statutory authority to enter into this Agreement, and that its execution hereof has been duly authorized by the City Council of the City of Yuma and does not and will not constitute a breach or violation of any of the CLIENT's organizational documents, any Applicable Law, or any agreements with third parties;
- (b) The CLIENT has done and will continue to do all things necessary to preserve and keep in full force and effect its existence and the Agreement;
- (c) This Agreement is the legal, valid and binding obligation of the CLIENT, in accordance with its terms, and all requirements have been met and procedures have been followed by the CLIENT to ensure the enforceability of the Agreement;
- (d) To the CLIENT's best knowledge, there is no pending or threatened, suit, action, litigation or proceeding against or affecting the CLIENT that affects the validity or enforceability of this Agreement; and,
- (e) The CLIENT has consulted with its legal counsel and is relying on the advice of its counsel concerning all legal issues related to this Agreement, and is not relying on SIEMENS in this regard.

Article 4

Performance Guarantee

- 4.1 The Annual Realized Savings generated during each Annual Period will be no less than the Guaranteed Annual Savings as shown in Tables 1.1 and 1.2 of the Performance Assurance, Exhibit C, subject to the limits in Section 4.8. The measurement and verification calculation methodology for determining the Savings is set forth in the Performance Assurance, Exhibit C.
 - 4.1.1 General. Except as otherwise provided, energy savings will be calculated for each month of each Annual Period as the product of (i) "units of energy saved" (kWh, Therms, GJ, etc.) multiplied by (ii) "cost of energy."
 - (a) Units of energy saved are calculated by 1) assuming the Contracted Baseline has been maintained per Section 4.3 below, and 2) subtracting the then current Annual Period measured units of energy consumed from the Baseline units of energy defined in Article 5 of Exhibit C.
 - (b) Costs of energy are defined in Article 6 of Exhibit C-Utility Rate Structures and Escalation Rates.
- 4.2 Any future Escalation Rates to be applied to utility, energy or other costs are set forth in Exhibit C. SIEMENS and the CLIENT agree that the Baseline data set forth in Exhibit C is a full and accurate reflection of the existing Facility, equipment, operation, business use, and energy usage, and that such Baseline data will be the basis on which all future energy use will be compared in order to determine the Annual Realized Savings.
- 4.3 SIEMENS and the CLIENT agree that the Contracted Baseline fully described in Exhibit C will represent the new operating and/or equipment profile of the Facility resulting from the FIM implementation. The Performance Guarantee is dependent upon and is subject to the express condition that the CLIENT operates and maintains its Facilities within the Contracted Baseline parameters, as may be adjusted in accordance with the terms herein, during the entire term of the Performance Guarantee Period.
- 4.4 The CLIENT agrees to notify SIEMENS prior to or within thirty (30) days of CLIENT's knowledge of any Material Change.
- 4.5 Within thirty (30) days of notice of a Material Change, SIEMENS' discovery of a Material Change and with prompt notice to CLIENT, SIEMENS shall:
 - (a) Require an adjustment, mutually agreed by both Parties, to the Performance Assurance and the Performance Guarantee as a result of the Material Change; or,
 - (b) Where the parties fail to agree upon a commercially reasonable adjustment to the Performance Guarantee under section (a) above, terminate both the Performance Assurance and the Performance Guarantee.
- 4.6 An Annual Assurance Performance Report will be performed at the end of each Annual Period as follows:
 - (a) Within ninety (90) days of the Guarantee Date, SIEMENS shall reconcile the Construction Period Savings and send a copy of the reconciliation to the CLIENT for review and acceptance, not to be unreasonably withheld. Upon the CLIENT's approval of the reconciliation, SIEMENS shall apply the Construction Period Savings to the calculation of the first Annual Period's Annual Realized Savings.

PERFORMANCE CONTRACTING AGREEMENT

- (b) At the conclusion of each Annual Period, SIEMENS will calculate the Annual Realized Savings, compare the calculated amount to the applicable Guaranteed Annual Savings amount, and prepare an Annual Performance Assurance Report of its findings for the CLIENT's review and approval, not to be unreasonably withheld.
 - (c) Where the Annual Realized Savings are less than the Guaranteed Annual Savings, a Savings Shortfall shall be recorded for the applicable Annual Period.
 - (d) If applicable, SIEMENS shall pay the CLIENT a Savings Shortfall within sixty (60) days following the CLIENT's acceptance of the reconciliation of the Annual Realized Savings and Guaranteed Annual Savings for the Applicable Period and once paid SIEMENS shall have fulfilled its obligations under the Performance Guarantee for the applicable Annual Period.
- 4.6.1 As the mutual goal of the Parties is to maximize Savings, if SIEMENS can correct a Savings Shortfall through an operational improvement at (i) no additional expense or material inconvenience to the CLIENT and (ii) without future additional operational expenses to the CLIENT, and the CLIENT declines to allow such operational improvement, then any future Savings Shortfall that the operational improvement would have corrected will be negated by deeming the value of the Savings Shortfall as Savings achieved and adding the amount of same to the Annual Realized Savings calculations for each Annual Period thereafter.
- (e) In the event CLIENT fails to deliver to SIEMENS written notice of an objection to any savings reconciliation delivered by SIEMENS under this Article 4.6 within thirty (30) calendar days of its receipt thereof, CLIENT shall be deemed to have accepted the applicable savings reconciliation and waived any and all objections thereto.
- 4.7 The Performance Guarantee is dependent upon and is subject to the express condition that the CLIENT maintains the PASP during the entire Performance Guarantee Period. If the CLIENT fails to maintain, breaches, cancels or otherwise causes the termination of the PASP then; (a) The Performance Guarantee shall terminate immediately and be void and of no force or effect; or, (b) Where termination of the Performance Guarantee acts to render the Agreement in violation of Applicable Law, all Guaranteed Savings thereafter shall be determined to have been achieved and SIEMENS shall have been deemed to have met its Performance Guarantee obligations under this Agreement for each and every Annual Period thereafter without the obligation to provide the CLIENT, or any third-party as the case may be, with any further Annual Performance Assurance Reports.
- 4.8 The payments and credits based on Savings Shortfalls, if any, are the sole remedy of the CLIENT under this Performance Guarantee. ANY PAYMENTS MADE OR TO BE MADE TO THE CLIENT UNDER THE TERMS OF THIS PERFORMANCE GUARANTEE SHALL NOT EXCEED AN AGGREGATE AMOUNT OF \$3,858,970.00.
- 4.9 The CLIENT represents that all existing equipment that is not installed by SIEMENS under this Agreement but is deemed necessary to achieve the Performance Guarantee, is in satisfactory working condition. At least thirty (30) calendars days prior to the beginning of the Performance Guarantee Period, SIEMENS will have inspected all such existing equipment and reported any deficiencies to the CLIENT. To the extent that the deficiencies are not remedied by the CLIENT prior to the Guarantee Date, the adverse effect on the ability of the Project to attain the necessary Guaranteed Savings shall be factored into the Annual Performance Assurance Report and, if necessary, the Performance Guarantee shall be adjusted accordingly.
- 4.10 Following the Acceptance Date, SIEMENS authorizes and CLIENT has elected to self-perform all of CLIENT's obligations regarding the service and maintenance of the Equipment, including but not limited to servicing and maintaining all Equipment in accordance with the manufacturers' recommendations in order to prevent a Savings Shortfall.
- 4.11 SIEMENS will have no liability or obligation to continue providing PASP Services or any Guaranteed Savings under the Performance Guarantee in the event that the CLIENT fails to:
- (a) Provide access during regular business hours of the CLIENT to any Facility where Work is to be performed;
 - (b) Service and maintain all Equipment in accordance with the manufacturers' recommendations in order to prevent a Savings Shortfall; or,
 - (c) Provide SIEMENS with accurate Facility operating information as soon as such information becomes reasonably available to the CLIENT, including energy usage and cost, executed preventive maintenance and repair records, during each Annual Period.

PERFORMANCE CONTRACTING AGREEMENT

- 4.12 Unless expressly contrary to Applicable Law, should the CLIENT decide to discontinue the PASP before the end of the Performance Guarantee Period, the CLIENT will give SIEMENS thirty (30) days prior written notice and in such event the CLIENT will pay to SIEMENS of the value of the PASP services performed by Siemens through the date of termination.
- 4.13 Unless expressly contrary to Applicable Law, any disputes concerning the calculation of the Annual Realized Savings or changes to the Contracted Baseline that are not resolved by good faith negotiations between the Parties within sixty (60) days receipt of the written notice of the dispute, will be resolved by a third-party professional engineering firm which is reasonably acceptable to both SIEMENS and the CLIENT. The determination of such firm will be final and binding upon CLIENT and SIEMENS. SIEMENS and the CLIENT will each be responsible for half of the fees of such firm.

Article 5

Work by SIEMENS

- 5.1 SIEMENS shall perform the Work expressly described in this Agreement and in any work release documents or change orders that are issued under this Agreement and signed by both Parties. The Work performed by SIEMENS shall be conducted in a professional and workmanlike manner. SIEMENS shall also perform the Work in accordance with sound engineering and safety practices, including complying with all federal, state, and local laws, rules, and regulations.
- 5.2 SIEMENS shall perform the Work during 7:00 a.m. – 6:00 p.m., Arizona Time Monday through Friday, excluding holidays, unless otherwise agreed herein. The CLIENT shall make the Facilities available so Work may proceed in an efficient manner. To the extent Siemens needs to perform the work after 6:00 p.m., it shall notify the CLIENT accordingly.
- 5.3 SIEMENS is not required to (i) conduct safety, reacceptance, or other tests; (ii) install new devices or equipment; or (iii) make modifications to any Equipment, unless expressly made a part of the Work identified in the Scope of Work and Services, Exhibit A. Any CLIENT request to change the scope or the nature of the Work or Services must be in the form of a mutually agreed change order, effective only when executed by both Parties.
- 5.4 All Work Product Deliverables shall become the CLIENT's property upon receipt by CLIENT. SIEMENS may retain file copies of such Work Product Deliverables. If any Instruments are provided to the CLIENT under this Agreement, any such Instruments shall remain SIEMENS' property, including the Intellectual Property conceived or developed by SIEMENS in the Instruments. Both parties expressly acknowledge that SIEMENS is not creating or conceiving any Instruments or Intellectual Property for CLIENT. All SIEMENS' Pre-existing Intellectual Property that may be included in the Deliverables provided to the CLIENT under this Agreement shall also remain SIEMENS property including the SIEMENS Pre-existing Intellectual Property included in the Work Product Deliverables. All Work Product Deliverables and any Instruments provided to the CLIENT are for Permitted Users' use. SIEMENS hereby grants the CLIENT a royalty-free (once payments due under this Agreement are paid to SIEMENS), non-transferable, perpetual, nonexclusive license to use any SIEMENS Pre-existing Intellectual Property solely as incorporated into the Deliverables and SIEMENS' Intellectual Property as incorporated into any Instruments provided to the CLIENT under this Agreement. Under such license, and following agreement to be bound to such separate confidentiality provisions that may exist between the Parties, Permitted Users shall have a right to:
- (a) Use, in object code form only, the Software Products included in the Deliverables ("Software Deliverables");
 - (b) Make and retain archival and emergency copies of such Software Deliverables (subject to any confidentiality provisions) except if the Software Deliverable is embedded in the Equipment; and,
 - (c) Use all such Deliverables and such Instruments, provided however, the Deliverables and Instruments shall not be used or relied upon by any parties other than Permitted Users, and such use shall be limited to the particular project and location for which the Deliverables are provided.
- 5.4.1 Any reuse of such Deliverables or such Instruments for other projects or locations without the written consent of SIEMENS, or use by any party other than Permitted Users will be at Permitted Users' risk and without liability to SIEMENS; and, the CLIENT shall indemnify, defend and hold SIEMENS harmless from any claims, losses or damages arising therefrom.

PERFORMANCE CONTRACTING AGREEMENT

5.4.2 In consideration of such license, CLIENT agrees not to reverse engineer any Equipment or Software Product to reconstruct or discover any source code, object code, firmware, underlying ideas, or algorithms of such Equipment or Software Product even to the extent such restriction is allowable under Applicable Law.

5.4.3 Nothing contained in this Agreement shall be interpreted or construed to convey to the CLIENT the pre-existing Intellectual Property rights of any third party incorporated into the Deliverables. CLIENT agrees to take delivery of any Software Deliverables subject to any applicable SIEMENS or third party end-user license agreement accompanying such Software Deliverable.

5.5 SIEMENS shall be responsible for any portion of the Work performed by any subcontractor of SIEMENS. SIEMENS shall not have any responsibility, duty or authority to direct, supervise or oversee any contractor of the CLIENT or their work or to provide the means, methods or sequence of their work or to stop their work. SIEMENS' work and/or presence at the Facility shall not relieve others of their responsibility to the CLIENT or to others.

5.6 With respect to Work provided by SIEMENS and Equipment, SIEMENS warrants that:

- (a) Unless otherwise agreed, all Equipment shall be new and of good quality. For one (1) year from the date the Equipment is installed, all Equipment manufactured by SIEMENS or bearing its nameplate will be free from defects in material and workmanship arising from normal use and service. All other Equipment in Exhibit A, Attachment 1, shall be subject to manufacturer's warranties in Exhibit A, Attachment 4.
- (b) Labor for all Work, excluding PASP or MSP Services, is warranted to be free from defects in workmanship for one (1) year after the date the Certificate of Final Completion is issued. PASP Services and MSP Services are warranted to be free from defects in workmanship for ninety (90) days after the Services are performed.

5.7 Warranty Limitation:

- (a) The limited warranties set forth in Section 5.6 will be void as to, and shall not apply to, any Equipment (i) repaired (but excluding proper maintenance in accordance with applicable manufacturer's specifications), altered or improperly installed by any person other than SIEMENS or its authorized representative; (ii) which the CLIENT or a third party subjects to unreasonable or improper use or storage, uses beyond rated conditions, operates other than per SIEMENS or the manufacturer's instructions, or otherwise subjects to improper maintenance, negligence or accident; (iii) damaged because of any use of the Equipment after the CLIENT has, or should have had knowledge of any defect in the Equipment; or (iv) not manufactured, fabricated, and assembled by SIEMENS or not bearing SIEMENS nameplate. However, for all materials purchased by SIEMENS, SIEMENS assigns to the CLIENT, without recourse, any and all assignable warranties available from any manufacturer, supplier, or subcontractor of such Equipment.
- (b) Any claim under the limited warranty granted above must be made in writing to SIEMENS within thirty (30) days after discovery of the claimed defect unless discovered directly by SIEMENS. Such limited warranty only extends to the CLIENT and not to any subsequent owner of the Equipment. The CLIENT's sole and exclusive remedy from SIEMENS for any Equipment or Services not conforming with this limited warranty is limited to, at SIEMENS' option: (i) repair or replacement of defective components of covered Equipment; or (ii) re-performance of the defective portion of the Services.
- (c) SIEMENS shall not be required to repair or replace more than the component(s) of the Equipment or the portion of the Work and Services actually found to be defective. Repaired Equipment or reperfomed Services will be warranted hereunder only for the remaining portion of the original warranty period.

