



**Request for Proposal
("RFP")**

For

MGE'S ENERGY EFFICIENCY PROGRAM EVALUATION

Issued: March 21, 2011

Proposals Due: April 22, 2011

REQUEST FOR PROPOSAL

1. PURPOSE

Missouri Gas Energy, a division of Southern Union Company (“MGE”) and the MGE Energy Efficiency Collaborative (EEC) seek proposals from qualified respondents to conduct a process and impact evaluation of three MGE energy efficiency programs.

Missouri Gas Energy currently has the following programs in place:

- Rebates for natural gas devices that meet Energy Star criteria for residential and small business customers as follows:
 - tanked/tankless water heaters
 - furnaces
 - combination furnace/water heater systems
 - boiler systems
 - programmable thermostats if purchased in conjunction with a space heating system.
- In addition, MGE has a Home Performance with Energy Star (HPwES) program that provides applicable rebates to residential customers.
- Residential Energy Suite and Commercial Energy Suite online energy analyzers are in place for applicable customer classes.

Funding by program for calendar year 2010:

Water Heat at \$204,000

Space heat at \$915,208

Home Performance with Energy Star at \$1,038,199

Energy Efficiency Education misc at \$293,173

Program Evaluation schedule for existing programs

	program began	evaluation date	status
residential H2O	2007	Dec-08	Process eval
residential heat	Mar-09	March-11	
residential HPwES	Sep-09	September-11	

Information on MGE's energy efficiency programs can be found at www.betterheatingnow.com. MGE's tariffs contain descriptions of its energy efficiency programs as well as rebate levels for specific appliances. The relevant tariffs may be found in Attachment 4.

MGE residential energy efficiency programs have been in place since 2007 and began with rebates for Energy Star tank/tankless water heaters for residential and domestic use small business customers. This program went through a process evaluation in December 2008. A space heating program for residential and domestic use small business customers was added in 2009 along with a HPwES program.

Our tariffs require a detailed post-implementation evaluation of the initial two (2) years of each new program completed within six (6) months of the end of each program's second year. Where feasible, these evaluations are to include both process and cost effectiveness (impact)

evaluations. Accordingly, this RFP includes process and impact evaluations for residential H2O, residential heat, and residential HPwES.

The impact evaluation will include calculation of cost-benefit ratios using the Total Resource Cost Test, Societal Test, Utility Cost Test, Ratepayer Impact Test, and Participant Test. These cost benefit ratio calculations should be performed using 3 levels of gas commodity prices (base, high and low)

As part of this program evaluation, MGE solicits recommendations for additional residential programs, adjustments to incentive levels, and other program improvement suggestions that may result from this review. As with its SGS program, MGE wants to have innovative and cost effective programs which provide benefits and are attractive to its customers.

Consistent with the Department of Energy's (DOE) proposal to incorporate full-fuel-cycle analyses into the development of energy conservation standards for consumer and commercial products, respondents to this RFP should include in a separate line item, a cost estimate for providing a full-fuel-cycle analysis in addition to the process and impact evaluations above.

Energy efficiency program funding is based on MGE's annual gross operating revenues. The goal is to reach a \$4,000,000 total program level in the next several years with 90% of the total allocated to residential programs and 10% of the total allocated to small general service customer programs..

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2. RFP QUESTIONS

All questions concerning this RFP shall be submitted in electronically to:

Robert.Painter@sug.com responses to questions will be in writing and made available to all prospective respondents and the Energy Efficiency Collaborative (a representative from Missouri Public Service Commission, Office of Public Counsel, Missouri Department of Natural Resources and Missouri Gas Energy) members.

3. AMENDMENTS TO RFP

This RFP may be amended or cancelled at MGE's sole discretion. Any amendments shall be in writing and made available to all prospective respondents. No oral statement of any person shall modify or otherwise change or affect the terms, conditions or specifications stated in this RFP.

4. CONTRACT

The successful respondent shall execute a contract ("Contract") in the form shown in Attachment 1 attached hereto. Modifications to the Contract are strongly discouraged. However, if the respondent has any suggested revisions to the Contract, such revisions shall be set forth in its proposal. Failure to submit such revisions with its proposal shall preclude MGE's consideration of such revisions at a later date. MGE is under no obligation to accept any revisions to the Contract. No agreement shall exist between the parties for the work until a form of the Contract shown in Attachment 1 is executed by the parties, nor shall any other writing or oral statement bind the parties for the work apart from a final, executed form of the Contract.

5. SUBMISSION OF PROPOSALS

A. Respondents shall submit proposals electronically including:

- Respondent's statement (in the form attached hereto as Attachment 2) signed by an authorized signatory
- An executive summary describing respondent's plan to accomplish and perform the work including pricing
- A completed Respondent Profile (attached hereto as Attachment 3)
- A certificate of insurance complying with the requirements of the Contract
- Suggested revisions to the Contract
- Examples of respondents experience in performing similar work and examples of final work product associated with that work.
- Other relevant information including experience and ability of key personnel who the respondent will use to perform the work.

B. Proposals shall be clearly labeled with the RFP title.

C. Proposals must be received by MGE no later than April 22, 2011 at midnight addressed to Robert.painter@sug.com.

D. All proposals shall be firm for a minimum of ninety (90) days after submission.

- E. MGE will not be liable for any costs incurred by respondents in preparing or submitting proposals under this RFP.
- F. Upon submission, all proposals shall become the property of MGE.

6. EVALUATION OF PROPOSALS

MGE and the EEC will evaluate each proposal to determine which is the most beneficial. Proposals will be evaluated on several criteria including, but not limited, to the following:

- Overall competence, clarity and quality of the proposal with regard to the information required by this RFP as well as compliance with the terms, conditions and other information set forth herein.
- Experience, qualifications and overall ability of the respondent to completely satisfy MGE's requirements as set forth in this RFP.
- All pricing information submitted in response to this RFP.
- Scope and effect of suggested revisions to the Contract.
- The respondent's ability to provide and substantiate quality work.
- Adaptability of the respondent to the changing and growing needs of MGE and to changing technological developments.

A respondent, if requested, must be prepared to present evidence of experience, ability and financial strength necessary to satisfactorily meet the requirements set forth or implied in this RFP.

7. ACCEPTANCE OR REJECTION OF PROPOSAL

The Contract, if awarded, will be awarded to the respondent(s) proposal(s) is deemed most advantageous to MGE and the EEC.

MGE reserves the right to accept one or more proposals or reject any or all proposals received in response to this RFP, and to waive informalities and irregularities in the proposals received.

