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GILA COUNTY

www.gilacountyaz.gov

PROFESSIONAL AGREEMENT NO. 6557.102/12-2010

TECHNICAL ENERGY AUDIT

THIS AGREEMENT for the performance of an Investment Grade Energy Audit is entered into as of this 5th day of April, 2011, (the "Audit Agreement") by and between the County of Gila, Arizona, whose principal offices are located at 1400 E. Ash St., Globe, Arizona, 85501 (the "Owner") and APS Energy Services Company, Inc., whose principal offices are located at 60 E. Rio Salado Parkway, Suite 1001, Tempe, Arizona, 85281 ("APSES"). APSES and Owner are also referred to individually as ("Party") and collectively as ("Parties").

Whereas, the Owner desires for Arizona Public Service Energy Services Company (APSES) to perform a complete investment grade energy audit of the Owners facilities consisting of the collection of data, inspection of facilities, establishment of base year energy consumption, the performance of a financial analysis of energy conservation measures and preparation of a detailed Energy Audit Report which constitutes the third phase of the project. The fourth and final phase of the project consists of the design and installation of energy conservation measures described and recommended in the Energy Audit Report, and approved by the Owner.

Whereas, the Owner may choose to apply American Recovery and Reinvestment Act (ARRA) funding to measures identified under this agreement APSES shall evaluate the facilities and plan for compliance with the requirements of the ARRA funding.

Now, therefore, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Owner and APSES agree as follows:

ARTICLE I – SCOPE OF SERVICE: The technical Energy Audit.

1.1 After execution of this agreement (the "Audit Agreement"), APSES will begin conducting a technical energy audit of all Owner facilities (the "Energy Audit"), which will consist of the collection of data,

inspection of Owner's facilities, establishment of base year energy consumption, the performance of a financial analysis of energy conservation measures and the preparation of the detailed Energy Audit Report, which outlines current energy consumptions, recommendations for energy efficient equipment upgrades, and a detailed analysis of implementation costs and energy savings resulting from such improvements. The Energy Audit Report is intended to provide the Owner with the information necessary for the evaluation of the costs and benefits of proceeding with the final phase of the project, which consists of the design and installation of the energy conservation measures.

- 1.2 If the Owner decides to proceed with the design and implementation of the energy conservation measures, as specified in the Energy Audit Report, the Parties shall execute the construction agreement, as it may be mutually amended by the Parties, (the "Construction Agreement"), and the Owner shall provide APSES a notice to proceed ("Notice to Proceed"). The Notice to Proceed is subject to the provisions, limitations, and project criteria set forth in the Energy Audit Report and the provisions of the Construction Agreement. The Owner may not unilaterally change any limitations or provisions of the Construction agreement or the Energy Audit Report in the Notice to Proceed. If the Owner issues the Notice to Proceed within sixty (60) calendar days from receipt of the Energy Audit Report or such time period as Owner and APSES mutually agreed upon, any costs incurred for Energy Audit shall be included in the implementation costs of the energy conservation measures. In the event the Construction Agreement is not executed and the Notice to Proceed is not issued within sixty (60) calendar days from receipt of the Energy Audit Report, the design and implementation costs of the energy conservation measures are subject to price adjustments, and may affect the energy savings established in the Energy Audit Report.
- 1.3 APSES cannot guarantee the energy savings stipulated in the Energy Audit Report if Owner selects another firm for the design and implementation of the energy conservation measures or chooses to implement the energy conservation projects with its own personnel.
- 1.4 Should APSES determine, in its sole discretion, at any time before the completion of the Energy Audit Report that the anticipated energy savings cannot be achieved at Owner's facility, APSES will provide written notice to Owner and cease all further Energy Audit activities, in which case Owner will not be charged for any Energy Audit activities performed by APSES.

ARTICLE II – PAYMENT: If the Owner decides not to proceed with the final phase of the Project, Owner shall pay APSES, within thirty (30) calendar days from the date of receipt of an invoice for the performance of the Energy Audit, the amount of Seventeen Thousand Six Hundred Ninety Dollars (\$17,690.00) Late payments shall accrue interest daily at a rate of ten percent (10%) per annum, or the maximum interest rate permitted by law, whichever is less, for each calendar day following the due date until payment is made.