5.8 THE EXPRESS LIMITED WARRANTIES PROVIDED ABOVE ARE IN LIEU OF AND EXCLUDE ALL OTHER WARRANTIES, STATUTORY, EXPRESS, OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, WHICH ARE HEREBY EXPRESSLY DISCLAIMED. THE LIMITED EXPRESS WARRANTIES AND REPRESENTATIONS SET FORTH IN THIS AGREEMENT MAY ONLY BE MODIFIED OR SUPPLEMENTED IN A WRITING EXECUTED BY A DULY AUTHORIZED SIGNATORY OF EACH PARTY.

5.9 SIEMENS will not be responsible for the maintenance, repair or replacement of Equipment, or Services necessitated by reason of:

PERFORMANCE CONTRACTING AGREEMENT

- (a) Non-maintainable, non-replaceable or obsolete parts of the Equipment, including but not limited to: ductwork, shell and tubes, heat exchangers, coils, unit cabinets, casings, refractory material, electrical wiring, water and pneumatic piping, structural supports, cooling tower fill, slats and basins, etc., unless covered by the warranty provisions herein or otherwise specifically stated herein; or
 - (b) The CLIENT's or a third-party's negligence, abuse, misuse, improper or inadequate repairs or modifications, improper operation, lack of operator maintenance or skill, corrosion, erosion, improper or inadequate water treatment, electrolytic action, chemical action, failure to comply with manufacturer's operating and environmental requirements, Acts of God, or other reasons beyond SIEMENS' control. Unless expressly agreed in writing, SIEMENS is not responsible for the removal or reinstallation of replacement valves, dampers, or waterflow and tamper switches with respect to pipes and ductwork, including vent or drain system. SIEMENS ASSUMES NO RESPONSIBILITY FOR ANY SERVICE PERFORMED ON ANY EQUIPMENT OTHER THAN THAT PERFORMED BY SIEMENS OR ITS AGENTS.
- 5.10 Nothing in this Section is intended to limit or affect the scope or duration of the manufacturer's warranties provided for Equipment not manufactured by SIEMENS.

Article 6

CLIENT Responsibilities

6.1 The CLIENT, without cost to SIEMENS, shall:

- (a) Designate a contact person with authority to make decisions for the CLIENT regarding the Work and provide SIEMENS with information sufficient to contact such person in an emergency;
- (b) Coordinate the work of contractors under CLIENT's sole control so as not to disrupt the Work and Services proceeding in an efficient manner;
- (c) Provide access and make all reasonable provisions for SIEMENS to enter any Facility where Work is to be performed so that Work may proceed in an efficient manner;
- (d) Permit SIEMENS to control and/or operate all building controls, systems, apparatus, equipment and machinery necessary to perform the Work;
- (e) Furnish SIEMENS with blueprints, surveys, legal descriptions, waste management plans and all other available information pertinent to the Work and any Facility where the Work is to be performed as may be reasonably requested by SIEMENS, and SIEMENS acknowledges that CLIENT has already provided such documents and information. Such plans and blueprints, along with an executed copy of this Agreement, with its Exhibits, shall be kept and maintained in CLIENT's files pursuant to the Arizona State Retention Schedule;
- (f) Furnish SIEMENS with all approvals, permits and consents from government authorities and others as may be required for performance of the Work, except for those SIEMENS has expressly agreed in writing to obtain;
- (g) In accordance with Article 11 hereof, promptly notify SIEMENS of all known Hazardous Materials at the Facility, of any contamination of the Facility by Oil or Hazardous Material, and of any other conditions requiring special care or which may reasonably be expected to affect the Work, and provide SIEMENS with any available documents describing the quantity, nature, location and extent of such materials, contamination or conditions;
- (h) Comply with Applicable Law and provide any notices required to be given to any government authorities in connection with the Work, except such notices SIEMENS has expressly agreed in writing to give;
- (i) Intentionally Omitted.
- (j) Furnish SIEMENS with any contingency plans, safety programs and other policies, plans or programs related to any Facility where the Work is to be performed;
- (k) Operate, service, and maintain all Equipment according to the manufacturer's recommendations including those set forth in the manufacturer's operating manuals or instructions, as well as all requirements of Applicable Law or of authorities having jurisdiction. The CLIENT shall furnish all needed servicing and parts for said FIMs required after the warranty period set forth in Section 5.6 of this Agreement, which parts shall become part of the FIMs. Such Equipment shall be operated only as detailed in any applicable manufacturer's specifications, which shall

PERFORMANCE CONTRACTING AGREEMENT

be supplied by SIEMENS. CLIENT shall also provide: (1) suitable electrical service, including clean, stable, properly conditioned power, to all Equipment; (2) capacity and connectivity as required by such Equipment; and (3) any utilities in accordance with the specifications for the Equipment;

- (l) Promptly notify SIEMENS of any unusual operating conditions, hours of usage, system malfunctions, installed equipment or building alterations that may affect the Equipment or energy usage or any Services; and,
- (m) Intentionally Omitted.
- (n) With respect to any anyCOMM Holdings Corporation ("anyCOMM") product, equipment and related services to be incorporated into the project, the following additional provisions shall apply:
 - (1) CLIENT shall enter into an agreement with anyCOMM to secure the rights to install and operate anyCOMM's lighting control devices for the term of this Agreement and shall coordinate delivery of the products to a designated delivery site.
 - (2) CLIENT will inspect the products and equipment upon delivery for product specifications, quantities, and safe storage. CLIENT will notify SIEMENS promptly of any damage and/or discrepancies or problems with the delivered order.
 - (3) CLIENT expressly assumes all risk of performance of the anyCOMM equipment (including any adverse impact upon the Guaranteed Savings and any Savings Shortfall attributable to the anyCOMM equipment) and delay and all risk of damage or loss for the anyCOMM products, equipment and related services. CLIENT will bear the costs of any repairs, replacement parts, communication deficits, defects and any other additional work and/or schedule delays attributable to the anyCOMM product, equipment and/or services. Any warranties shall be provided by anyCOMM and CLIENT shall pursue, at its cost, all warranty claims exclusively against anyCOMM.
 - (4) CLIENT is to be invoiced directly by anyCOMM for the anyCOMM product (if invoices are applicable) and shall be responsible for complying with all terms required of it in the agreement(s) to acquire the anyCOMM product.
 - (5) The Price identified in Article 1 of Exhibit B is the fee is due and payable to SIEMENS in accordance with Article 8 of the Agreement and is irrespective of any equipment direct-purchased by CLIENT. In the event CLIENT does not acquire the rights to use the anyCOMM equipment and requests SIEMENS purchase substitute equipment on CLIENT's behalf, the parties will execute a mutually agreeable change order pursuant to Article 7 of the Agreement.

6.2 Unless contrary to Applicable Law, the CLIENT acknowledges that the technical and pricing information contained in this Agreement is confidential and proprietary to SIEMENS and agrees not to disclose it or otherwise make it available to others without SIEMENS' express written consent.

6.3 The CLIENT acknowledges that it is now and shall at all times remain in control of the Facility. Except as expressly provided herein, SIEMENS shall not be responsible for the adequacy of the health or safety programs or precautions related to the CLIENT's activities or operations, the CLIENT's other contractor(s), the work of any other person or entity, or Facility conditions. SIEMENS shall not be responsible for inspecting, observing, reporting or correcting health or safety conditions or deficiencies of the CLIENT or others at the Facility. So as not to discourage SIEMENS from voluntarily addressing health or safety issues while at the Facility, in the event SIEMENS does address such issues by making observations, reports, suggestions or otherwise, the CLIENT shall not hold, or attempt to hold, SIEMENS liable or responsible on account thereof.

Article 7

Changes and Delays

7.1 As the Work is performed, Applicable Law or conditions may change, or circumstances outside SIEMENS' reasonable control may develop, which would require SIEMENS to expend additional costs, effort or time to complete the Work, in which case SIEMENS will notify the CLIENT and an equitable adjustment will be made to SIEMENS' compensation and the time for performance so long as such adjustment complies with the Arizona Contract and Arizona Revised Statutes §§ 34-451, 34-455, and 34-456. In the event such changes require the Work to be suspended or terminated, SIEMENS shall be compensated for Work previously performed and for costs reasonably incurred in connection with the suspension or termination.

PERFORMANCE CONTRACTING AGREEMENT

- 7.2 Either party may request additions, deletions, modifications or changes to the Work. Any such requests shall only become effective upon execution of a written agreement by authorized representatives of both Parties, except that any requested additions, deletions, modifications or changes to the Work that materially amend the Work must receive approval from the City Council prior to the execution by the CLIENT's authorized representative.
- 7.3 SIEMENS may, in its sole discretion, substitute alternative parts, goods or equipment in the performance of the Work, provided that any such substitution shall be of an equal or better quality.
- 7.4 SIEMENS shall not be responsible for loss, delay, injury, damage or failure of performance that may be caused by circumstances beyond its control, including but not restricted to acts or omissions by the CLIENT or its employees, agents or contractors, Acts of God, war, civil commotion, acts or omissions of government authorities, fire, theft, corrosion, flood, water damage, lightning, freeze-ups, strikes, lockouts, differences with workmen, riots, explosions, quarantine restrictions, delays in transportation, or shortage of vehicles, fuel, labor or materials. In the event of such delay or failure, the time for performance shall be extended by a period equal to the time lost plus a reasonable recovery period and the compensation shall be equitably adjusted to compensate for additional costs SIEMENS incurs due to such delay; provided however that in the event that CLIENT did not cause the force majeure delay but the delay results in increased costs, SIEMENS shall only be entitled to recover fifty percent (50%) of its delay costs incurred because of the force majeure event. If any such delay exceeds sixty (60) days, SIEMENS may terminate this Agreement upon three (3) days' notice to the CLIENT and the CLIENT shall promptly pay SIEMENS for the allocable portion of the Work completed, for any costs and the additional expenses of termination incurred as a result of delays caused solely by CLIENT, and for any loss or damage incurred with respect to materials, equipment, tools and machinery, including reasonable overhead and profit.

Article 8

Compensation

- 8.1 The aggregate amount paid by CLIENT provides for and is solely in consideration of the Scope of Work and Services described in Exhibit A, and is detailed in Exhibit B.
- 8.2 SIEMENS will invoice the CLIENT in accordance with the schedules set forth in Exhibit B. Unless otherwise agreed in writing, invoices are due and payable within forty-five (45) days after receipt by the CLIENT. If the CLIENT disagrees with any portion of an invoice, it shall notify SIEMENS in writing of the amount in dispute and the reason for its disagreement within twenty-one (21) days of receipt of the invoice, and shall pay the portion not in dispute.
- 8.3 SIEMENS may suspend or terminate the Work or Services at any time if payment is not received when due. In such event, SIEMENS shall be entitled to compensation for the Work or Services previously performed and for costs reasonably incurred in connection with the suspension or termination.
- 8.4 On amounts not paid within forty-five (45) days of invoice date, the CLIENT shall pay interest from invoice date until payment is received at the lesser of 12% per annum or the maximum rate allowed by law. The CLIENT shall reimburse SIEMENS for SIEMENS' costs and expenses (including reasonable attorney and witness fees) incurred for collection under this Agreement.
- 8.5 Except to the extent expressly agreed herein, SIEMENS' fees do not include any taxes, excises, fees, duties or other government charges related to the Work or Services. The CLIENT shall pay such amounts or reimburse SIEMENS for any such amounts SIEMENS pays to the extent such charges are lawfully due and payable by CLIENT and have been paid or incurred by SIEMENS in furtherance thereof. If the CLIENT claims that the Work or Services is subject to a tax exemption or direct payment permit, it shall provide SIEMENS with a valid exemption certificate or permit and, unless specifically prohibited by law, shall indemnify, defend and hold SIEMENS harmless from any taxes, costs and penalties arising out of the use or acceptance of CLIENT's exemption certificate.
- 8.6 All other work or services requested by the CLIENT, including but not limited to the following, shall be separately billed or surcharged on a time and materials basis:
- (a) Emergency services, if inspection does not reveal any deficiency covered by the Scope of Work and Services, Exhibit A;
 - (b) Work and/or services performed at times other than during SIEMENS' normal working hours, unless otherwise agreed to in Exhibit A; or
 - (c) Work and/or services performed on equipment not covered by the Scope of Work and Services, Exhibit A.

PERFORMANCE CONTRACTING AGREEMENT

Article 9

Acceptance

- 9.1 A milestone in Exhibit A is substantially complete when SIEMENS believes that all or an independent definable phase or portion of the Work is Substantially Complete, SIEMENS will submit a Certificate of Substantial Completion to the CLIENT which shall be subject to the following:
- (a) If the CLIENT concurs that the described portion of the Work as performed is Substantially Complete, the CLIENT will sign the Certificate of Substantial Completion and return it to SIEMENS;
 - (b) A Certificate of Substantial Completion may include, as an attachment to it, an Outstanding Items List prepared by SIEMENS;
 - (c) If the CLIENT does not concur that the Work is Substantially Complete, then, within fifteen (15) business days of receiving the Certificate of Substantial Completion, the CLIENT shall notify SIEMENS in writing of the reasons it believes the Work is not Substantially Complete;
 - (d) If SIEMENS disagrees with the CLIENT as to whether the Work is Substantially Complete, SIEMENS shall notify the CLIENT of a dispute and such dispute shall be resolved in accordance with Section 9.3 herein;
 - (e) If, within fifteen (15) business days of receiving the Certificate of Substantial Completion the CLIENT fails to sign the Certificate, and within the same period the CLIENT's Representative does not deliver to SIEMENS a written notice of the reasons the CLIENT believes that the Work is not Substantially Complete, SIEMENS shall send the CLIENT written notice that the CLIENT has not signed the Certificate and the CLIENT shall have five (5) business days from receipt of such notice to deliver to SIEMENS the signed Certificate or a written notice of the reasons the CLIENT believes that the Work is not Substantially Complete. If, within five (5) business days of receiving the notice, the CLIENT fails to sign the Certificate or provide written notice of the reasons the CLIENT believes that the Work is not Substantially Complete, then in the mutual interests of the Project proceeding in a timely manner, the CLIENT will be deemed to have agreed to, signed and returned the Certificate of Substantial Completion.
- 9.2 After the CLIENT signs and returns, or is deemed to have signed and returned, as set forth in Section 9.1 above, to SIEMENS all of the Certificates of Substantial Completion relating to the Work, and after SIEMENS corrects and completes all of the items on all of the Outstanding Items Lists, if any, SIEMENS will submit to the CLIENT a Certificate of Final Completion which shall be subject to the following:
- (a) If the CLIENT concurs that all of the items on all of the Outstanding Items Lists have been completed or corrected, the CLIENT will indicate its final acceptance of the Work by signing the Certificate of Final Completion and returning it to SIEMENS;
 - (b) If the CLIENT does not concur that all of the items on all of the Outstanding Items Lists have been completed or corrected, then the CLIENT shall, within fifteen (15) business days of receiving the Certificate of Final Completion, provide SIEMENS with a list of the items that, the CLIENT believes, were not completed or corrected;
 - (c) If SIEMENS disagrees that the items identified by the CLIENT have not been completed or corrected, SIEMENS shall notify the CLIENT of a dispute and such dispute shall be resolved in accordance with section 9.3 herein;
 - (d) If, within fifteen (15) business days of receiving a Certificate of Final Completion, the CLIENT fails to sign that Certificate, and, within the same period the CLIENT's Representative does not deliver to SIEMENS a written notice identifying the items on the Outstanding Items List(s) that, the CLIENT believes, were not completed or corrected, then the CLIENT will be deemed to have agreed to and signed and returned the Certificate of Final Completion.
- 9.3 Any disputes concerning the Substantial Completion or the Final Completion of the Work will be resolved by submitting the issue to a third party professional engineering firm and which is reasonably acceptable to both SIEMENS and the CLIENT. The determination of this firm with respect to Final Completion or Substantial Completion will be final and binding upon the Parties. SIEMENS and the CLIENT shall share equally the costs or fees for such firm in connection with such dispute resolution process.