MGE may award the Contract without discussion with respondents after proposals are received. MGE may negotiate terms and conditions with one or more respondents. Respondents may be asked to make oral presentations of their proposals.

The successful respondent will be notified in writing as soon as possible of the acceptance of its proposal. All other respondents will be notified in writing that their proposals have not been selected.

**ATTACHMENT 1
CONTRACT**

Agreement No.: MPSA-_____

MASTER PROFESSIONAL SERVICES AGREEMENT

This Master Professional Services Agreement ("**Agreement**") is entered into this _____ day of _____, 20____ ("**Effective Date**") by and between **MISSOURI GAS ENERGY, A DIVISION OF SOUTHERN UNION COMPANY** having offices at 3420 Broadway, Kansas City, MO 64111 ("**Company**") and _____ having offices at _____ ("**Contractor**").

WHEREAS, Company has need from time to time for certain professional services to be performed by an independent contractor at its offices and/or at the Premises of Company or its Affiliate (as the foregoing capitalized terms are defined in Section 1 of this Agreement); and

WHEREAS, Contractor understands the types of services required by Company and is willing to undertake such performance under the terms, conditions, and provisions hereinafter set forth; and

NOW, THEREFORE, in consideration of the mutual terms, conditions and covenants hereinafter set forth in this Agreement and other good and valuable consideration, Company and Contractor intending to be legally bound hereby, agree as follows:

1. DEFINITIONS AND INTERPRETATIONS. For purposes of this Agreement, the following terms shall have the meanings specified in this Section 1. All definitions in this Agreement apply to the Statement of Work (as defined below) and any/all exhibits, attachments and appendices thereto and to any subsequent Statement of Work entered into by Company. All references herein to agreements and other contractual instruments shall be deemed to include all exhibits, attachments and appendices attached thereto and all amendments and other modifications to such agreements and instruments. Words used herein in the singular, where the context so permits, shall also apply to words when used in the plural and vice versa. The term "**including**" when used in the Agreement or any Statement of Work will be by way of example and not considered in any way to be a limitation, and means "including, without limitation."

"**Affiliate**" (and, with a correlative meaning "**Affiliated**") means any entity, including, but not limited to, a corporation, company, partnership, LLC/LP or joint venture that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with Company. For purposes of this definition, the term "**control**" (including "**controlled by**" and "**under common control with**") shall mean the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of an entity, whether through the ownership of voting securities, regardless of percentage, by written contract, or otherwise.

"**Company's Representative**" means the individual designated in writing by Company, by letter to Contractor or in the applicable Statement of Work, as the person having general authority to decide questions and resolve problems raised by Contractor or occurring in relation to the Work (as defined below).

"**Confidential Information**" means such proprietary, confidential and trade secret information, material and documents, whether in written, oral, electronic or other tangible or intangible form, furnished to Contractor or any of its Representatives (as defined below) by Company or any of its Representatives or a Person having an obligation of confidence to Company or any of its Representatives in connection with Work under this Agreement, and all notes, analyses, compilations, forecasts, data, translations, studies,

memoranda or other documents prepared by Contractor or any of its Representatives that contain or otherwise reflect such information, material or documents. Notwithstanding the foregoing, Confidential Information does not include: (i) information which is now in the public domain, or which later enters the public domain, through no action by Contractor or its Representatives in violation of this Agreement; or (ii) information which Contractor can demonstrate was already in its possession at the time of its disclosure hereunder, and which was not acquired, directly or indirectly, from Company or its Representatives on a confidential basis; or (iii) information which is independently developed by Contractor without reference to, or the use of, any Confidential Information; or (iv) information which is lawfully received from any source other than Company or its Representatives under circumstances not involving, to Contractor's knowledge, any breach of any confidentiality obligation; or (v) information to be disclosed or released by Contractor upon prior written express authorization from Company.

"Day" or "day" means the period of twenty-four (24) consecutive hours from 00:00:01 a.m. to 24:00:00 p.m., Kansas City, MO.

"Deliverable" means any requirements, specifications, technical information, documentation, data, reports, business processes, methods, creative works, and other written or oral material developed hereunder and arising out of, or resulting from, the Work provided by Contractor under a single Statement of Work.

"Governmental Authority" means, with respect to any natural person, firm, association, corporation, joint stock company, trust, limited liability company, partnership, joint venture or any other entity, any country, state, county, city or political subdivision that exercises jurisdiction over such natural person, firm, association, corporation, joint stock company, trust, limited liability company, partnership, joint venture or any other entity or the property or assets of any of the foregoing entities, and any court, agency, department, commission, board, bureau or instrumentality of any of them.

"Intellectual Property Rights" means all industrial and intellectual property rights protected by law throughout the world, including all copyright rights, copyright registrations and applications, trademark rights (including trade dress and trade name), trademark registrations and applications, domain names, patent rights (including the right to apply therefore), patent applications (including the right to claim priority under applicable international conventions) and all patents issuing thereon, and inventions, whether or not patentable, trade secret rights, mask-work rights, all utility and design rights, rights in specifications, author's rights, rights in algorithms, rights in packaging, rights in goodwill, and other intellectual property rights, as may exist now and hereafter come into existence, and all renewals and extensions thereof, regardless of whether any of such rights arise under the laws of the United States or of any other state, country or jurisdiction.

"Milestone" means the dates, Deliverables and acceptance criteria determined in the Statement of Work.

"Person" means and include natural persons, corporations, limited partnerships, limited liability companies, general partnerships, joint stock companies, joint ventures, associations, companies, trusts, banks, trust companies, land trusts, business trusts or other organizations, whether or not legal entities, and all Governmental Authorities.

"Premises" means all work places, land, right-of-way, easements, surface easements, property, buildings, temporary and permanent structures or installations, vehicles, helicopters, airplanes and other conveyances owned by, leased to, operated by and/or under the control of Company or any Affiliate.

“Representatives” means, with respect to either party hereto, such party’s parent, subsidiaries and Affiliates and their respective directors, officers, employees, agents and advisors (including without limitation independent attorneys, accountants, consultants, commercial bankers and financial lenders).

“Statement of Work” or “SOW” means a detailed written statement or project work description, in the suggested format set forth at **Exhibit A** attached to this Agreement, signed by Company and Contractor that describes in detail the Work to be performed by Contractor. A SOW shall contain, at a minimum, those elements set forth in Section 3.1 of this Agreement. An SOW may be renewed or extended for additional periods of time by mutual agreement of the parties.