ARTICLE III – LEGAL ARIZONA WORKERS ACT COMPLIANCE: APSES hereby warrants that it will at all times during the term of this Contract comply with all federal immigration laws applicable to APSES's employment of its employees, and with the requirements of A.R.S. § 23-214 (A) (together the "State and Federal Immigration Laws"). APSES shall further ensure that each subcontractor who performs any work

for APSES under this contract likewise complies with the State and Federal Immigration Laws. County shall have the right at any time to inspect the books and records of APSES and any subcontractor in order to verify such party's compliance with the State and Federal Immigration Laws.

Any breach of APSES's or any subcontractor's warranty of compliance with the State and Federal Immigration Laws, or of any other provision of this section, shall be deemed to be a material breach of this Contract subjecting APSES to penalties up to and including suspension or termination of this Contract. If the breach is by a subcontractor, and the subcontract is suspended or terminated as a result, APSES shall be required to take such steps as may be necessary to either self-perform the services that would have been provided under the subcontract or retain a replacement subcontractor, (subject to APSES approval if MWBE preferences apply) as soon as possible so as not to delay project completion. APSES shall advise each subcontractor of County's rights, and the subcontractor's obligations, under this Article by including a provision in each subcontract substantially in the following form:

"Subcontractor hereby warrants that it will at all times during the term of this contract comply with all federal immigration laws applicable to Subcontractor's employees, and with the requirements of A.R.S. § 23-214 (A). Subcontractor further agrees that County may inspect the Subcontractor's books and records to insure that Subcontractor is in compliance with these requirements. Any breach of this paragraph by Subcontractor will be deemed to be a material breach of this contract subjecting Subcontractor to penalties up to and including suspension or termination of this contract." Any additional costs attributable directly or indirectly to remedial action under this Article shall be the responsibility of APSES. In the event that remedial action under this Article results in delay to one or more tasks on the critical path of APSES's approved construction or critical milestones schedule, such period of delay shall be deemed excusable delay for which APSES shall be entitled to an extension of time, but not costs.

ARTICLE IV – LAWS AND ORDINANCES: This agreement shall be enforced under the laws of the State of Arizona. APSES shall maintain in current status all Federal, State and Local licenses and permits required for the operation of the business conducted by APSES. APSES shall comply with the applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and applicable federal regulations under the Act.

ARTICLE V – ANTI-TERRORISM WARRANTY: Pursuant to A.R.S. §35-397 APSES certifies that it does not have scrutinized business operations in Iran or Sudan and that they are in compliance with the Export Administration Act and not on the Excluded Parties List.

ARTICLE VI – TERM: Contract shall commence upon award and be in effect for a period of one (1) year. The County shall have the right at its sole option to extend the contract for one (1) more year if deemed necessary.

ARTICLE VI – CANCELLATION: This agreement is subject to cancellation pursuant to A.R.S. § 38-511.

IN WITNESS WHEREOF, three (3) identical counterparts of this Agreement, each which shall include original signatures and for all purposes be deemed an original thereof, have been duly executed by the parties hereinabove named, on the date and year first above written.

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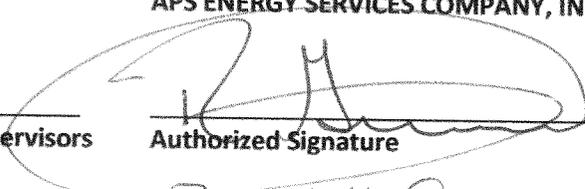
TECHNICAL ENERGY AUDIT

GILA COUNTY:

GILA COUNTY BOARD OF SUPERVISORS

APS ENERGY SERVICES COMPANY, INC.

Michael A. Pastor, Chairman, Board of Supervisors



Authorized Signature

Robert W. Georgeoff

Print Name

ATTEST:

President

Title

Marian Sheppard, Chief Deputy Clerk of the Board

APPROVED AS TO FORM:

Bryan B. Chambers, Chief Deputy County Attorney
for Daisy Flores, County Attorney