PERFORMANCE CONTRACTING AGREEMENT

Article 10

Insurance and Allocation of Risk

10.1 Insurance.

10.1.1 General.

- (a) *Insurer Qualifications*. Without limiting any obligations or liabilities of Consultant, Consultant shall purchase and maintain, at its own expense, hereinafter stipulated minimum insurance with insurance companies authorized to do business in the State of Arizona pursuant to Arizona Revised Statutes ("A.R.S.") § 20-206, as amended, with an AM Best, Inc. rating of A- or above with policies and forms satisfactory to the City. Failure to maintain insurance as specified herein may result in termination of this Agreement at the City's option.
- (b) *No Representation of Coverage Adequacy*. The City reserves the right to review any and all of the insurance policies and/or endorsements cited in this Agreement, but has no obligation to do so. Failure to demand such evidence of full compliance with the insurance requirements set forth in this Agreement or failure to identify any insurance deficiency shall not relieve Consultant from, nor be construed or deemed a waiver of, its obligation to maintain the required insurance at all times during the performance of this Agreement.
- (c) *Additional Insured*. All insurance coverage and self-insured retention or deductible portions, except Workers' Compensation insurance and Professional Liability insurance, if applicable, shall name and endorse, to the fullest extent permitted by law for claims arising out of the performance of this Agreement, the City, its agents, representatives, officers, directors, officials and employees as Additional Insured as specified under the respective coverage sections of this Agreement.
- (d) *Coverage Term*. All insurance required herein shall be maintained in full force and effect until all work or services required to be performed under the terms of this Agreement are satisfactorily performed, completed and formally accepted by the City, unless specified otherwise in this Agreement.
- (e) *Primary Insurance*. Consultant's insurance shall be endorsed to indicate its primary, non-contributory insurance with respect to performance of this Agreement and in the protection of the City as an Additional Insured. Such coverage shall be at least as broad as ISO CG 20 01 04 13.
- (f) *Claims Made*. In the event any insurance policies required by this Agreement are written on a "claims made" basis, coverage shall extend, either by keeping coverage in force or purchasing an extended reporting option, for three (3) years past completion and acceptance of the services. Such continuing coverage shall be evidenced by submission of annual Certificates of Insurance citing applicable coverage is in force and contains the provisions as required herein for the three-year period.
- (g) *Waiver*. All policies, including Workers' Compensation insurance, shall contain a waiver of rights of recovery (subrogation) against the City, its agents, representatives, officials, officers and employees for any claims arising out of the work or services of Consultant. Consultant shall arrange to have such subrogation waivers incorporated into each policy via formal written endorsement.
- (h) *Policy Deductibles and/or Self-Insured Retentions*. The policies set forth in these requirements may provide coverage that contains deductibles or self-insured retention amounts. Such deductibles or self-insured retention shall not be applicable with respect to the policy limits provided to the City. Consultant shall be solely responsible for any such deductible or self-insured retention amount.
- (i) *Use of Subcontractors*. If any of the Work under this Agreement is subcontracted in any way, Consultant shall execute written agreements with its subcontractors containing the indemnification provisions set forth in this Section and insurance requirements set forth herein protecting the City and Consultant. Consultant shall be responsible for executing any agreements with its subcontractors and obtaining certificates of insurance verifying the insurance requirements.
- (j) *Evidence of Insurance*. Prior to commencing any work or services under this Agreement, Consultant will provide the City with suitable evidence of insurance in the form of certificates of insurance and a copy of the declaration page(s) of the insurance policies as required by this Agreement, issued by Consultant's insurance insurer(s) as evidence that policies are placed with acceptable insurers as specified herein and provide the required coverages, conditions and limits of coverage specified in this Agreement and that such coverage and provisions are in full force and effect. The City may reasonably rely upon the certificates of insurance and

PERFORMANCE CONTRACTING AGREEMENT

declaration page(s) of the insurance policies as evidence of coverage but such acceptance and reliance shall not waive or alter in any way the insurance requirements or obligations of this Agreement. If any of the policies required by this Agreement expire during the life of this Agreement, Consultant shall forward renewal certificates and declaration page(s) to the City. All certificates of insurance and declarations required by this Agreement shall be identified by referencing the title of this Agreement. Certificates of insurance and declaration page(s) shall specifically include the following provisions:

- (1) The City, its agents, representatives, officers, directors, officials and employees are Additional Insureds as follows:
 - (i) Commercial General Liability – Under Insurance Services Office, Inc., (“ISO”) Form CG 20 10 03 97 or equivalent.
 - (ii) Auto Liability – Under ISO Form CA 20 48 or equivalent.
 - (iii) Excess Liability – Follow Form to underlying insurance.
- (2) Consultant’s insurance shall be primary, non-contributory insurance with respect to performance of the Agreement.
- (3) All policies, including Workers’ Compensation, waive rights of recovery (subrogation) against City, its agents, representatives, officers, officials and employees for any claims arising out of work or services performed by Consultant under this Agreement.
- (4) ACORD certificate of insurance form 25 (2014/01) is preferred. If ACORD certificate of insurance form 25 (2001/08) is used, the phrases in the cancellation provision “endeavor to” and “but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives” shall be deleted. Certificate forms other than ACORD form shall have similar restrictive language deleted.

10.1.2 Required Insurance Coverage.

- (a) *Commercial General Liability.* Consultant shall maintain “occurrence” form Commercial General Liability insurance with an unimpaired limit of not less than \$1,000,000 for each occurrence, \$2,000,000 Products and Completed Operations Annual Aggregate and a \$2,000,000 General Aggregate Limit. The policy shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury. Coverage under the policy will be at least as broad as ISO policy form CG 00 010 93 or equivalent thereof, including but not limited to, separation of insured’s clause. To the fullest extent allowed by law, for claims arising out of the performance of this Agreement, the City, its agents, representatives, officers, officials and employees shall be endorsed as an Additional Insured under ISO, Commercial General Liability Additional Insured Endorsement form CG 20 10 03 97, or equivalent, which shall read “Who is an Insured is amended to include as an insured the person or organization shown in the Schedule, but only with respect to liability arising out of “your work” for that insured by or for you.” If any Excess insurance is utilized to fulfill the requirements of this subsection, such Excess insurance shall be “follow form” equal or broader in coverage scope than underlying insurance.
- (b) *Vehicle Liability.* Consultant shall maintain Business Automobile Liability insurance with a limit of \$1,000,000 each occurrence on Consultant’s owned, hired and non-owned vehicles assigned to or used in the performance of the Consultant’s work or services under this Agreement. Coverage will be at least as broad as ISO coverage code “1” “any auto” policy form CA 00 01 12 93 or equivalent thereof. To the fullest extent allowed by law, for claims arising out of the performance of this Agreement, the City, its agents, representatives, officers, directors, officials and employees shall be endorsed as an Additional Insured under ISO Business Auto policy Designated Insured Endorsement form CA 20 48 or equivalent. If any Excess insurance is utilized to fulfill the requirements of this subsection, such Excess insurance shall be “follow form” equal or broader in coverage scope than underlying insurance.
- (c) *Workers’ Compensation Insurance.* Consultant shall maintain Workers’ Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction over Consultant’s employees engaged in the performance of work or services under this Agreement and shall also maintain Employers Liability Insurance of not less than \$1,000,000 for each accident, \$1,000,000 disease for each employee and \$1,000,000 disease policy limit.

PERFORMANCE CONTRACTING AGREEMENT

- (d) *Excess Liability*. SIEMENS shall carry Excess Liability insurance with an unimpaired limit of not less than \$5,000,000 per occurrence, and such Excess Liability insurance shall be "follow form" equal or broader in coverage scope than all of the underlying insurance policies required by this Section 10.1.

10.1.3 Cancellation and Expiration Notice. Insurance required herein shall not expire, or be canceled, or be reduced by SIEMENS below the limits and coverage requirements contained herein without thirty (30) days' prior written notice to the City.

10.2 The CLIENT will either maintain at its own expense, or self-insure for the equivalent risks, property insurance written on a builder's "all-risk" or equivalent policy form in an amount no less than the Price identified in Exhibit B, Article 1.1, plus the value of subsequent modifications and cost of materials supplied or installed by others, if any, on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by SIEMENS, until final payment has been made to SIEMENS or no person or entity other than the CLIENT has an insurable interest in the property, whichever is later. The policy form shall include without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and start-up, rebuilding and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for SIEMENS' services and expenses required as result of such insured loss. If the insurance requires deductibles or retentions, the CLIENT shall pay costs not covered because of such deductibles or retentions. This insurance shall cover portions of the Work off the Facility, and also portions of the Work in transit. Use shall not commence unless the insurance company providing this insurance has consented to such partial occupancy or use by endorsement for otherwise.

10.3 Title and risk of loss of materials and Equipment furnished by SIEMENS shall pass to the CLIENT upon release of care, custody and control by SIEMENS, and the CLIENT shall be responsible for protecting them against theft and damage.

10.4 SIEMENS shall indemnify, defend, and hold the CLIENT harmless from and against losses, claims, expenses and damages (including reasonable attorney's fees) for personal injury or physical damage to property (collectively "Damages"). Such indemnification shall be solely to the extent the Damages are caused by or arise directly from SIEMENS or its employees', consultants', contractors', or agents' negligent acts, directives, mistakes, errors, or omissions or willful misconduct in connection with SIEMENS' performance of the Work or Services. SIEMENS' obligations under this indemnity shall not extend to Damages arising out of or in any way attributable to the negligence of the CLIENT or its agents, contractors or employees. SIEMENS reserves the right to control the defense and settlement of any claim for which SIEMENS has an obligation to indemnify hereunder. UNLESS CONTRARY TO APPLICABLE LAW, IN NO EVENT SHALL THE CLIENT OR SIEMENS BE LIABLE UNDER THIS INDEMNITY OR OTHERWISE UNDER THIS AGREEMENT FOR SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES, INCLUDING COMMERCIAL LOSS, LOSS OF USE, OR LOST PROFITS, HOWEVER CAUSED, EVEN IF SIEMENS OR THE CLIENT HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. The preceding limit shall not apply to the CLIENT's remedy under the Performance Guarantee as such is limited by Section 4.8.

10.5 As to Patents and Copyrights:

- (a) SIEMENS shall, at its own expense, defend the CLIENT or at its option settle any suit or proceeding brought against the CLIENT in so far as the suit or proceeding is based on an allegation that any Work (including parts thereof), or use thereof for its intended purpose, constitutes an infringement of any United States patent or copyright, if SIEMENS is promptly provided notice and given authority, information, and assistance in a timely manner for the defense of said suit or proceeding. SIEMENS shall pay any and all damages and costs awarded against the CLIENT in any suit or proceeding so defended. SIEMENS will not be responsible for any settlement of such suit or proceeding made without its prior written consent. In case the Work, or any part thereof, as a result of any suit or proceeding so defended is held to constitute infringement or its use by the CLIENT is enjoined, SIEMENS shall, at its option and its own expense, either: (i) procure for the CLIENT the right to continue using said Work; (ii) replace it with substantially equivalent non-infringing Work; or (iii) modify the Work so it becomes non-infringing.
- (b) SIEMENS will have no duty or obligation to the CLIENT under Section 10.5(a) to the extent that the Work is: (i) supplied according to the CLIENT's design, wherein compliance therewith has caused SIEMENS to deviate from its normal course of performance; (ii) modified by the CLIENT without SIEMENS consent or its contractors after

PERFORMANCE CONTRACTING AGREEMENT

delivery (routine maintenance shall not constitute a modification for purposes of this Section 10.5); or, (iii) combined by the CLIENT or its contractors with items not furnished hereunder, and by reason of said design, instruction, modification, or combination, a suit is brought against the CLIENT. If by reason of such design, instruction, modification or combination, a suit or proceeding is brought against SIEMENS, unless expressly prohibited by law, the CLIENT shall protect SIEMENS in the same manner and to the same extent that SIEMENS has agreed to protect the CLIENT under the provisions of Section 10.5(a) above.

- (c) THIS SECTION 10.5 IS AN EXCLUSIVE STATEMENT OF ALL THE DUTIES OF THE PARTIES RELATING TO PATENTS AND COPYRIGHTS, AND DIRECT OR CONTRIBUTORY PATENT OR COPYRIGHT AND OF ALL THE REMEDIES OF THE CLIENT RELATING TO ANY CLAIMS, SUITS, OR PROCEEDINGS INVOLVING PATENTS AND COPYRIGHTS. Compliance with Section 10.5 as provided herein shall constitute fulfillment of all liabilities of the Parties under the Agreement with respect to the intellectual property indemnification.

10.6 The Parties acknowledge that the price for which SIEMENS has agreed to perform the Work and obligations under this Agreement was calculated based upon the foregoing allocations of risk, and that each Party has expressly relied on and would not have entered into this Agreement but for such allocations of risk.