“Work” means all professional services, provision of personnel and tasks required to be performed by Contractor under this Agreement and as set forth in all SOWs issued hereunder.

2. TERM. This Agreement shall commence on the Effective Date and shall continue for a primary term of one (1) year, unless terminated earlier pursuant to the terms and conditions of Section 16 herein. This Agreement shall automatically renew at the end of the primary term for subsequent month-to-month terms, unless and until either party provides written notice of termination to the other party pursuant to the provisions in Section 16 herein. Contractor may not terminate this Agreement for its convenience as to any specific project upon which Work has commenced.

3. CONTRACT SERVICES.

3.1. Contractor to Provide Work. During the term of this Agreement and upon request from Company, Contractor shall supply employees acceptable to Company to perform all Work described in a SOW, subject to the terms and provisions set forth in this Agreement and such SOW. Contractor and Company shall describe in a SOW the Work to be accomplished on the specific project, and shall include, as applicable: (1) the project name; (2) a detailed description of the Work; (3) designation of the rates and/or classifications of the Work; (4) Contractor employees who will perform the Work; (5) an identification of the site and location of the Work; (6) the date Contractor shall commence Work and any related schedule; (7) any special conditions or instructions relating to the Work; (8) a list of Company furnished materials, if any, and the location where said materials will be received by or delivered to Contractor; and (9) all project Milestones and Deliverables. Any SOW executed after the execution of this Agreement is hereby incorporated by reference. Contractor recognizes that this Agreement is not exclusive and does not guarantee that Company or any Affiliate will procure any specific Work or any minimum volume of Work. Termination or suspension of Work under any SOW, in whole or in part, shall not diminish Contractor’s liability or obligation to continue prosecution of Work under any other SOW.

3.2. Other Contractors Engaged by Company. Company reserves the right, at all times, to enter into other agreements in connection with any Work and/or project being performed by Contractor. At such times as Company may engage other contractors to provide Work concurrently on the project, Contractor shall cooperate with and conduct its operations as to avoid interference with such other contractor’s activity to the maximum extent possible in the best interest of the entire project.

3.3. Contractor’s Right to Subcontract Work. Contractor shall not subcontract the Work or any part thereof, without first having obtained written approval from Company. In the event Company grants such approval for all or part of the Work, Contractor shall cause each retained subcontractor to assume and satisfy all subcontracted Work obligations of Contractor under the applicable SOW. Contractor shall be liable for all acts and omissions of all subcontractors and of all subcontractor employees or agents, as if such acts and omissions were performed or omitted by Contractor. Contractor acknowledges the Confidential Information and Intellectual Property Rights of Company under this Agreement, and, in the

event Company employs subcontractors in connection with Work, Contractor agrees to restrict the subcontractor's access to such information under the terms of this Agreement, or, if necessary to complete the Work, Contractor agrees to require the subcontractor and, as necessary, subcontractor's employees, to sign a non-disclosure agreement that has been approved by Company.

3.4. Time is of the Essence. Time is of the essence in the performance of Work under this Agreement. Contractor acknowledges that the time requirements herein provided are both reasonable and realistic.

4. REPRESENTATIONS AND WARRANTIES.

4.1. Performance Standards. Contractor hereby makes the following representations and warranties:

- a. Contractor is in the business of and has the experience and capability, including supervisory competence, to provide the Work in a professional manner, in accordance with the best practices in the industry. Contractor's agents, employees and subcontractors have the capability, experience, expertise and means required to perform the Work and the Work will be performed in a professional and timely manner using personnel, equipment and materials qualified and/or suitable to do the Work requested. Contractor acknowledges that Company is relying on Contractor's expertise and knowledge in its performance of the Work.
- b. Contractor shall secure all licenses, permits, and registrations necessary to provide the Work in a timely manner so as to avoid any delay or penalty with respect to the Work and shall pay in connection therewith all valid and applicable fees, assessments, or taxes.
- c. Contractor has the authority to do business in the state(s) in which the Work is to be performed.
- d. Contractor shall assume sole responsibility to assure that the Work is accomplished in accordance with any and all prudent and applicable safety standards, and Contractor shall employ such methods, tools and equipment in the performance of the Work under this Agreement as will ensure Work of reasonable accuracy.
- e. Contractor will make timely payments to any/all subcontractors and suppliers of any materials and services furnished by them for the Work, and failure of Contractor to do so shall be deemed a breach hereof.
- f. Contractor will cooperate with Company and its Representatives at all times while performing the Work hereunder, and will consult and advise Company's Representative with respect to questions arising in connection with this Agreement.
- g. Contractor, in performing its obligations under this Agreement, shall establish and maintain appropriate business standards, procedures, and controls, including those necessary to avoid any real or apparent impropriety or adverse impact on the interest of Company or its Affiliates.
- h. Contractor represents that any individual it recommends to perform the Work has undergone a thorough background investigation by Contractor, subject to the provisions of the Fair Credit Reporting Act.
- i. Contractor will submit progress reports on the Work at intervals prescribed by Company.

j. Contractor represents that prior to undertaking the Work it will ascertain the nature and scope of the Work, the type and magnitude of resources required to complete the Work, and any other issues, which could affect the performance of the Work. Contractor's failure to become knowledgeable about or to discover matters, which affect the Work, shall not relieve Contractor from its obligations under this Agreement. Contractor shall continuously train its personnel at its own expense so as to keep abreast of all new technology applicable to the Work. Contractor shall continuously furnish such personnel until Contractor's performance under the Agreement and SOW is completed.

4.2. Compliance with Laws/Regulations.

a. Contractor represents and warrants that it prohibits discrimination against any employee or applicant for employment because of race, color, religion, sex, national origin, age, disability, or veteran's status. Further, Contractor takes affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to those factors. Contractor represents and warrants that it is familiar with and will comply with all applicable legal and other requirements necessary to provide the Work. While providing Work on the Premises, Contractor's personnel, including its subcontractors, shall conform to Company's published policies and procedures, including Company's safety procedures, provided that the safety requirements listed in Company's safety procedures shall not relieve Contractor from complying with any applicable laws, ordinances, regulations and rules.

b. Contractor assumes full responsibility for and agrees to pay for, and agrees that the price to be paid by Company as set herein shall be fully inclusive of, all labor, including overtime as legally required, all overhead, and all contributions and taxes payable under federal and state social security acts, old age pension, worker's compensation laws, unemployment compensation laws and income tax laws and any other applicable laws as to all of its employees and agents engaged in the performance of the Work hereunder; and Contractor hereby agrees to indemnify and hold Company harmless against the consequences of any failure by Contractor or any of its subcontractors to pay or withhold taxes, charges or compensation due on behalf of its employees or agents involved in the Work.

4.3. Restrictive Covenants. Contractor represents and warrants that it knows of no contract or other impediment that would inhibit or prohibit Contractor from entering into this Agreement.

4.4. Invoices. Contractor represents and warrants that all amounts reflected on invoices submitted by Contractor for payment are accurate, just, due and owing under the terms of this Agreement and any applicable SOW, and that all Work for which Contractor seeks payment is free and clear of liens, claims, security interests and encumbrances arising in favor of Contractor and its subcontractors, other vendors, suppliers and other Persons or entities able to make a claim by reason of having provided labor, materials or equipment to Contractor relating to the Work or any portion thereof. Contractor agrees and represents that in submitting an invoice, Contractor waives and releases all liens, claims, security interests and other encumbrances arising in favor of Contractor by reason of having provided labor, materials or equipment relating to the Work or any portion thereof, to the extent of such invoice. Contractor agrees to remove immediately any lien, claim, security interest or other encumbrances against Company, Company's property, or any Affiliate's property, arising in favor of Contractor or its subcontractors, other vendors, suppliers or other Persons or entities by reason of having provided labor, materials or equipment related to the Work and to pay any damages, costs, losses and expenses (including, without limitation, court costs and attorneys' fees) of whatever kind which Company may incur, be required to pay or be liable for as a result of, in connection with, arising out of, or related to any such lien, claim, security interest or other

encumbrance.

5. CORRECTION OF WORK; REMOVAL OF CONTRACTOR PERSONNEL.

5.1. Correction of Work. If, prior to acceptance of the Work, Company reasonably determines that any Work does not comply with the Work description, that any Work furnished by Contractor or its subcontractors is defective, or that any part of Contractor's or its subcontractor's performance under the Agreement is deficient, Company may require Contractor to promptly provide the Work as required to remedy said defect or deficiency. It is expressly understood by Contractor that Company shall not be required to compensate Contractor for costs incurred by Contractor in correcting defects or deficiencies attributable to Contractor's failure to perform the Work in accordance with the requirements of this Agreement and a SOW. If, after a reasonable time, Company determines that Contractor will not or is not able to perform necessary corrections, Company may, upon written notice to Contractor, use a third party vendor to correct the non-conforming Work at Contractor's expense.

5.2. Removal. In the event the performance of Work by Contractor's or its subcontractor's employees or agents under any SOW is unsatisfactory in the reasonable judgment of Company, Company may notify Contractor accordingly and, if requested by Company, Contractor's or its subcontractor's employees or agents whose performance of Work is unsatisfactory shall be removed from providing Work on the project and from the Premises immediately after such notification. Upon such removal of any personnel of Contractor or its subcontractor initially designated to work on the project, Contractor shall promptly provide a suitably qualified, trained and oriented replacement. The costs of such qualification, training and orientation or replacement personnel shall not be included in the costs of the Work, and Contractor shall not otherwise pass these costs on to Company.

6. ADDITIONAL WORK. Company may require Contractor to perform Work or furnish materials or equipment, or the use thereof, in connection with the Work, which are not included in the Agreement (hereinafter referred to as "***Additional Work***"). Additional Work may be occasioned by major changes in specifications requiring Work of a materially different nature, kind and cost from that contemplated at the time of execution of this Agreement, or the performance of other Work incident to the completion of the Work herein, but not in contemplation of the parties at the time of execution of this Agreement. Contractor shall not perform any Additional Work without first having secured written authorization from Company, which shall be signed by Company. Such authorization shall describe the Additional Work to be performed and shall specify either the additional price to be paid by Company or the basis on which such price shall be calculated. Should Contractor perform any Additional Work without advance written authorization signed by Company, such Additional Work shall be at Contractor's sole expense.

IN NO EVENT SHALL COMPANY AND ITS AFFILIATES BE LIABLE TO CONTRACTOR, ITS AFFILIATES, SUBCONTRACTORS, OR SUPPLIERS, FOR ANY LOSSES SUFFERED BY ANY OF THEM, WHETHER DIRECT OR INDIRECT, CONSEQUENTIAL, OR SPECIAL LOSS OR DAMAGE, ARISING FROM COMPANY'S REQUIREMENT FOR ADDITIONAL WORK.

7. USE OF COMPLETED PORTIONS OF WORK. Company shall have the right to take possession of and use any completed or partially completed portions of the Work, notwithstanding that the time for completing the Work or portions thereof may not have expired, but such taking possession and use shall not be deemed an acceptance of any Work not completed as specified. If such prior use increases the cost of or delays the Work, Contractor shall be entitled to an equitable adjustment in its compensation and time allowed for performance provided that Contractor shall provide Company notice of the amount of such adjustment in writing and give Company at least ten (10) business days to confirm

its election to take possession of such Work after notice of such adjustment.

8. PAYMENT TO CONTRACTOR.

8.1. Payment for Professional Work. As total consideration for the Work to be performed during the Term, Company shall pay Contractor for Work in the amount and manner set forth in the applicable SOW.

8.2. Invoicing and Payment. Contractor shall send Company monthly invoices stating the time spent, Work rendered (including a description of Deliverables), and related approved expenses (with records, receipts, and other supporting evidence as Company may request). All time worked, even if in excess of eight hours in one day, or on weekends or holidays, shall be billed only at the rates described herein. All invoices shall include Contractor's taxpayer identification number. If authorized in advance by Company's Representative, Contractor will be reimbursed for all reasonable out-of-pocket expenses, actually incurred by Contractor and supported by documentation, and directly chargeable in performance of Work requested by Company. Payment to Contractor by Company will be made within thirty (30) days from Company's receipt of a properly completed invoice and supporting data and acceptance of the Work by Company's Representative; provided, however, payment of any invoices or portions of invoices shall not prejudice the right of Company to protest or question the correctness of any invoice, or verify compliance of the Work or any portion thereof with this Agreement or any SOW; and, furthermore, any payment by Company to Contractor shall not prejudice or constitute a waiver of any right whatsoever of Company. Contractor shall, where applicable, separately list on its invoices all valid sales, use and like taxes on Work provided hereunder.