Article 11

Hazardous Materials Provisions

11.1 The Work does not include directly or indirectly performing or arranging for the detection, testing, handling, storage, removal, treatment, transportation, disposal, monitoring, abatement or remediation of any contamination of any Facility at which Work is performed and any soil or groundwater at the Facility by petroleum or petroleum products (collectively called "Oil"), asbestos, PCBs or hazardous, toxic, radioactive or infectious substances, including any substances regulated under RCRA, CERCLA or any other Applicable Law (collectively called "Hazardous Materials"), including without limitation: ionization smoke detectors, ballasts, mercury bulb thermostats, used oil, contaminated filters, contaminated absorbents, and refrigerant. The CLIENT represents that, to best of its knowledge but without any investigation, there are no Hazardous Materials or Oil present where the Work is to be performed. SIEMENS will notify the CLIENT immediately if it discovers or reasonably suspects the presence of any previously undisclosed Oil or Hazardous Material. All Services have been priced and agreed to by SIEMENS in reliance on the CLIENT's representations as set forth in this Article. The discovery or reasonable suspicion of Hazardous Materials or hazardous conditions at a Facility where SIEMENS is to perform Work, or of contamination of the Facility by Oil or Hazardous Materials not previously disclosed pursuant to Section 11.2, shall entitle either Party to suspend the Work immediately, subject to mutual agreement of terms and conditions applicable to any further Work, or to terminate the Work. If the Works is terminated by either Party, SIEMENS shall be paid for Work previously performed.

Article 12

Miscellaneous Provisions

12.1 Notice. Notices between the Parties shall be in writing and shall be hand-delivered or sent by certified mail, express courier, or acknowledged telefax properly addressed to the appropriate Party's address and Designated Representative set forth in Article 1 of this Agreement. Any notices sent to the CLIENT shall include a copy to the CLIENT's attorney, delivered to: City Attorney, One City Plaza, Yuma, AZ 85364 or telefaxed to: 928-373-5053. Any such notice shall be deemed to have been received when delivered in-person or when sent by telefax, or five (5) business days subsequent to deposit in the U.S. mails, or one (1) day after deposit with express courier.

12.2 Successors and Assigns. Neither the CLIENT nor SIEMENS shall assign or transfer any rights or obligations under this Agreement without prior written consent of the other Party, except that either Party may assign this Agreement to its affiliates and SIEMENS may use subcontractors in the performance of the Work or Services. Nothing contained in this Agreement shall be construed to give any rights or benefits to anyone other than the CLIENT and SIEMENS without the express prior written consent of both Parties. The requirements and obligations of this Agreement are binding upon the heirs, executors, administrators, successors, and assigns of both Parties.

12.3 Jurisdiction/Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of Arizona. Any action to enforce any provision of this Agreement or to obtain any remedy with respect this Agreement shall be brought exclusively in the Superior Court, Yuma County, Arizona or, as may be appropriate, in the Justice Courts of Yuma County, Arizona, or in the United States District Court for the District of Arizona. The Parties expressly

PERFORMANCE CONTRACTING AGREEMENT

and irrevocably consent to the exclusive jurisdiction and venue of such courts and expressly waive the right to transfer or remove any such action.

12.4 Survival. This Agreement and all provisions of this Agreement allocating responsibility or liability between the Parties shall survive the completion of the Work, the Services, and the termination of this Agreement.

12.5 Intentionally Omitted.

12.5 Intentionally Omitted.

12.6 SIEMENS' performance of the Work and Services is expressly conditioned on the Parties assenting to all of the terms of this Agreement, notwithstanding any different or additional terms contained in any writing at any time submitted or to be submitted by a Party to the other Party relating to the Work or Services, even if signed by the Parties, unless the written statement expressly indicates that such terms supersede the terms of this Agreement.

12.7 Severability. Any provision of this Agreement found to be invalid, unlawful or unenforceable by a court of law property jurisdiction shall be ineffective to the extent of such invalidity, and deemed severed herefrom, without invalidating the remainder of this Agreement. All other provisions hereof shall remain in full force and effect.

12.8 Non-Waiver. The waiver by a Party of any breach by the other Party of any term, covenant or condition hereof shall not operate as a waiver of any subsequent breach hereof. No waiver shall operate or be effective unless made in writing and executed by the Party to be bound thereby.

12.9 Bonds. SIEMENS shall provide a performance and payment bond in an amount no less than the Price identified in Exhibit B, Article 1.1. The performance and payment bond will solely apply to the Work performed during the Construction Period and to the required statutory lien filing period thereafter. The performance and payment bond will not apply to any of the obligations included in the Performance Assurance, Exhibit C. Furthermore, the CLIENT's funding source may be named as "Co-Obligee" on the performance bond if so requested by the CLIENT.

12.10 Conflict of Interest. This Agreement shall be subject to the conflict of interest provisions of A.R.S. § 38-511, as amended.

12.11 Boycott of Israel. Pursuant to A.R.S. § 35-393.01, SIEMENS certifies that SIEMENS is not engaged in a boycott of Israel as of the effective date of this Agreement, and agrees for the duration of this Agreement to not engage in a boycott of Israel.

12.12 E-verify Requirements. To the extent applicable under A.R.S. § 41- 4401, SIEMENS and its subcontractors warrant compliance, and are contractually obligated to comply, with all federal immigration laws and regulations that relate to their employees and their compliance with the E-verify requirements under A.R.S. § 23-214(A) ("Immigration Warranty"). SIEMENS's or its subcontractor's failure to comply with Immigration Warranty shall be deemed a material breach of this Agreement and may subject SIEMENS to penalties up to and including termination of this Agreement at the sole discretion of the CLIENT.

The CLIENT retains the legal right to inspect the papers of all SIEMENS personnel who provide services under this Agreement to ensure that SIEMENS or its subcontractors are complying with the Immigration Warranty. SIEMENS agrees to assist the CLIENT in regard to any such inspections. The CLIENT may, at its sole discretion, conduct random verification of the employment records of SIEMENS and any subcontractor to ensure compliance with the Immigration Warranty. SIEMENS agrees to assist the CLIENT in regard to any random verification performed.

Neither SIEMENS nor any subcontractor will be deemed to have materially breached SIEMENS Immigration Warranty if SIEMENS or subcontractor establishes that it has complied with the employment verification provisions prescribed by Sections 274A and 274B of the Federal Immigration and Nationality Act and the E-Verify requirements prescribed by A.R.S. § 23-214(A).

12.13 Non-Discrimination Laws. SIEMENS shall not discriminate against any person on the basis of race, religion, color, age, sex, disability, or national origin in the performance of this Agreement, and shall comply with the terms and intent of Title VII of the Civil Rights Act of 1964, as amended, State Executive Order 2009-09, the Rehabilitation Act of 1973, as amended, which prohibits discrimination in the employment or advancement in employment of qualified persons because of physical or mental disability, and with the Americans with Disability Act of 1990. In addition, SIEMENS shall include similar requirements of subcontractors in any contracts entered into for performance of SIEMENS obligations under this Agreement.

PERFORMANCE CONTRACTING AGREEMENT

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

Article 1: Scope of Work

- 1.1 *Description:* Except as otherwise expressly provided herein, SIEMENS shall provide a turnkey project for the conversion of the city's high intensity discharge (HID) street lighting fixtures to light emitting diode (LED) fixtures.
- 1.2 *Specific Elements:* The Work shall include the following:
 - 1.2.1 Retrofit or replace existing high pressure sodium and metal halide street lighting fixtures with an LED technology. Cobra head fixtures will be replaced with a new LED fixture. Shoe box and decorative fixtures will be replaced with new LED fixtures.
 - 1.2.2 Quantities and reference fixture styles and light control devices shall be as indicated in Exhibit A, Attachments 1 and 2, which are attached and incorporated herein by reference.
 - 1.2.3 SIEMENS will install a lighting control device, provided by the CLIENT, on all fixtures. Correct unit installation will be confirmed, based on manufacturer's installation instructions. SIEMENS will not warrant the suitability or functionality of the control units provided by The CLIENT.
 - 1.2.4 Fixtures converted to LED that do not already have Arizona Public Service Co. ("APS") approved pole numbering in place will be badged with pole numbers, per APS's badging specifications. Any badges that are incomplete or in disrepair will be replaced.
 - 1.2.5 SIEMENS will complete the Outdoor Lighting (ODL) Equipment Change Form, as provided by APS, with the replacement fixture type (LED) and wattage, and assist the CLIENT with submitting the form to APS. Any fixtures that were identified as additions or subtractions to the APS street lighting database will be included in the forms provided
 - 1.2.6 SIEMENS will fill out all appropriate rebate application forms, and provide them to the CLIENT for submission. The CLIENT shall receive any and all rebates resulting from, arising out of, or attributable to the Work.
- 1.3 *Technical Specifications, Drawings, and Exhibits:* The Work shall be performed in accordance with the specifications, drawings and other attachments included by SIEMENS as part of this Agreement.
 - 1.3.1
 - 1.3.2 The fixtures pictured in Exhibit A, Attachment 2 are assumed to be representative of all fixtures to be replaced.
 - 1.3.3 All fixtures shall match the color of the existing infrastructure so long as the existing infrastructure is among standard industry colors and does not require custom painting.

1.3.4 As part of new LED fixture installation, SIEMENS shall:

- 1.3.4.1 Provide all necessary traffic control plans and traffic control labor and equipment for work on required roadways in accordance with the current State of Arizona and the City of Yuma statutes, ordinances, regulations, and requirements.
- 1.3.4.2 Provide a disposal plan, including a description of the methodology for disposal of the fixtures and/or components. Waste disposal plan to be approved by SIEMENS and the CLIENT.
- 1.3.4.3 Dispose of the waste, in accordance with the plan, including collection, storage, disposal and/or recycling of universal waste generated by this project in full accordance with State and local regulations.
- 1.3.4.4 Manage receipt, storage and transport of all SIEMENS furnished project material and equipment prior to and during installation. Fixtures shall be staged for installation in a manner that ensures secured storage of materials and equipment satisfactory to SIEMENS and the CLIENT.
- 1.3.4.5 Inspect all LED fixtures for consistent quality. Prepare any defective fixtures for return to manufacturers' distributor (repack and palletize).
- 1.3.4.6 Ensure all fixture labels have been installed in a manner to be exposed allowing viewing from the ground.

For poles not currently labeled, label poles per the CLIENT's badging plan.
- 1.3.4.7 Install new SIEMENS-furnished LED fixtures and in accordance with manufacturers' instructions and local and national electrical codes.
- 1.3.4.8 Install CLIENT-provided lighting control devices on all fixtures, except that if CLIENT does not provide a lighting control device, SIEMENS shall furnish and install photocells for all fixtures.
- 1.3.4.9 Test new LED fixtures and CLIENT-provided lighting control device functionality, documenting deficiencies. Testing will address the photocell functionality of all lighting control devices, but will not address any advanced functionalities components of lighting control devices with advanced functionalities.
- 1.3.4.10 SIEMENS shall work with CLIENT staff to identify any punch list items directly related to the new light fixtures and lighting control devices that are provided in this Scope of Work.
- 1.3.4.11 Call backs for defective fixtures: During the installation phase of the project, and for a period of thirty (30) calendar days after the Acceptance Date (as defined in Article 2 of the Agreement) shall be completed within three (3) days of notification at no additional cost to the CLIENT. Thereafter, repairs and replacements due to defects shall be as provided in applicable equipment warranties.

1.3.4.12 Hold regular weekly project meetings with SIEMENS and the CLIENT to inspect installation, work safety, public safety, traffic control safety, schedule updates, material waste handling, compliance, etc.

1.3.5 Project Safety:

1.3.5.1 Follow all applicable Safety protocols.

1.3.5.2 Provide specified training to appropriate CLIENT staff, or authorized representatives, on all aspects of routine operations, maintenance and safety needs for the proper operation of the new LED fixtures. The training shall include instruction on any education materials and technical information associated with the new LED fixtures.

1.3.5.3 Complete SIEMENS prepared "punch-list" for completion of project implementation.

1.3.5.4 Provide all necessary documentation including equipment warranties, universal waste disposal logs, prevailing wage documents, lien releases etc.

1.4 Fixture replacement shall consist of:

1.4.1 Remove and discard existing fixtures.

1.4.2 Install new fixtures per manufacturer's instructions.

1.4.3 Installing new CLIENT-provided lighting control devices in the NEMA 7-pin Photocell Receptacle. If CLIENT does not provide a lighting control device, SIEMENS shall provide and install photocell controls in NEMA 7-pin Photocell Receptacle, if applicable.

1.4.4 Verifying operation of provided LED fixtures and lighting control device or photocell.

1.4.5 SIEMENS will submit proposed fixtures and retrofit kits to the CLIENT for approval.

1.5 Fixture retrofit shall consist of

1.5.1 Remove existing lamp, ballast, and any other necessary equipment.

1.5.2 Install appropriate retrofit kit and controller.

1.5.3 Verify operation of new LED fixture and lighting control device.

1.5.4 Dispose of the existing HID fixtures in accordance with applicable regulations, including Haz Mat documentation.

1.6 Badging shall consist of

1.6.1 The subcontractor will badge each CLIENT owned pole that does not currently have an APS badge immediately prior to installation of light fixtures. An investment grade street light audit was recently conducted for the CLIENT. GIS data will be provided to the subcontractor, identifying pole locations, existing fixtures and designated pole numbers per the results of such investment grade street light audit.

- 1.6.2 Badging will include the installation of badges, each badge comprised of seven separate digits mounted vertically, which comply with all requirements of APS.
- 1.6.3 SIEMENS shall verify the following information while installing fixtures.
 - Installation date
 - Pole's new badge number
 - Pole type
 - Luminaire type
 - New Luminaire wattage
 - Damage
 - Notes of any discrepancies between actual existing fixture and the database for the same fixture
 - Voltage of the existing fixture
 - Pole badge number
 - GIS coordinate of fixture
 - Other data as required
- 1.6.4 Identify utility rates and applicable utility incentive programs, reconciling data with installation records prior to submission.
- 1.6.5 Ensure analysis tool(s) used is in compliance with utility incentive reporting requirements.
- 1.6.6 Fill out all appropriate applications and provide all required documentation for all rebates and incentives available for this project. Documentation will support removal of nonexistent and duplicate poles.
- 1.6.7 Prepare and submit to the CLIENT any and all documentation necessary to receive all eligible rebates and incentives available.
- 1.6.8 Prepare and submit to the CLIENT required billing rate change documents for all applicable new fixtures and retrofits, including changes to wattages.
- 1.6.9 Provide electronic files with specified pre and post installation data including, but not limited to fixture type, wattage, location/address and any other attributes required by the CLIENT deemed necessary for the future management of street light operations and maintenance.
- 1.7 Exclusions
 - 1.7.1 Tree trimming branches that impact the installation or output of the new light fixtures or photocells.
 - 1.7.2 Replacement of failed fuses or power service issues.
 - 1.7.3 House shields: SIEMENS will reinstall all existing house shields. Upon receipt of documentation verifying a resident's wish for a house shield to be installed, SIEMENS will return and install a house shield on the new fixture during the SIEMENS warranty period described in Section 5.6 of the Agreement. After the warranty period expires, SIEMENS will provide a house shield to the City for any notifications received during the warranty period for the City to install at its expense.
 - 1.7.4 SIEMENS shall not be responsible for and hereby disclaims any and all responsibility for the correction, repair and/or replacement of any communication deficits and/or the repair or remediation of any other defects, malfunctions, or operating deficiencies within the anyCOMM network and/or its related products.