8.3. Disputed Invoices. In the event Company disputes the amount or content of any invoice, Company shall not be responsible for payment of such invoice or portion of such invoice that is in dispute, until such time as the dispute is resolved. Invoices must be received within sixty (60) days of providing the Work; invoices received later may not be processed for payment by Company.

8.4. Retainage and Contractor's Completion Affidavit. Company may, in its sole discretion, withhold ten percent (10%) of the monthly invoiced amount that is due and owing as retainage which is payable on Contractor's satisfactory completion of the Work and presentation of Contractor's final adjusted invoice (initialed and dated by Company's proper approving authority), accompanied by an executed statement by Contractor of completion of the project and evidence properly supporting the completion, if requested by Company, in the form of Contractor's Completion Affidavit attached hereto as **Exhibit B**. If requested by Company, Contractor shall supply releases or waivers of any and all liens, or claims for property damages and proof of payment of all taxes and other obligations assumed hereunder, arising out or in connection with the Work satisfactory to Company. Acceptance by Contractor of such final payment shall constitute a waiver by it of all claims against Company related to or arising out of this Agreement. Such final acceptance and payment by either party hereto shall not, however, release Contractor from any unperformed obligations hereunder.

9. SALES AND USE TAXES.

9.1. Compliance with Law. In the performance of Work under this Agreement, Contractor agrees to comply with all applicable sales and use tax laws in the State in which products are delivered and/or services are furnished to Company. Prior to starting the Work, Contractor shall obtain the necessary permits and licenses to remit sales, use, gross receipts and like taxes to the applicable taxing authority. Contractor will separately itemize on all invoices to Customer the amount of applicable sales, use and like taxes on Work furnished to Customer, provided, that Company does not elect direct payment of taxes pursuant to the provisions set forth in Section 9.2 below. Contractor agrees to indemnify, defend and hold

Company harmless for all taxes, penalties and interest resulting from Contractor's failure to properly remit itemized taxes to the applicable taxing authority.

9.2. Direct Payment. Upon written notice to Contractor, Company may elect to directly remit sales, use, and gross receipts or like taxes to the taxing authority to which such taxes are due and directly payable. If Company exercises such election, Company shall provide Contractor with a properly executed Direct Payment Sales Tax Permit. If Company submits a properly executed Direct Payment Sales Tax Permit to Contractor, the amounts invoiced to Company for Work will be exclusive of applicable sales and use taxes. Contractor shall specify that no sales and use taxes are included in the invoiced amount by noting on its invoices "NO TAXES INCLUDED".

9.3. Contractor Tax Responsibility. Except for the foregoing, Company will not be responsible for or be required to pay or reimburse Contractor for any duty, use, value-added, excise, franchise, property, withholding or other tax, including taxes based on Contractor's income, whether designated penalty or interest, assessed or levied as a result of this Agreement or the transactions set forth herein.

10. CONFIDENTIALITY.

10.1. Confidential Information. It is understood that Contractor and its Representatives may have access to Confidential Information disclosed by Company or its Representatives in connection with the Work hereunder. Confidential Information shall be maintained under secure conditions by Contractor, using at least the same security procedures used by Contractor for the protection of its own trade secrets, proprietary, and confidential information but in no event less than reasonable care. It is further understood that Contractor will utilize the Confidential Information received by it solely for the purpose of providing the Work contemplated under a SOW and for no other purposes whatsoever. In no event shall Contractor divulge any such Confidential Information to any Person without the express prior written consent of Company; provided however, that Confidential Information may be disclosed to the Representatives of Contractor who are actively and directly participating in assisting with the Work or who otherwise need to know the Confidential Information for the purpose of Contractor's performance of the Work, it being understood that such Representatives shall be informed of the confidential nature of the Confidential Information and shall be directed to treat it confidentially and not to use the Confidential information other than for the purposes of the Work. In any event, Contractor shall be responsible for any breach of confidentiality and nondisclosure obligations under this Agreement by any of Contractor's Representatives. It is agreed that the confidentiality and nondisclosure obligations of Contractor under this Agreement shall survive the termination of this Agreement and any SOW. At any time upon the written request of Company, Contractor, at Company's option, shall (i) promptly return all Confidential Information in the possession of Contractor or any of its Representatives to Company without retaining any copies, summaries or extracts thereof, or (ii) promptly destroy all Confidential Information in the possession of Contractor or any of its Representatives, without retaining any copies, summaries or extracts thereof and confirm in writing by a duly authorized officer of Contractor that the Confidential Information has been destroyed.

10.2. Notice Preceding Compelled Disclosure. In the event any Confidential Information is requested or required of Contractor or any of its Representatives (by oral question, interrogatories, requests for information or documents, subpoena, civil investigative demand or similar process) by any court or governmental or administrative agency or authority to disclose any Confidential Information, Contractor or any of its Representatives receiving such request or demand shall use all reasonable efforts to provide Company with prompt notice of such request or requirement so that Company or its Representatives may seek appropriate injunctive relief or protective order and shall keep Company informed of any developments with respect to such request or demand. If requested by Company, Contractor shall reasonably cooperate, and use commercially reasonable efforts to cause its Representatives to cooperate

in the defense of a request or demand. If Confidential Information is compelled by applicable law, rule or regulation, Contractor or its Representative shall disclose only such Confidential Information as Contractor's internal or external legal counsel advises is required by such law, rule or regulation. In any such event, Contractor agrees to use good faith efforts to ensure that all Confidential Information that is so disclosed will be accorded confidential treatment. Contractor shall not be liable for the disclosure of Confidential Information pursuant to the provisions of this Section 10.2 unless such disclosure was caused by Contractor or its Representatives and not otherwise permitted by this Agreement.

10.3. Injunctive Relief. Contractor recognizes and agrees that the use or disclosure of any Confidential Information of Company or its Representatives in a manner inconsistent with the provisions of this Agreement may cause Company or its Representatives irreparable damage for which adequate remedy at law may not be available. Accordingly, Company or its Representatives shall be entitled to seek temporary and/or permanent injunctive relief against any such actual or threatened breach or violation from any court of competent jurisdiction immediately upon request. The right of Company or its Representatives to seek injunctive relief shall not limit in any manner that party's right to seek other and/or additional remedies at law or in equity.

11. INTELLECTUAL PROPERTY RIGHTS.

11.1 Company and Affiliate Materials and Information. All information, data, documents, and materials that Contractor receives from Company or its Representatives or acquires or learns from Company's or its Representatives' files, documents, or employees, irrespective of whether the information, data, documents and materials are subject to the obligations of confidence imposed by Section 10 (Confidentiality) of this Agreement, (collectively "**Materials and Information**"), shall remain Company's or its Representative's sole and exclusive property. Contractor shall obtain no rights whatsoever in such Materials and Information, whether under applicable patent, copyright, trade secret laws or otherwise. Similarly, if Contractor or its Representatives, in connection with providing the Work, obtains access to third party information, data, documents, and materials in Company's or its Representative's possession, Contractor shall obtain no rights in such third party information, data, documents, and materials. Except as specifically authorized in writing by Company or any Affiliate, as appropriate, Contractor shall not use, and shall not make any copies, summaries, or extracts of Materials and Information or any third party information, data, documents, and materials. Upon completion of the Work, Company's terminating this Agreement, or at any time upon Company's written request, Contractor at Company's option, shall (i) promptly return all Materials and Information in the possession of Contractor or any of its Representatives to Company without retaining any copies, summaries or extracts thereof, or (ii) promptly destroy all Materials and Information in the possession of Contractor or any of its Representatives, without retaining any copies, summaries or extracts thereof and confirm in writing by a duly authorized officer of Contractor that the Materials and Information has been destroyed.

11.2. All Information Disclosed by Contractor to Company Shall Be Free of Third Party Claims. Contractor shall not disclose or provide to Company any information, ideas, concepts, improvements, discoveries, inventions, or forms of expression of ideas that Contractor does not own or otherwise have the right to disclose or provide to Company. Contractor represents and warrants to Company that all information, ideas, concepts, improvements, discoveries, inventions, processes, methods, or forms of expression of ideas disclosed or provided to Company by Contractor shall be free from third party claims of ownership and from third party claims of infringement of Intellectual Property Rights. Contractor shall cooperate fully and promptly with Company with respect to any notice of infringement or request for disclosure or response to a request for disclosure generated or received by Company in connection with Contractor's Work. Contractor shall obtain agreements from its vendors and subcontractors to cooperate in connection with such requests for disclosure.

11.3. Contractor's Disclosure Obligations. Contractor shall promptly disclose in writing to Company all information, ideas, concepts, improvements, discoveries, and inventions, whether patentable or not and whether or not reduced to practice, as well as all forms of expression of ideas which are the subject matter of copyright (including all drawings, memoranda, notes, records, files, correspondence, drawings, manuals, models, specifications, computer programs, maps, and all other writings or materials of any type), which are conceived, created, developed, made, or acquired by Contractor (subject to the restrictions in Section 11.2), either individually or jointly with others, that is within the SOW as a Deliverable.

11.4. Ownership of Ideas, Concepts, Improvements, Discoveries, Inventions, and Forms of Expression of Ideas Created by Contractor. All information, ideas, concepts, improvements, discoveries, inventions, and forms of expression of ideas described in the immediately preceding Section 11.3 (collectively "**Work Product**") shall be Company's sole and exclusive property. Contractor hereby specifically sells, assigns, and transfers to Company all of Contractor's worldwide Intellectual Property Rights in and to all Work Product, and any United States or foreign applications for patents, inventor's certificates, or other industrial rights that may be filed thereon, including divisions, continuations, continuations-in-part, reissues, and/or extensions thereof, and applications for registration of any tradename or trademark. Both during the Work and thereafter, Contractor agrees to assist Company and its nominee, at any time, in the protection of Company's worldwide right, title and interest in and to the Work Product, including, but not limited to, the execution of all lawful oaths, declarations and assignment documents requested by Company or its nominee in connection with the preparation, prosecution, registration, issuance or enforcement of any applications for United States or foreign patents and registration of any tradename or trademark.

12. INDEMNIFICATION.

12.1. INDEMNITY. TO THE FULLEST EXTENT PERMITTED BY LAW, CONTRACTOR WILL AND DOES HEREBY AGREE TO DEFEND, PROTECT, RELEASE, INDEMNIFY, AND HOLD HARMLESS COMPANY AND ITS AFFILIATES, TOGETHER WITH THE RESPECTIVE OFFICERS, DIRECTORS, AGENTS, EMPLOYEES, SERVANTS, INSURERS, LEGAL REPRESENTATIVES, SUCCESSORS AND ASSIGNS OF EACH OF THEM (COLLECTIVELY, THE "**INDEMNIFIED PARTIES**") FROM AND AGAINST ANY AND ALL CLAIMS, DEMANDS, DAMAGES, LOSSES, LIABILITIES, SUITS AND CAUSES OF ACTION OF EVERY KIND BROUGHT BY ANY PERSON, INCLUDING THE PARTIES HERETO AND THEIR EMPLOYEES, EMPLOYEES' REPRESENTATIVES AND BENEFICIARIES, AND ANY THIRD PARTY OR GOVERNMENTAL AGENCY FOR ECONOMIC LOSSES, DAMAGE TO TANGIBLE OR INTANGIBLE PROPERTY (NOT INCLUDING LOST DATA), OR INJURIES OR DEATH OF PERSONS (COLLECTIVELY "**CLAIMS**"), AND ALL COSTS AND EXPENSES (INCLUDING THE COSTS OF INVESTIGATION AND REASONABLE ATTORNEYS' FEES AND ALL EXPENSES OF LITIGATION AND COURT COSTS), LIABILITIES, AWARDS, AND JUDGMENTS INCURRED BY ANY OF THE INDEMNIFIED PARTIES IN CONNECTION THEREWITH, ARISING, OR ALLEGED TO ARISE OUT OF, OR IN CONNECTION WITH THIS AGREEMENT, THE ACTS OR INACTIONS, INCLUDING NEGLIGENCE, GROSS NEGLIGENCE, VIOLATION OF STATUTE, OR INTENTIONAL MISCONDUCT OF CONTRACTOR, ITS EMPLOYEES, AGENTS, OR SUBCONTRACTORS OR ANY OF THE INDEMNIFIED PARTIES UNDER THIS AGREEMENT INCIDENTAL TO THE WORK PROVIDED HEREIN. IN THE EVENT THAT ANY ONE OR MORE OF THE INDEMNIFIED PARTIES IS ADJUDICATED TO HAVE BEEN PARTIALLY OR SOLELY LEGALLY RESPONSIBLE FOR SUCH CLAIMS, IT IS THE INTENTION OF CONTRACTOR THAT THIS CONTRACTUAL OBLIGATION OF INDEMNIFICATION SHALL CONTINUE BUT CONTRACTOR'S INDEMNIFICATION OBLIGATION SHALL NOT EXTEND TO THE PERCENT OF LEGAL RESPONSIBILITY ATTRIBUTED TO THE GROSS NEGLIGENCE OR INTENTIONAL

MISCONDUCT UNDER THIS AGREEMENT OF INDEMNIFIED PARTIES.