1.8 Performance Assurances:

As part of annual performance assurance activities, SIEMENS will:

- 1.8.1 Verify that the Arizona Public Service utility bills are changed to reflect the LED replacement fixtures.
- 1.8.2 Draft a letter to the utility, detailing any fixtures that have not yet been changed, or which otherwise appear to be incorrect in the billing database. The letter will be provided to the CLIENT for submission to the utility.
- 1.8.3 Prepare a letter report, summarizing the annual savings achieved for the retrofit.

1.9 CLIENT'S Responsibilities (in addition to those in Article 6 of the Agreement):

- 1.9.1 Submission of rebate forms to APS.
- 1.9.2 Submission of ODL (Outdoor Lighting) Change Forms to APS. The ODL Change form is required by APS to document changes in outdoor lighting equipment or wattages, and is provided in Attachment 3.

Article 2: Work Implementation Period

2.1 Commencement of Work:

- 2.1.1 SIEMENS shall commence the Work no later than thirty (30) days after the occurrence all of the following events: (1) CLIENT provides the lighting control devices; (2) SIEMENS obtains the LED retrofit kits; and (3) the parties have fully executed this Agreement. Siemens shall perform the Work diligently and shall complete the Work no later than three-hundred sixty five (365) calendar days after the Effective Contract Date.

- 2.2 *Milestones:* Specific scheduling milestones and coordination requirements are shown in the attached document entitled: Yuma Project Master Baseline Schedule August 2017.

Article 3: Scope of Services-Performance Assurance Services Program

3.1 SIEMENS will provide PASP services consistent with the Agreement and Exhibit C. SIEMENS will provide an Annual Performance Assurance Report ninety (90) days after the end of each Annual Period. The reports will include the baseline billing data established at the start of the project, as well as a summary of current bills, showing the reduction in billing due to the LED upgrades.

3.2 CLIENT will provide copies of all street lighting utility bills to SIEMENS. SIEMENS will review the utility bills to confirm that all fixtures are being billed correctly under LED street lighting rates, and that fixture counts have been revised to reflect the lighting audit. In the event that the bills are incorrect, SIEMENS will provide The CLIENT with a list of discrepancies for the city to provide to APS.

3.3 SIEMENS will assist CLIENT in getting the APS billing database updated, but will not be responsible for any delays or refusals on the part of the utility to update their bills or databases.

Article 4: Scope of Services-Maintenance Services Program

(Please check one box only)

X CLIENT has elected to self-implement maintenance. Therefore SIEMENS shall not perform any on-going maintenance services, although the Parties may negotiate a separate agreement for such services at a later date. CLIENT agrees that it will maintain the equipment per manufacturer specifications and that it will operate the Equipment in accordance with the Contracted Baseline described in Article 7 of Exhibit C. If CLIENT fails to properly maintain or operate the Equipment, SIEMENS shall have the right to modify the Performance Guarantee pursuant to Article 4 of the Agreement.

Exhibit A - Scope of Work and Services

By signing below, this Exhibit is attached to and made a part of the Agreement between SIEMENS and the CLIENT.

CLIENT: **City of Yuma**

Signature: _____

Printed Name: Gregory K. Wilkinson

Title: City Administrator

Date: _____

SIEMENS: **Siemens Industry, Inc.**

Signature: _____

Printed Name: _____

Title: _____

Date: _____

Signature: _____

Printed Name: _____

Title: _____

Date: _____

Attachment 1

Fixture Counts and Equipment

Provide and install new LED fixtures and install CLIENT-provided lighting control devices as follows:

Fixture Type	Yuma Design Standard Designation	Count	New Fixture Manufacturer & Model Number	Lighting Control Device
Cobra	Local Residential (No. 2-050 40')	4653	HOLOPHANE ATBSEMVOLTR33KMPNLP7	anyCOMM
Cobra	Local Ind./Comm. (No. 2-050 45')	200	HOLOPHANE ATBMFMVOLTR3MPNLP7	anyCOMM
Cobra	Minor Collector (No. 2-030 60')	20	HOLOPHANE ATBMFMVOLTR3MPNLP7	anyCOMM
Cobra	Major Collector (No. 2-020 78')	443	HOLOPHANE ATBMHMOVOLTR3NLP7	anyCOMM
Cobra	Arterial (No. 2-010 78')	758	HOLOPHANE ATBMHMOVOLTR3NLP7	anyCOMM
Cobra	Principal Arterial (No. 2-020 108')	376	HOLOPHANE ATBMHMOVOLTR3NLP7	anyCOMM
Shoebox	Multi-Use Bikepath (No. 2-085')	127	HOLOPHANE ATBMCMVOLTR3MPNLP7	anyCOMM
Shoebox	Local Residential (No. 2-050 40')	93	HOLOPHANE ATBSEMVOLTR33KMPNLP7	anyCOMM
Shoebox	Local Ind./Comm. (No. 2-050 45')	45	HOLOPHANE ATBMFMVOLTR3MPNLP7	anyCOMM
Shoebox	Major Collector (No. 2-020 78')	24	HOLOPHANE ATBMHMOVOLTR3NLP7	anyCOMM
Shoebox	Arterial (No. 2-010 78')	9	HOLOPHANE ATBMHMOVOLTR3NLP7	anyCOMM

Provide and install LED retrofit kits and install CLIENT-provided lighting control devices as follows:

Fixture Type	Yuma Design Standard Designation	Count	Retrofit Kit	Lighting Control Device
Candy/Acorn	Local Residential (No. 2-050 40')	49	Globaltech M21 MH	anyCOMM
Candy/Acorn	Major Collector (No. 2-020 78')	10	Globaltech ST 112 ML	anyCOMM
Candy/Acorn	Arterial	58	Globaltech	anyCOMM

	(No. 2-010 78')		ST 112 ML	
China Hat	Local Residential (No. 2-050 40')	3	Globaltech M21 MH	anyCOMM
Decora	Local Residential (No. 2-050 40')	63	Globaltech M21 MH	anyCOMM
Lantern	Local Residential (No. 2-050 40')	116	Globaltech M21 MH	anyCOMM
Lantern	Arterial (No. 2-010 78')	2	Globaltech ST 112 ML	anyCOMM

LED fixtures and kits will:

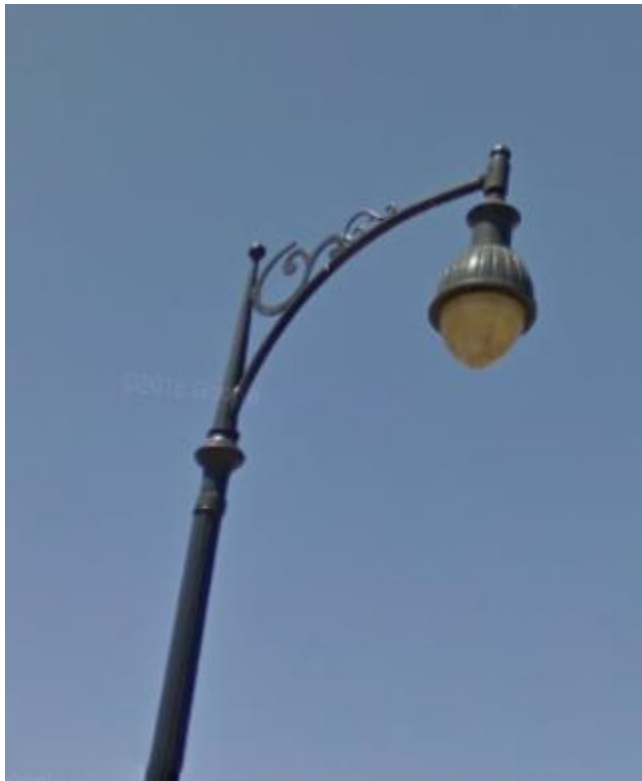
- meet the current City of Yuma Street Lighting Design Standards.
- be DesignLights Consortium® (DLC) qualified.
- meet the current requirements for Government Owned Street Lighting Systems under APS Rate Schedule E-59.
- carry a 10-year manufacturer's warranty.
- have a die cast aluminum housing with tool-less entry.
- be provided with ANSI C136.41 NEMA 7-pin receptacles.
- be capable of full dimming by anyCOMM lighting control device without field modification to fixture
- be provided with a factory installed Utility Label per ANSI C136.15.
- contain Integral 10kV surge suppression protection per IEEE/ANSI C62.41.2-2002.
- be equipped with 120-277V Universal drivers.

It is assumed that all existing CLIENT-owned equipment is in good, operable condition.

Attachment 2

Example Fixtures

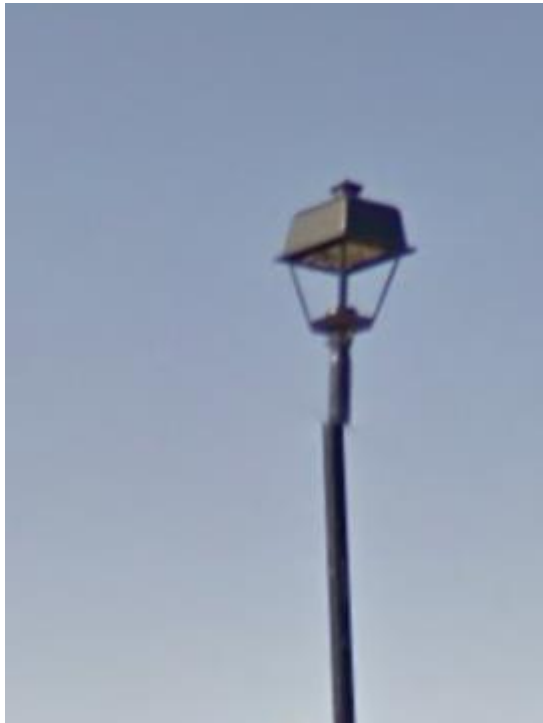
Candy / Acorn Style



Decora



Lantern



China Hat



Shoebox – All except bike path



Shoebox – bike path



Article 1: Payment for Scope of Work

- 1.1 **Price:** As full consideration of the Work as described in Exhibit A, Article 1: Scope of Work, the CLIENT shall pay to SIEMENS \$3,705,848 (plus taxes, if applicable).
- 1.2 **Timely Payments:** The CLIENT agrees to pay SIEMENS in progress payments and pursuant to SIEMENS payment requests. The progress payments shall be based upon the applicable percentage of work completed through the date indicated on SIEMENS' written payment request. Other than the Mobilization and Audit Payment set forth below, Table B.1 represents an anticipated schedule of progress payments. CLIENT agrees to pay the Mobilization and Audit payment within 45 days of the Effective Contract Date. CLIENT agrees to pay the remaining progress payment invoices submitted by SIEMENS per Article 8 of the Agreement.

Table B.1 – FIM Work Payment Schedule

Project Phase	Payments (\$)	Payments (%)	Schedule
Mobilization and Audit	\$185,292	5%	Month 1
Progress Payment #1	\$667,053	18%	Month 2
Progress Payment #2	\$667,053	18%	Month 3
Progress Payment #3	\$667,053	18%	Month 4
Progress Payment #4	\$667,053	18%	Month 5
Progress Payment #5	\$667,053	18%	Month 6
Retainage and Final Payment	\$185,291	5%	End of Project
PROJECT TOTAL:	\$3,705,848	100%	

Article 1 of Exhibit B is attached to and made a part of the Agreement between SIEMENS and the CLIENT.

CLIENT: **City of Yuma, AZ**

Signature: _____

Printed Name: Gregory K. Wilkinson

Title: City Administrator

Date: _____

SIEMENS: **Siemens Industry, Inc.**

Signature: _____

Printed Name: _____

Title: _____

Date: _____

Article 2: Payment for Performance Assurance Services Program (PASP)

- 2.1 **Price:** As full consideration of the Services as described in Exhibit A, Article 3, the CLIENT shall pay to SIEMENS the amounts identified in Table B.2 plus taxes, if applicable, on the dates identified therein.
- 2.2 **Performance Assurance Services Program Term:** The term of the PASP shall commence on the Guarantee Date and shall extend for either: (a) the term of the Performance Guarantee Period where multi-year obligations are allowed; or (b) for twelve (12) month periods corresponding to the term of each Annual Period.
- 2.3 **Automatic Renewal:** Where the PASP term is limited to an Annual Period, the PASP shall automatically renew for ten (10) successive Annual Periods beginning on the anniversary date of Guarantee Date. Either party may request to amend the PASP at the end of an Annual Period by giving the other party at least sixty (60) days prior written notice of such amendments and such amendment shall be mutually negotiated by the Parties and effective upon a written amendment signed by both Parties prior to commencement of the next Annual Period. Each automatic renewal shall be and remain subject to the terms and conditions of this Agreement. SIEMENS obligations under the Performance Guarantee are dependent upon and subject to the express condition that the CLIENT maintains the PASP during the entire Performance Guarantee Period.
- 2.4 **Termination:** See Section 4.7 of the Agreement.

Table B.2 – Performance Assurance Program Payment Schedule

Date	Annual Payments (\$)	Notes
One Year from Guarantee Date	\$6,560.	
Two Years from Guarantee Date	\$6,757.	
Three Years from Guarantee Date	\$6,960.	
Four Years from Guarantee Date	\$3,000.	
Five Years from Guarantee Date	\$3,000.	
Six Years from Guarantee Date	\$3,000.	
Seven Years from Guarantee Date	\$3,000.	
Eight Years from Guarantee Date	\$3,000.	
Nine Years from Guarantee Date	\$3,000.	
Ten Years from Guarantee Date	\$3,000.	

Article 2 of Exhibit B is attached to and made a part of the Agreement between SIEMENS and the CLIENT.

CLIENT: City of Yuma, AZ

Signature: _____

Printed Name: Gregory K. Wilkinson

Title: City Administrator

SIEMENS: Siemens Industry, Inc.

Signature: _____

Printed Name: _____

Title: _____

Exhibit B – Payment Schedules

Date: _____

Date: _____

The following Articles and Tables are hereby included and made part of this Exhibit C:

Article 1: Summary of Articles and Total Guaranteed Savings

Article 1	Summary of Articles and Total Guaranteed Savings
Article 2	Measurement and Verification Options
Article 3	Performance Guarantee Period Responsibilities of CLIENT
Article 4	Measurement and Verification Plan
Article 5	Baseline Data
Article 6	Utility Rate Structures and Escalation Rates
Article 7	Contracted Baseline Data
Appendix A	Utility Tariffs
Appendix B	City of Yuma Street Lighting Standards
Appendix C	Transportation Master Plan

Table 1.1 – Total Guaranteed Savings (Units)

Performance Period	Electric Energy Saved (kWh)	Electric Power Saved (kW)	Natural Gas Saved (Therms)	No. 2 Fuel Oil Saved (Gallons)	Water Saved (Gallons)
Construction	1,330,160	N/A	N/A	N/A	N/A
Annual Period 1	4,030,788	N/A	N/A	N/A	N/A

- 1.1 Only Annual Period 1 is shown Table 1.1 because the energy/utility unit Savings will remain constant for each Annual Period of the Performance Guarantee Period because the CLIENT will operate the Facility in accordance with the Contracted Baseline identified in Article 7 of this Exhibit C.