12.2. NO LIMITATION. THIS INDEMNIFICATION SHALL NOT BE LIMITED TO DAMAGES, COMPENSATION, OR BENEFITS PAYABLE UNDER INSURANCE POLICIES, WORKERS' COMPENSATION ACTS, DISABILITY BENEFIT ACTS, OR OTHER EMPLOYEES' BENEFIT ACTS. THIS CONTRACTUAL OBLIGATION OF INDEMNIFICATION SHALL SURVIVE SETTLEMENT OF ANY UNDERLYING THIRD-PARTY CLAIM, INCLUDING VOLUNTARY SETTLEMENTS MADE BY ANY OF THE INDEMNIFIED PARTIES WITH SUCH THIRD PARTY. ALTHOUGH CONTRACTOR IS A SUBSCRIBER UNDER A WORKERS' COMPENSATION ACT, DISABILITY ACT OR OTHER EMPLOYEE BENEFIT ACT WHICH WOULD LIMIT THE AMOUNT OR TYPE OF DAMAGES, COMPENSATION OR BENEFITS PAYABLE BY OR FOR CONTRACTOR, CONTRACTOR AGREES TO ASSUME THE ENTIRE LIABILITY AND INDEMNIFY, DEFEND AND HOLD THE INDEMNIFIED PARTIES HARMLESS FROM ANY AND ALL CLAIMS ARISING IN FAVOR OF CONTRACTOR'S EMPLOYEES AND EMPLOYEES' REPRESENTATIVES AND BENEFICIARIES REGARDLESS OF WHETHER SUCH CLAIMS ARISE IN WHOLE OR IN PART FROM THE SOLE OR CONTRIBUTORY NEGLIGENCE OF ANY OF THE INDEMNIFIED PARTIES. NOTWITHSTANDING THE FOREGOING, CONTRACTOR SHALL NOT BE LIABLE FOR, AND CONTRACTOR'S INDEMNIFICATION OBLIGATION SHALL NOT EXTEND TO, THE PERCENT OF LEGAL RESPONSIBILITY ADJUDICATED TO BE ATTRIBUTABLE TO THE GROSS NEGLIGENCE OR INTENTIONAL MISCONDUCT UNDER THIS AGREEMENT OF INDEMNIFIED PARTIES. ALTHOUGH CONTRACTOR HAS CAUSED THE INDEMNIFIED PARTIES TO BE NAMED AS ADDITIONAL INSURED UNDER CONTRACTOR'S POLICIES OF INSURANCE, CONTRACTOR'S LIABILITY UNDER THIS INDEMNIFICATION PROVISION SHALL NOT BE LIMITED TO THE LIABILITY SET FORTH IN SUCH POLICIES. CONTRACTOR FURTHER AGREES TO INDEMNIFY, DEFEND AND HOLD THE INDEMNIFIED PARTIES HARMLESS FOR ANY CLAIMS FOR ANY COMPANY BENEFITS MADE BY ANY OF CONTRACTOR'S EMPLOYEES THAT ARE PLACED BY CONTRACTOR WITH COMPANY OR ITS AFFILIATES FOR ANY PERIOD OF TIME. CONTRACTOR FURTHER AGREES, EXCEPT AS MAY BE OTHERWISE SPECIFICALLY PROVIDED HEREIN, THAT THE OBLIGATION OF INDEMNIFICATION HEREUNDER SHALL INCLUDE, BUT NOT BE LIMITED TO, THE FOLLOWING:

(1) LIENS BY THIRD PERSONS AGAINST THE INDEMNIFIED PARTIES AND THEIR PROPERTY, BECAUSE OF LABOR, WORK, MATERIALS, OR ANY OTHER TYPE OF LIEN, FURNISHED TO CONTRACTOR, ITS ASSIGNEES OR SUBCONTRACTORS, IN CONNECTION WITH THE WORK PERFORMED BY CONTRACTOR HEREUNDER.

(2) EXPENSES, CLAIMS, FINES, AND PENALTIES OR OTHER ENFORCEMENT CHARGES, RESULTING FROM THE FAILURE OF CONTRACTOR TO ABIDE BY ANY AND ALL VALID AND APPLICABLE LAWS, RULES OR REGULATIONS OF GOVERNMENTAL AUTHORITY WITH JURISDICTION.

12.3. Notice and Defense of Claims. The Indemnified Party shall give Contractor reasonably prompt notice of any such Claim of which it learns. This obligation of indemnification shall survive even if an Indemnified Party does not provide Contractor with reasonably prompt notice of any such Claim of which it learns so long as such failure does not materially prejudice Contractor. It is understood and agreed by Contractor that in the event any of the Indemnified Parties is made a defendant in any suit, action or proceeding for which it is indemnified pursuant to this Agreement, and Contractor fails or refuses to assume the defense thereof, after having been notified by Company or Affiliate to do so, that said Indemnified Party may compromise and settle or defend any such Claim, and Contractor shall be bound and obligated to reimburse said Indemnified Party for the amount expended by Indemnified Party in

settling and compromising any such Claim, or for the amount expended by Indemnified Party in paying any judgment rendered therein, together with all reasonable attorneys' fees incurred by Indemnified Party for defense or settlement of such Claim. Any judgment rendered against Indemnified Party or amount expended by Indemnified Party in compromising or settling such Claim shall be conclusive as determining the amount for which Contractor is liable to reimburse Indemnified Party hereunder.

12.4. Savings. It is agreed by Contractor and Company with respect to any legal limitations now or hereafter in effect and affecting the validity or enforceability of the indemnification obligations under this Agreement, such legal limitations are made a part of the indemnification obligations and shall operate to amend the indemnification obligations to the minimum extent necessary to bring the provisions into conformity with the requirements of such limitations, and as so modified, the indemnification obligations shall continue in full force and effect.