Table 1.2 – Total Guaranteed Savings (Cost)

Performance Period	Energy/Utility Savings	Operational Savings	Total Savings
Construction	\$79,115	\$0	\$79,115
Annual Period 1	\$239,742	\$105,062	\$344,804
Annual Period 2	\$246,935	\$108,214	\$355,149
Annual Period 3	\$254,343	\$111,461	\$365,803
Annual Period 4	\$261,973	\$114,805	\$376,777
Annual Period 5	\$269,832	\$118,249	\$388,081
Annual Period 6	\$277,927	\$109,617	\$387,544
Annual Period 7	\$286,265	\$101,614	\$387,879
Annual Period 8	\$294,853	\$94,197	\$389,049
Annual Period 9	\$303,698	\$87,320	\$391,019
Annual Period 10	\$312,809	\$80,946	\$393,755
TOTALS	\$2,827,492	\$1,031,485	\$3,858,977

- 1.2 Table 1.2 shows the CLIENT'S guaranteed cost Savings for each Annual Period that are extrapolated from the guaranteed energy/utility unit Savings shown in Table 1.1 by multiplying the energy/utility Savings by the Baseline energy/utility rates including the stipulated Escalation Rates found in Article 6 of this Exhibit C. Table 1.2 also shows the Operational Savings which are stipulated based on various sources as identified Table 2.2.

- 1.3 SIEMENS cannot and does not predict fluctuations in utility rates or the cost of energy. Therefore, the CLIENT and SIEMENS agree that the energy/utility cost Savings for each Annual Period will be calculated by multiplying the verified units of energy/utility Savings by the Annual Period's stipulated energy/utility rate and Escalation Rates and not the Annual Period's actual utility rate.
- 1.4 The determination of energy/utility Savings will follow current best practice, as defined in the IPMVP, or the FEMP Guidelines where required, unless otherwise agreed to by the Parties.
- 1.5 The Performance Guarantee does not operate to guarantee the Savings per-FIM. Rather, the calculation of Savings is based on aggregate performance of all of the FIMs contained in the Project. The projected value of such aggregate performance is contained in Table 1.2 above representing the Total Guaranteed Savings as monetized.

This Exhibit C, comprising 12 pages, is attached to and made a part of the Agreement between SIEMENS and the CLIENT.

CLIENT: City of Yuma, Arizona

Signature: _____

Printed Name: Gregory K. Wilkinson

Title: City Administrator

Date: _____

SIEMENS: Siemens Industry, Inc.

Signature: _____

Printed Name: _____

Title: _____

Date: _____

Signature: _____

Printed Name: _____

Title: _____

Date: _____

Article 2: Measurement and Verification Options

2.1 Measurement and Verification Options: There are five measurement and verification options to measure and verify energy/utility Savings: Option A - Retrofit Isolation: Key Parameter Measurement; Option B - Retrofit Isolation: All Parameter Measurement; Option C - Whole Facility; and, Option D – Calibrated Simulation. Options A through and including D are part of the IPMVP. Option E- Stipulated is based on industry accepted engineering standards and is the Option used for purposes of calculating Operational Savings.

Option A - Retrofit Isolation: Key Parameter Measurement. Savings are determined by field measurement of the key performance parameter(s) which define the energy use of the FIM's affected system(s) and/or the success of the Project. Measurement frequency ranges from short-term to continuous, depending on the expected variations in the measured parameter and the length of the reporting period. Parameters not selected for field measurement are estimated. Estimates can be based on historical data, manufacturer's specifications, or engineering judgment. Documentation of the source or justification of the estimated parameter is required. The plausible savings error arising from estimation rather than measurement is evaluated. If applicable, the predetermined schedule for data collection, evaluation, and reporting is defined in Exhibit A, Article 3-Performance Assurance Services Program.

Option B – Retrofit Isolation: All Parameter Measurement. Savings are determined by field measurement of the energy use of the FIM-affected system. Measurement frequency ranges from short-term to continuous, depending on the expected variations in the savings and the length of the reporting period. If applicable, the predetermined schedule for data collection, evaluation, and reporting is defined in Exhibit A, Article 3-Performance Assurance Services Program.

Option C - Whole Facility: Savings are determined by measuring energy use at the whole Facility or sub-Facility level. Continuous measurements of the entire Facility's energy use are taken throughout the reporting period. If applicable, the predetermined schedule for data collection, evaluation, and reporting is defined in Exhibit A, Article 3-Performance Assurance Services Program.

Option D - Calibrated Simulation: Savings are determined through simulation of the energy use of the whole Facility, or of a sub-Facility. Simulation routines are demonstrated to adequately model actual energy performance measured in the Facility. This Option usually requires considerable skill in calibrated simulation. If applicable, the predetermined schedule for data collection, evaluation, and reporting is defined in Exhibit A, Article 3-Performance Assurance Services Program.

Option E – Stipulated: This Option is the method of measurement and verification applicable to FIMS consisting either of Operational Savings or where the end use capacity or operational efficiency; demand, energy consumption or power level; or manufacturer's measurements, industry standard efficiencies or operating hours are known in advance, and used in a calculation or analysis method that will stipulate the outcome. Both CLIENT and SIEMENS agree to the stipulated inputs and outcome(s) of the analysis methodology. Based on the established analytical methodology the Savings stipulated will be achieved upon completion of the FIM and no further

measurements or calculations will be performed during the Performance Guarantee Period. If applicable, the methodology and calculations to establish Savings value will be defined in Section 4.6 of this Exhibit C.

2.2 Table 2.1 below summarizes Annual Period 1's Guaranteed Savings (See Article 1, Tables 1.1 and 1.2 of this Exhibit C) utilizing the applicable Measurement and Verification Options as applied to the referenced FIMs valued pursuant to the agreed upon amounts identified in Article 6 of this Exhibit C.

Table 2.1 – Savings for First Annual Period by Option

FIM	Energy/Utility Savings \$						Operational Savings \$ ^[1]	Total Savings \$
	Measurement and Verification Options						E	
	A Retrofit Isolation: Key Parameter Measurement	B Retrofit Isolation: All Parameter Measurement	C Whole Facility	D Calibrated Simulation	E Stipulated	Total Energy/Utility Savings	Stipulated	
Lighting Retrofits (Street Lights)	\$239,742	-	-	-	-	\$239,742	\$105,062	\$344,804
TOTALS	\$239,742	-	-	-	-	\$239,742	\$105,062	\$344,804

[1] Operational savings are detailed in Exhibit C, Article 2, Table 2.2.

2.3 Table 2.2 identifies the source of Operational Savings for Annual Period 1, as defined and quantified by the Parties. To determine Operational Savings in subsequent years, which are shown in Table 1.2, the Operational Savings were escalated each Annual Period per the Escalation Rate shown in Section 2.5. In addition, to account for labor associated with lamp failures, the Operational Savings were derated by ten percent (10%) each year starting in Annual Period 6. Material costs are assumed to be covered by the manufacturer's warranty. **OPERATIONAL SAVINGS SHALL NOT BE MEASURED OR MONITORED DURING THE PERFORMANCE GUARANTEE PERIOD.**

Table 2.2 - Source of Operational Savings

Description	Cost each	Monthly Cost \$	Annual Cost	Annual Period Savings Begin	# of Annual Periods Savings Are Applied
Bulbs	\$15.00	\$1,350	\$16,200	1	10
Photocells	\$18.00	\$1,620	\$19,440	1	10
Labor	\$26.00	\$3,042	\$36,504	1	10
Aerial Lift Vehicle	\$50.00	\$4,500	\$54,000	1	10
Buffer Vehicle	\$16.00	\$432	\$5,184	1	10
Derate Factor		80%	80%		
Total Operational Savings		\$8,755.20	\$105,062		

2.4 SIEMENS has explained to the CLIENT and the CLIENT has satisfied itself as to how Operational Savings are incorporated into the Annual Realized Savings.

2.5 The Escalation Rate applicable to the Operational Savings is three percent (3%).

BY SIGNING BELOW, THE PARTIES CONFIRM THAT THEY HAVE REVIEWED THE INCLUDED MEASUREMENT AND VERIFICATION OPTIONS AND THEIR APPLICATION TO BE USED IN CALCULATING SAVINGS UNDER THE AGREEMENT.

CLIENT: **City of Yuma, Arizona**

Signature: _____

Printed Name: Gregory K. Wilkinson

Title: City Administrator

Date: _____

SIEMENS: **Siemens Industry, Inc.**

Signature: _____

Printed Name: _____

Title: _____

Date: _____

Signature: _____

Printed Name: _____

Title: _____

Date: _____

Article 3: Performance Guarantee Period Responsibilities of the CLIENT

In addition to the CLIENT'S responsibilities under Article 6 of the Agreement, this Article 3 details the responsibilities of the CLIENT in connection with the management and administration of the Performance Guarantee.

- 3.1 The CLIENT will provide a representative to coordinate the Work and provide required data described in this Article 3.
- 3.2 The CLIENT will work directly with the CLIENT'S utility provider, Arizona Public Services Co. (referred to as "Utility" or "APS"), with SIEMENS assistance, to update the Utility's billing database to reflect the LED upgrades. SIEMENS is not responsible for any savings lost due to the Utility's failure to modify its billing records; except to the extent the Utility's failure to modify billing records is due to SIEMENS' failure either to provide timely data to the CLIENT to provide to the Utility or to install LED lamps within the E-59 Tariff.
- 3.3 The CLIENT will provide SIEMENS with accurate details of any street lights that have been removed, added, or modified during each Annual Period, including lamp type, wattage and location for the existing and replacement equipment, no later than sixty (60) days prior to the end of each Annual Period. This pertains to streetlights or accounts included in the scope of this contract.
- 3.4 If applicable, the CLIENT will provide SIEMENS with copies of the CLIENT'S street light bills from the Utility within thirty (30) days of receipt by the CLIENT or provide access to Utility vendor information to allow SIEMENS to obtain complete billing information for the street lights for each Annual Period to allow SIEMENS to include a utility bill analysis in the Annual Performance Assurance Report. The utility bill analysis does not take the place of the Measurement and Verification Plan identified in Article 4 of this Exhibit C. Billing information provided must include fixture types and counts; and pole numbers, in addition to billing information.

Article 4: Measurement and Verification Plan

The following information is applicable to this Agreement:

- Article 4.1 General Overview
- Article 4.2 Option A - Retrofit Isolation: Key Parameter Measurement
- Article 4.3 Option B - Retrofit Isolation: All Parameter Measurement
- Article 4.4 Option C - Whole Facility
- Article 4.5 Option D - Calibrated Simulation
- Article 4.6 Option E – Stipulated-Energy/Utility Savings

4.1 General Overview –

The purpose of the Measurement and Verification (M&V) Plan is to identify the methods, measurements, procedures and tools that will be used to verify the Savings for each FIM which has energy/utility Savings. Savings are determined by comparing prior usage, consumption or efficiencies (defined as the “Baseline”) against the post-FIM implementation usage, consumption or efficiencies. The Baseline usage, consumption or efficiencies are described in this Exhibit C, Article 5. The post-FIM implementation usage, consumption or efficiencies is defined as the Contracted Baseline and are described in this Exhibit C, Article 7.

4.2 Option A - Retrofit Isolation: Key Parameter Measurement

4.2.1 Street Lighting

Location(s): City Wide (City of Yuma, AZ)

Overview:

SIEMENS will retrofit the existing street lighting fixtures with more energy-efficient street lighting fixtures. Verification of electric energy Savings (kWh) will be achieved by one-time calculation of energy reduction using manufacturer's specification of electric demand (kW) and Utility stipulated operating hours (4380 hours annually) of each installed post-retrofit fixture type. Ongoing savings will be verified by confirming that the correct utility bill tariffs (E-59) are applied to the retrofitted street lights upon receipt from the City of Yuma each year of performance.

Pre-Retrofit Measurement\Calculations:

Pre-Retrofit Billed \$ = annual utility costs of the LED street lighting before LED retrofit as determined by the Technical Energy Audit that Siemens completed in May 2017.

Table 4.2.1 – Baseline Operating Parameters for the City of Yuma Streetlights

Fixture Type	Rated Wattage (kW _{Pre})	Quantity (Qty _{Pre})
--------------	------------------------------------	--------------------------------

HPS	0.070	715
HPS	0.100	3278
HPS	0.150	625
HPS	0.250	803
HPS	0.400	1388
INC	Various	8
MH	0.175	193
MV	0.400	4
LPS	0.55	3
Total		7,017

Post-Retrofit Measurement\Calculations:
Summed across all fixture types

$$\text{Post-Retrofit Billed \$} = [(\text{kW}_{\text{post}} * \text{Qty}_{\text{Post}} * \text{AOH})_{\text{fixture type "n"}}] * \$/\text{kWh}$$

Where:

kW_{post} = Post-Retrofit kW based on manufacturer's specifications of the installed/retrofitted lighting-fixture types

Post-Retrofit Billed \$ = annual utility costs of the LED street lighting after LED retrofit

AOH = Annual Operating Hours = 4,380 Hours/Year

Qty_{Post} = Quantity of post-retrofit fixtures by type

\$/kWh = unit cost of electricity per kWh as defined in Article 6 of this Exhibit C verified annually

Table 4.2.2 – Post-Retrofit Operating Parameters for the City of Yuma Streetlights

Post-Retrofit Fixture Type	Rated Wattage (kW_{post})	Quantity (Qty_{Post})
LED	0.040	4746
LED	0.050	231
LED	0.075	70
LED	0.081	127
LED	0.133	265
LED	0.164	1610
Totals		7049

Savings Calculations:

Cost Savings (\$/yr):

$$\text{\$}_s = \text{Pre-Retrofit Billed \$} - \text{Post-Retrofit Billed \$}$$

Where:

$$\text{\$}_s = \text{Total annual cost savings}$$

- 4.3 **Option B - Retrofit Isolation: All Parameter Measurement – NOT USED**
- 4.4 **Option C – Whole Facility – NOT USED**
- 4.5 **Option D – Calibrated Simulation – NOT USED**
- 4.6 **Stipulated-Energy/Utility Savings – NOT USED**

Article 5: Baseline Data

- 5.1 Street Lights: The Baseline data in Table 5.1.1 below is based on various bills and utility inventories provided by CLIENT and the Utility for 2016. Table 5.1.1 outlines the current owner of each utility line item, the Utility account number, the quantity of lamps in that line item, the lamp type and the wattage per lamp. This baseline information, along with the Tariff defined in Article 6, establishes the baseline.

Table 5.1.1 Baseline (Street Lights)

Owner	Utility Account #	Fixture Count	Lamp Type	Wattage
City	444251287	706	HPS	70
City	444251287	3123	HPS	100
City	444251287	621	HPS	150
City	444251287	786	HPS	250
City	444251287	1382	HPS	400
City	444251287	8	INC	295
City	444251287	193	MH	175
City	444251287	3	LPS	55
City	444251287	4	MV	400
City	781390285	4	HPS	70
City	781390285	1	HPS	150
City	423811287	4	HPS	250
City	270313284	4	HPS	250
City	915390288	16	HPS	100
City	368327284	1	HPS	100
City	407546284	16	HPS	100
City	407546284	2	HPS	150
City	407546284	3	HPS	250
City	119593281	3	HPS	250
City	672314284	1	HPS	150
City	672314284	3	HPS	250
City	672314284	6	HPS	400
City	58662288	5	HPS	70
City	58662288	64	HPS	100
City	256373288	58	HPS	100

- 5.2 The street lighting tariff uses a Utility-determined monthly energy usage, based on lamp type, to calculate the electrical costs. Thus, the baseline kWh is independent of the actual lamp operation.

Article 6: Utility Rate Structures and Escalation Rates

- 6.1 Utility costs used for savings calculations will be based on the E-59 utility tariff ("Utility Tariff") and rate escalation percentages as noted below. A three percent (3%) escalation rate will be applied annually to the Utility Tariff.

Street Light Tariffs:

Electric Rate – Schedule E-59

Service Provider: Arizona Public Service Co.

Rate Summary:

Energy Charge: \$0.06088 (plus applicable riders and surcharges)

Service Charge: \$2.79 per installed lamp

Annual kWh per lamp: As provided in rate E-58, E-59 (as applicable), or as set forth in the manufacturer's specifications and accepted by the Utility.

A copy of Schedule E-58 and E-59 are included in Appendix A.

Project savings are based on the technology (Lamp Type) change (HPS, MV and MH) to LED lamps, within the E-59 tariff. Savings Guarantee does not include other fees and charges from APS.

Rate Escalation: 3% per Annual Period– Years 0 thru 10

Article 7: Contracted Baseline Data

7.1 Table 7.1.1 details the replacement fixtures, including wattage, lamp type, and Photocell that is required to be installed by SIEMENS before receiving a Certificate of Substantial Completion. The fixture type, lighting standards, and number of fixtures and standards set forth in Table 7.1.1 are based on the Technical Energy Audit presented in May 2017, on the City of Yuma Street Lighting Standards 7-100A and 7-100B (Appendix B), and on the City of Yuma Transportation Master Plan Map: 3-1 (Appendix C). Table 7.1.1 is the Contracted Baseline and failure of the CLIENT to maintain the Contracted Baseline may result in a Material Change which may require a modification of the Performance Guarantee pursuant to Article 4 of the Agreement.

Table 7.1.1 Post-Retrofit Lamp (Street Lights)

Applicable City of Yuma					
Fixture Type	Lighting Standard	Count	Lamp Type	Wattage	Lighting Control Device Type
Cobra	Local Residential	4653	LED	40	Photocell*
	Local Ind / Comm	200	LED	133	Photocell*
	Minor Collector	20	LED	133	Photocell*
	Major Collector	443	LED	164	Photocell*
	Arterial	758	LED	164	Photocell*
	Principal Arterial	376	LED	164	Photocell*
ShoeBox	Local Residential	93	LED	40	Photocell*
	Local Ind / Comm	45	LED	133	Photocell*
	Major Collector	24	LED	164	Photocell*
	Arterial	9	LED	164	Photocell*
Bike Path		127	LED	81	Photocell*
Decorative	Acorn - Local Residential	49	LED	50	Photocell*
	Acorn - Major Collector	10	LED	75	Photocell*
	Acorn - Arterial	58	LED	75	Photocell*
	China Hat - Local Residential	3	LED	50	Photocell*
	Decora - Local Residential	63	LED	50	Photocell*
	Lantern - Local Residential	116	LED	50	Photocell*
	Lantern - Arterial	2	LED	75	Photocell*

* Or City provided lighting control device

Appendix A to Exhibit C

Utility Tariffs

[see the following pages]



**RATE SCHEDULE E-58
CLASSIFIED SERVICE
STREET LIGHTING SERVICE**

AVAILABILITY

This rate schedule is available in those portions of cities, towns and unincorporated communities in which Company does a general retail electric business and where Company has installed a multiple or series street lighting system of adequate capacity for the service to be rendered.

APPLICATION

This rate schedule is applicable to service for lighting public streets, alleys, thoroughfares, public parks and playgrounds from dusk to dawn by use of Company's facilities where such service for the entire area is contracted for from the Company by the city, town, other governmental agencies, or a responsible individual for unincorporated communities. Dusk is defined as the time between sunset and full night when a photocontrol senses the lack of sufficient sunlight and turns on the lights. Dawn is defined as the time between full night and sunrise when a photocontrol senses sufficient sunlight to turn off lights.

RATES

The bill shall be computed at the following rates for each type of standard facility and/or service utilized to provide street lighting, plus any adjustments incorporated in this schedule:

I. FIXTURES (Includes Mounting Arm, if Applicable)

	Lumen	Watts	kWh	RATES	
				Investment by Company	Investment by Others
A. Acorn	9,500 HPS	100	41	\$ 27.06	\$9.22
	16,000 HPS	150	69	30.04	11.65
	6000 IND	85	29	17.87	4.77
B. Architectural	9,500 HPS	100	41	15.38	7.34
	16,000 HPS	150	69	17.96	9.82
	30,000 HPS	250	99	21.31	12.60
	50,000 HPS	400	153	26.29	18.13
	14,000 MH	175	72	21.51	11.79
	21,000 MH	250	101	24.42	14.54
	36,000 MH	400	159	30.54	20.00
	8,000 LPS	55	30	22.35	9.82
	13,500 LPS	90	50	26.36	11.84
	22,500 LPS	135	72	30.11	14.45
	33,000 LPS	180	90	36.22	17.02
	6,200 IND	85	29	9.40	3.65
	8,400 IND	100	34	9.93	4.05
	10,200 IND	120	41	10.91	4.63
	13,000 IND	150	52	12.05	5.50
	20,500 IND	200	69	13.72	6.84
	22,500 IND	265	91	16.37	8.62
	5,800 LED	94	32	16.53	4.79
	7,400 LED	127	44	18.96	5.89
	12,300 LED	203	70	23.66	8.22



**RATE SCHEDULE E-58
CLASSIFIED SERVICE
STREET LIGHTING SERVICE**

I. FIXTURES (Includes Mounting Arm, if Applicable) (cont):

				RATES	
	Lumen	Watts	kWh	Investment by Company	Investment by Others
B. Architectural	9,200 LED	139	48	\$23.77	\$6.78
	13,620 LED	202	70	26.45	8.58
	6,400 LED	89	31	16.61	4.73
C. Cobra/Roadway	5,800 HPS	70	29	8.73	5.16
	9,500 HPS	100	41	10.28	6.32
	16,000 HPS	150	69	12.87	8.82
	30,000 HPS	250	99	15.52	11.46
	50,000 HPS	400	153	21.06	16.37
	14,000 MH	175	72	14.97	10.20
	21,000 MH	250	101	17.49	12.69
	36,000 MH	400	159	23.03	17.63
	8,000 FL	100	38	17.20	5.04
	6,200 IND	75	26	9.78	3.50
	6,400 IND	85	29	8.33	3.51
	8,000 IND	88	30	9.72	3.75
	8,400 IND	100	34	9.01	3.93
	10,200 IND	120	41	9.69	4.47
	13,000 IND	150	52	10.67	5.32
	15,250 IND	200	69	12.87	6.73
	22,500 IND	250	86	17.22	8.41
	Gray/Bronze 3,500 IND	55	19	9.75	3.03
	6,000 LED	95	33	15.83	4.76
	8,700 LED	142	49	17.80	6.06
	9,600 LED	157	54	18.94	6.54
	11,600 B-LED	181	62	17.67	6.90
	Gray/Bronze 3,300 LED	43	15	8.36	2.59
	Gray/Bronze 5,300 LED	67	23	9.70	3.29
	Gray/Bronze 8,300 LED	106	37	12.58	4.59
	Gray/Bronze 10,500 LED	130	45	14.00	5.29
	Gray/Bronze 20,000 LED	258	89	24.33	9.54
D. Decorative Transit	9,500 HPS	100	41	37.09	11.11
	16,000 HPS	150	69	36.88	12.41
	30,000 HPS	250	99	42.46	16.02
	5,300 LED	75	26	26.40	5.69
	8,300 LED	100	34	28.27	6.47
	10,500 LED	150	52	30.35	7.91
E. Flood	30,000 HPS	250	99	20.61	12.81
	50,000 HPS	400	153	25.56	17.77
	21,000 MH	250	101	22.00	13.53
	36,000 MH	400	159	26.82	18.35



**RATE SCHEDULE E-58
CLASSIFIED SERVICE
STREET LIGHTING SERVICE**

I. FIXTURES (Includes Mounting Arm, if Applicable) (cont):

					Rates	
		Lumens	Watts	kWh	Investment By Company	Investment By Others
F. Post Top	Colonial Gray	8,000 FL	100	38	\$18.54	\$5.23
		9,500 HPS	100	41	10.60	6.65
	Colonial Black	9,500 HPS	100	41	12.21	6.88
	Decorative Transit	9,500 HPS	100	41	32.47	10.24
	Copper Square	6,000 IND	85	29	17.52	4.72
	Gray/Black	8,000 IND	88	30	13.80	4.29
	Gray/Black	4,350 LED	86	30	12.52	4.12
G. FROZEN		4,000 INC	295	103	\$9.78	\$5.47
		7,000 MV	175	73	12.67	7.27
		11,000 MV	250	96	15.87	9.68
		20,000 MV	400	150	24.92	14.12

NOTES:

1. Investment by Company. These rates are applicable where the Company provides the initial investment to purchase and install all facilities necessary for street lighting service. The Company will own, operate, and maintain the street lighting system.
2. Investment by Others. These rates are applicable in those instances where the requesting entity or individual purchases and installs the street lighting facilities at their own expense and in accordance with Company specifications. These rates will also apply in the instance where the customer provides a non-refundable advance to the Company to cover the Company's cost of purchasing and installing the street lighting system. The Company retains ownership of the street lighting system and provides operation and maintenance for all facilities.
3. Listed kWhs reflect the assigned monthly energy usage for each type of fixture and are used to determine any applicable transmission, system benefit, distribution, energy, and adjustment charges.
4. HPS = High Pressure Sodium
5. MH = Metal Halide
6. LPS = Low Pressure Sodium
7. FL = Fluorescent
8. INC = Incandescent. Incandescent lighting charges are applicable and available only to those customers being served and those installations in service on November 1, 1986.
9. MV = Mercury Vapor. Mercury Vapor lighting charges are applicable and available only to those customers being served and those installation in service on November 1, 1986 in accordance with A.R.S. §49-1104(A).
10. LED = Light Emitting Diode
11. IND = Induction



**RATE SCHEDULE E-58
CLASSIFIED SERVICE
STREET LIGHTING SERVICE**

II. POLES

			RATES		
			Height	Investment by Company	Investment by Others
A. Anchor Base Mounted (Flush)	Round Steel	1 Simplex Adapter	12 ft.	\$12.17	\$1.68
			22 ft.	13.70	1.88
			25 ft.	14.82	2.05
			30 ft.	17.03	2.34
			32 ft.	17.89	2.37
		2 Simplex Adapters	12 ft.	12.98	1.79
			22 ft.	14.91	2.06
			25 ft.	15.55	2.14
			30 ft.	18.07	2.49
			32 ft.	19.28	2.66
	Square Steel	5"	13 ft.	13.95	1.92
			15 ft.	12.47	1.72
			23 ft.	14.79	2.03
			25 ft.	16.26	2.23
			28 ft.	18.05	2.48
			32 ft.	17.95	2.47
Concrete		12 ft.	41.58	5.73	
Fiberglass		12 ft.	35.21	4.85	
Decorative Transit Pedestrian	4"	16 ft.	34.33	4.73	
Decorative Transit	6"	30 ft.	66.28	9.13	
Hinged Poles	Square	15 ft.	13.20	1.08	
	Round	19 ft.	11.93	.97	
B. Anchor Base Mounted (Pedestal)	Round Steel	1 Simplex Adapter	12 ft.	11.71	1.61
			22 ft.	13.24	1.82
			25 ft.	14.35	1.98
			30 ft.	16.58	2.29
			32 ft.	17.41	2.40
		2 Simplex Adapters	12 ft.	12.51	1.72
			22 ft.	13.97	1.92
			25 ft.	15.08	2.07
			30 ft.	17.61	2.42
			32 ft.	18.81	2.59
		3 Bolt Arm	32 ft.	21.62	2.97
		Square Steel	5"	13 ft.	13.50
	15 ft.			13.80	1.89
	23 ft.			14.32	1.98
	25 ft.			15.80	2.19
	28 ft.			17.56	2.42
	32 ft.			18.23	2.50



**RATE SCHEDULE E-58
CLASSIFIED SERVICE
STREET LIGHTING SERVICE**

II POLES (cont)

			RATES		
		Height	Investment by Company	Investment by Others	
C. Direct Bury	Round Steel	19 ft.	\$18.42	\$2.54	
		30 ft.	14.38	2.66	
		38 ft.	17.55	2.73	
		Self Support	40 ft.	21.62	3.42
		Stepped	25 ft.	49.72	4.06
			32 ft.	52.36	4.27
			49 ft.	64.99	8.96
	Square Steel	4"	34 ft.	15.87	2.75
		5"	20 ft.	15.07	2.49
			30 ft.	15.71	2.59
			38 ft.	17.05	2.96
		8"	28 ft.	28.45	2.32
			32 ft.	29.74	2.43
	Decorative Transit		41 ft 6 in	20.47	3.01
	Decorative Transit	47 ft.	25.50	3.75	
	Steel Distribution Pole (for lighting only)	35 ft.	23.54	3.10	
D. Post Top	Decorative Transit Anchor Base	16 ft.	35.07	4.82	
	Gray Steel/Fiberglass	23 ft.	12.16	2.00	
	Black Steel	23 ft.	13.41	2.21	
E. Existing distribution pole suitable for streetlight use			1.48	--	
F. FROZEN	Wood Poles	30 ft.	\$8.95	\$1.55	
		35 ft.	8.95	1.48	

NOTE: The monthly rate for all new poles includes up to 300 feet of overhead secondary wire, or up to 300 feet of underground secondary wire if the customer provides earthwork and conduit (excluding the underground to overhead transition).

III. ANCHOR BASE

		RATES		
		Height	Investment by Company	Investment by Others
A. Flush		4 ft.	\$9.91	\$1.36
		6 ft.	11.82	2.05
B. Pedestal		8 ft.	13.54	2.36
	For 32' Round Steel Pole only	4 ft. 6"	9.39	1.63



**RATE SCHEDULE E-58
CLASSIFIED SERVICE
STREET LIGHTING SERVICE**

IV. CHARGES FOR OPTIONAL OR ADDITIONAL EQUIPMENT

		RATES
		Company Owned
Underground Circuit Charges:		
a.	Per foot of cable, installed under paving	\$0.15716
b.	Per foot of cable, not installed under paving	0.05589

V. DETERMINATION OF RATES FOR NEW EQUIPMENT

Monthly rates for new lighting fixtures, poles and other equipment not included in Sections I, II, or III above shall be determined by the Company using the following method:

Step 1 Determination of Charges for each Charge Type							Monthly Fixed Charge Rate
Charge Type	Monthly Charge	=	Cost Inputs		PV Factor		
1	Carrying Cost (fixtures)	=	Equipment Cost (installed)	x	NA	x	1.533%
2	Carrying Cost (poles)	=	Equipment Cost (installed)	x	NA	x	1.449%
3	Fixture Replacement Cost	=	Equipment Cost (installed)	x	0.132	x	1.533%
4	Pole, Anchor Replacement Cost	=	Equipment Cost (installed)	x	0.082	x	1.449%
5	Lighting O&M	=	O&M Cost (lifecycle)	x	0.381	x	1.533%
Charge Type	Monthly Charge		kWh Input		\$/kWh		
6	Generation	=	kWh per month	x	0.04023		
7	T&D, RCS, SB	=	kWh per month	x	0.03516		

Step 2 Determination of Total Monthly Charge	
The total monthly charge shall be the summation of the charges for each applicable charge type	
<u>Equipment</u>	<u>Charge Type</u>
Fixture - IBC	1,5,6,7
Fixture - IBO	3,5,6,7
Pole, Anchor Base - IBC	2
Pole, Anchor Base - IBO	4



**RATE SCHEDULE E-58
CLASSIFIED SERVICE
STREET LIGHTING SERVICE**

TRIP CHARGE

When Company is not the responsible party contracted for the regular maintenance of a street lighting system owned by a city, town or other governmental entity, a \$100.00 trip charge per light will be charged when Customer requests a disconnect and/or reconnect of service in order to accommodate the maintenance activities of the Customer or its designee(s) on their street light equipment. The trip charge will also apply when Customer request disconnect or reconnect for non-maintenance purposes.

ADJUSTMENTS

1. The bill is subject to the Renewable Energy Standard as set forth in the Company's Adjustment Schedule REAC-1 pursuant to Arizona Corporation Commission Decision No. 70313.
2. The bill is subject to the Power Supply Adjustment factor as set forth in the Company's Adjustment Schedule PSA-1 pursuant to Arizona Corporation Commission Decision No. 67744 Arizona Corporation Commission Decision No. 69663, and Arizona Corporation Commission No. 71448, and 73183.
3. The bill is subject to the Transmission Cost Adjustment factor as set forth in the Company's Adjustment Schedule TCA-1 pursuant to Arizona Corporation Commission Decision No. 67744.
4. The bill is subject to the Environmental Improvement Surcharge as set forth in the Company's Adjustment Schedule EIS pursuant to Arizona Corporation Commission Decision No. 69663 and Arizona Corporation Commission Decision No. 73183.
5. Direct Access customers returning to Standard Offer service may be subject to a Returning Customer Direct Access Charge as set forth in the Company's Adjustment Schedule RCDAC-1 pursuant to Arizona Corporation Commission Decision No. 67744.
6. The bill is subject to the Demand Side Management Adjustment Charge as set forth in the Company's Adjustment Schedule DSMAC-1 pursuant to Arizona Corporation Commission Decision No. 71448.
7. The bill is subject to the applicable proportionate part of any taxes or governmental impositions which are or may in the future be assessed on the basis of gross revenues of APS and/or the price or revenue from the electric energy or service sold and/or the volume of energy generated or purchased for sale and/or sold hereunder.

SPECIAL PROVISIONS

1. Street lighting facilities installed under this rate schedule are of the type currently being furnished by Company as standard at the time service is initially requested. Standard facilities are those listed in the Company's Transmission and Distribution Construction Standards book.
2. The Company cannot guarantee that streetlighting facilities will always operate as intended. Therefore, the customer will be responsible for notifying the Company when the streetlighting facilities are not operating as intended. The Company will use reasonable efforts to complete normal maintenance (replacement of lamps, photocontrols or fixtures) within ten (10) working days from notification by customer; however, if the maintenance requires cable replacement or repairs, the Company shall use reasonable efforts to complete said repairs within twenty (20) working days.
3. The customer's bill will not be reduced due to lamp, photocontrol or cable repair or replacement outages.
4. Lighting equipment which is not specified in this rate schedule will be billed at the rates corresponding to the most similar equipment, as determined by the Company.



**RATE SCHEDULE E-58
CLASSIFIED SERVICE
STREET LIGHTING SERVICE**

NON-STANDARD FACILITIES

Non-standard facilities (non-standard being defined as any facility not listed in the Company's Transmission and Distribution Construction Standards book) do not qualify for this rate schedule. At the Company's discretion, such facilities may be served under another of the Company's rate schedules.

EXTENSION OF STREET LIGHTING SYSTEM

The Company will extend its standard street lighting system up to a distance of 300 feet for each additional lighting installation without cost at the request of the customer. When the extension is underground the customer will provide earthwork as specified in of the Company's Service Schedule 3, Conditions Governing Extensions of Electric Distribution Lines and Services; or, at the applicant's request, the Company will provide such earthwork and the applicant will be required to pay a non-refundable contribution in aid of construction equal to the cost of such earthwork. Any additional extension required (over and above the first 300 feet) will be provided by Company for a contribution in aid of construction equal to the cost of the additional extension.

Extensions to isolated areas requiring a substantial extension of the electric distribution system, as opposed to an extension of the street lighting system, will require a special study to determine the terms and conditions under which the Company will undertake such an extension.

TERMS AND CONDITIONS

Service under this rate schedule is subject to the Company's Schedule 1, Terms and Conditions for Standard Offer and Direct Access Services and the Company's Schedule 10, Terms and Conditions for Direct Access. These schedules have provisions that may affect the customer's bill. In addition, service may be subject to special terms and conditions as provided for in a customer contract or service agreement.



**RATE SCHEDULE E-59
CLASSIFIED SERVICE
GOVERNMENT OWNED STREET LIGHTING SYSTEMS**

AVAILABILITY

This rate schedule is available in those portions of cities, towns and unincorporated communities in which the Company does a general retail electric business and where the customer has installed or purchased a multiple or series street lighting system and the Company has distribution facilities of adequate capacity for the service to be rendered.

APPLICATION

This rate schedule is applicable to Standard Offer electric service for continuous lighting, from dusk to dawn, of public streets, alleys, thoroughfares, public parks and playgrounds by use of the customer's facilities where such service for the whole area is contracted for from the Company pursuant to the terms set forth herein by the city, town, other governmental entities, or a responsible individual for unincorporated communities. Dusk is defined as the time between sunset and full night when a photocontrol senses the lack of sufficient sunlight and turns on the lights. Dawn is defined as the time between full night and sunrise when a photocontrol senses sufficient sunlight to turn off lights.

The customer will own, operate, and maintain the street lighting system including lamps and glass replacements but excluding distribution facilities installed by the Company to serve the lighting system.

RATES

The bill shall be computed at the following rates plus any adjustments incorporated in this schedule:

Service Charge:	\$2.79	per installed lamp
Energy Charge:	\$ 0.06088	per kWh

TRIP CHARGE

When Company is not the responsible party contracted for the regular maintenance of a street lighting system owned by a city, town or other governmental entity, a \$100.00 trip charge per light will be charged when customer requests a disconnect and/or reconnect of service in order to accommodate the maintenance activities of the customer or its designee(s) on their street light equipment. The trip charge will also apply when customer request disconnect or reconnect for non-maintenance purposes.

ADJUSTMENTS

1. The bill is subject the Renewable Energy Standard as set forth in the Company's Adjustment Schedule REAC-1 pursuant to Arizona Corporation Commission Decision No. 70313.
2. The bill is subject to the Power Supply Adjustment factor as set forth in the Company's Adjustment Schedule PSA-1 pursuant to Arizona Corporation Commission Decision No. 67744, Arizona Corporation Commission Decision No. 69663, Arizona Corporation Commission Decision No 71448, and 73183.
3. The bill is subject to the Transmission Cost Adjustment factor as set forth in the Company's Adjustment Schedule TCA-1 pursuant to Arizona Corporation Commission Decision No. 67744.
4. The bill is subject to the Environmental Improvement Surcharge as set forth in the Company's Adjustment Schedule EIS pursuant to Arizona Corporation Commission Decision No. 69663 and Arizona Corporation Commission Decision No. 73183.



**RATE SCHEDULE E-59
CLASSIFIED SERVICE
GOVERNMENT OWNED STREET LIGHTING SYSTEMS**

ADJUSTMENTS (cont)

5. Direct Access customers returning to Standard Offer service may be subject to a Returning Customer Direct Access Charge as set forth in the Company's Adjustment Schedule RCDAC-1 pursuant to Arizona Corporation Commission Decision No. 67744.
6. The bill is subject to the Demand Side Management Adjustment Charge as set forth in the Company's Adjustment Schedule DSMAC-1 pursuant to Arizona Corporation Commission Decision No. 67744 and Arizona Corporation Commission Decision No. 71448.
7. The bill is subject to the applicable proportionate part of any taxes or governmental impositions which are or may in the future be assessed on the basis of gross revenues of APS and/or the price or revenue from the electric energy or service sold and/or the volume of energy generated or purchased for sale and/or sold hereunder.

SPECIAL PROVISIONS

1. Billed energy is based upon the summation of the contracted energy rating of installed facilities specified in the streetlighting contract.
2. The customer's bill will not be reduced due to lamp, photocontrol or cable repair or replacement outages.
3. Presently installed units which do not conform to the types specified in Rate Schedule E-58 will be billed in accordance with the type which is most nearly like such units.

EXTENSION OF COMPANY DISTRIBUTION SYSTEM

The Company will extend its standard street lighting system up to a distance of 300 feet for each additional lighting installation without cost at the request of the customer. When the extension is underground the customer will provide earthwork as specified in of the Company's Service Schedule 3, Conditions Governing Extensions of Electric Distribution Lines and Services; or, at the customer's request, the Company will provide such earthwork and the applicant will be required to pay a non-refundable contribution in aid of construction equal to the cost of such earthwork. Any additional extension required (over and above the first 300 feet) will be provided by Company for a contribution in aid of construction equal to the cost of the additional extension.

Extensions to isolated areas requiring a substantial extension of the electric distribution system, as opposed to an extension of the street lighting system, will require a special study to determine the terms and conditions under which the Company will undertake such an extension.

CONTRACT PERIOD

The contract period for service under this rate schedule shall be a fixed period of not less than 1 year and not more than 20 years, as agreed to by the customer and as specified in the streetlighting contract.

TERMS AND CONDITIONS

Service under this rate schedule is subject to the Company's Schedule 1, Terms and Conditions for Standard Offer and Direct Access Services and the Company's Schedule 10, Terms and Conditions for Direct Access. These schedules have provisions that may affect the customer's bill. In addition, service may be subject to special terms and conditions as provided for in a customer contract or service agreement.

Appendix B to Exhibit C

City of Yuma Street Lighting Standards

[on file with the Yuma City Clerk; available upon request]

Appendix C to Exhibit C

City of Yuma Transportation Master Plan

[on file with the Yuma City Clerk; available upon request]



Certificate of Substantial Completion

PROJECT NAME:	
CLIENT:	
CERTIFICATE DATE (mm/dd/yyyy):	
CERTIFICATE NUMBER:	
PROJECT NUMBER:	

The following portions of the Work are at Substantial Completion in accordance with the Agreement.
(Insert unique Work item such as Facility Improvement Measure title, system name, building, etc.)

Work Item:	
Warranty Start Date (mm/dd/yyyy):	
Work Item:	
Warranty Start Date (mm/dd/yyyy):	
Work Item:	
Warranty Start Date (mm/dd/yyyy):	

The Building Technologies Division of Siemens Industry, Inc. guarantees the workmanship and materials of the above Substantially Complete Work in accordance with the Agreement.

The Work indicated above has been reviewed by the CLIENT and has been found, to the best of the CLIENT's knowledge, to be Substantially Complete. Substantial Completion is the milestone in the progress of the Work at which time the Work is sufficiently complete and available for the CLIENT to have beneficial use of the Work for its intended purpose. A list of items to be completed and corrected (if any) shall be identified as the Outstanding Items List, attached to this form, and indicated by checking the appropriate box below:

Outstanding Items List Attached: ☐ **No Outstanding Items Noted:** ☐

The failure of the CLIENT to note items requiring completion or correction does not relieve the contractual responsibility of Building Technologies Division of Siemens Industry, Inc. to complete or correct the Work. Work found to require completion or correction after the Certificate Date of this

Certificate, but within the warranty period shall be corrected in accordance with the Agreement's warranty provisions.

Building Technologies Division of Siemens Industry, Inc. agrees to complete or correct all items indicated on the Outstanding Items in a timely manner.

Building Technologies Division of Siemens Industry, Inc. Representative: _____

Signature: _____ Date: _____

The CLIENT accepts the Work indicated above as Substantially Complete and assumes possession and beneficial use of the Work on the Warranty Start Date indicated above.

CLIENT: _____

CLIENT Representative: _____

Signature: _____ Date: _____

Note: The CLIENT shall, upon execution of this Certificate of Substantial Completion, assume all contractual responsibilities for maintenance, insurance, operation, and protection of the Substantially Complete Work in accordance with the Agreement.



Certificate of Final Completion

PROJECT NAME:	
CLIENT:	
CERTIFICATE DATE (mm/dd/yyyy):	
PROJECT NUMBER:	

All elements of the project Work have been reviewed by the CLIENT and have been found, to the best of the CLIENT's knowledge, to be at Final Completion. All items noted in the Outstanding Items Lists associated with Certificate(s) of Substantial Completion have been resolved, and all Work as defined in Exhibit A of the Agreement is complete.

The failure of the CLIENT to note items requiring completion or correction does not relieve the contractual responsibility of Building Technologies Division of Siemens Industry, Inc. to complete or correct the Work. Work found to require completion or correction after the date of this Certificate, but within the warranty period shall be promptly corrected in accordance with the Agreement's warranty provisions.

Building Technologies Division of Siemens Industry, Inc. has reviewed the project Work, as well as all contractual requirements, and the requirements for Final Completion have been met.

Building Technologies Division of Siemens Industry, Inc. Representative: _____

Signature: _____ Date: _____

The CLIENT accepts the project Work as meeting the requirements for Final Completion.

CLIENT: _____

CLIENT Representative: _____

Signature: _____ Date: _____

Exhibit E

State of Arizona Contract with Siemens

[on file with the Yuma City Clerk; available upon request]