13. INSURANCE.

13.1. Coverage. Contractor shall procure and maintain such insurance coverage, as Company reasonably requires from time to time, at Contractor's own cost. Currently, the specific minimum insurance requirements include:

- a. Worker's Compensation and Employer's Liability Insurance. Policy to comply with the laws of the state where the Work is performed. Worker's Compensation – Statutory Employer's Liability - \$1,000,000. Each Accident (Minimum) - \$1,000,000. Disease – Each Employee.
- b. Commercial General Liability. Policy, subject to Company's approval as to form, endorsed to provide for contractual liability, completed operations liability, and broad form property damage with limits as follows: Bodily Injury and Property Damage - \$1,000,000. Combined Single Limit Each Occurrence.
- c. Comprehensive Automobile Liability. Policy shall include coverage for all owned, non-owned, and hired vehicles, with limits as follows: Bodily Injury and Property Damage – \$1,000,000. Combined Single Limit Each Occurrence.
- d. Professional Liability. \$1,000,000. Each Occurrence (also covers errors and omissions) in aggregate.

13.2. Proof of Insurance. Upon execution of this Agreement, Contractor shall furnish Company a Certificate of Insurance evidencing that all insurance required hereunder is in full force and effect. All such policies which are in any way related to the Work and that are secured and maintained by Contractor or its subcontractors shall (a) be issued by insurance companies satisfactory to Company with an A.M. Best Rating of at least A-VI; (b) be endorsed to name as an additional insured (except Worker's Compensation and Professional Liability coverages) Company, its parent, subsidiary and Affiliated entities and their respective directors, officers, employees and agents; and (c) include clauses providing that each underwriter shall waive its rights of recovery, under subrogation or otherwise, against Company, its parent, subsidiary and Affiliated entities and their respective directors, officers, employees and agents. Furthermore, Contractor agrees to waive all rights of recovery against Company, its parent, subsidiary and Affiliated entities which Contractor may have or acquire because of deductible clauses in or inadequacy of limits of, any policies of insurance maintained by Contractor. Contractor shall be solely responsible for deductibles required under such policies. Contractor shall require its insurance carrier to give Company at least thirty (30) days written notice prior to the cancellation of any such policy.

13.3. Additional Insurance Requirements. Contractor shall require any subcontractor at any tier,

other vendor, supplier, material dealer and others connected with the Work to provide and maintain insurance at all times during the period that their agreement with Contractor related to Work is in force and effect at the subcontractor's, other vendor's, supplier's material dealer's, or others' own cost. Contractor's insurance shall be primary and any insurance or self-insurance maintained by Company shall be excess and non-contributory to Contractor's insurance. Irrespective of the requirements as to insurance to be carried as provided for herein, the insolvency, bankruptcy or failure of any insurance company carrying insurance of Contractor, the failure of any insurance company to pay claims accruing, or the inadequacy of the limits of the insurance, shall not affect, negate or waive any of the provisions of this Agreement including, without exception, the indemnity obligations of Contractor. Contractor further agrees that nothing contained in this Insurance Section of the Agreement shall relieve Contractor of any of Contractor's obligations and responsibilities contained in any other Section of this Agreement. Should Contractor fail to comply with any of the insurance requirements in this Section 13 (Insurance), Company, in its sole discretion, may immediately terminate this Agreement and any one or more SOWs.

14. COMPANY POLICY REGARDING DRUGS, ALCOHOL AND WEAPONS. Contractor agrees to advise its employees, subcontractors, and agents that it is Company's policy that: (a) the use, possession, and/or distribution of illegal or unauthorized drugs, drug related paraphernalia, weapons, or the use or possession of alcoholic beverages (except where authorized by Company's management) on the Premises is prohibited; (b) entry onto or presence on the Premises by any Person, including, without limit, personnel of Contractor, its subcontractors and agents, constitutes consent to Company to conduct announced or unannounced searches on Company's Premises of the Person and his/her personal effects for such prohibited items; and (c) any Person who is found in violation of the policy or who refuses to permit a search may be removed and barred from Company's Premises, at Company's discretion.

15. INDEPENDENT CONTRACTOR.

15.1. No Employment Relationship. The Work performed by Contractor shall be as an independent contractor and not as an employee. Accordingly, neither Contractor nor any of Contractor's employees are entitled to the benefits that Company or any Affiliate provides to its employees, including, but not limited to, group insurance and participation in Company's or such Affiliate's employee benefit, pension, and compensation plans. Contractor agrees to employ and direct any Persons performing Work, and such Persons shall be and remain Contractor's sole employees subject to its direction and control; they shall not be Company's employees or subject to Company's direction and control. Contractor is responsible for providing all training or instructions with respect to the Work. Contractor shall provide any equipment, materials, or supplies that Contractor deems necessary to perform the Work. Company's or Affiliate's general suggestions in connection with the Work, general right of inspection, and right to terminate this Agreement shall not make Contractor an agent or employee of Company or any Affiliate or give Company or any Affiliate any right of control over Contractor or its employees. Contractor shall maintain all Persons performing the Work as employees, and shall file appropriate forms (generally, W-2 forms) with the Internal Revenue Service for each and every such Person.

15.2. Benefit Waiver. In the event Contractor (and/or its employees) for any reason were to become eligible to participate in a Company-sponsored benefit and/or compensation program, Contractor, for itself and its employees, hereby waives any such right to participate in the program. This waiver of any right to participate in any Company-sponsored employee benefit and/or compensation program represents a material component of the terms of payment agreed to by the parties.

15.3. No Agency. Contractor is not an agent, partner, or joint venturer of Company or any Affiliate. Contractor shall not represent itself to third persons to be other than an independent contractor of Company or any Affiliate, nor shall Contractor offer or agree to incur or assume any obligations or commitments in Company's or any Affiliate's name or for Company or any Affiliate without Company's

or Affiliate's prior written consent and authorization. Contractor recognizes that this Agreement is not exclusive and that Company reserves the right to contract with other parties for similar services during the Term.

15.4. Contractor Taxes. Contractor shall be responsible for payment of all taxes arising out of its Work under this Agreement, including, but not limited to, federal and state income tax, state sales and use taxes (subject to Section 9 herein), Social Security tax, unemployment insurance tax, and any other tax or business license fee as required. Company and Affiliates, as applicable, will report the amounts it pays Contractor on applicable Internal Revenue Service documents.

16. TERMINATION.

16.1. Company Termination. Notwithstanding anything contained herein to the contrary, Company may:

- a. terminate this Agreement and/or the performance of Work , in whole or in part, under any one or more SOWs at any time for Company's convenience by providing Contractor with at least fourteen (14) days' prior written notice of termination; or
- b. terminate this Agreement and/or the performance of Work under one or more SOWs to which the failure applies, in whole or in part, immediately in the event of failure of Contractor, for reasons other than set forth in the following Clause (c), to carry on any Work or part of the Work in an efficient, skillful and careful manner to the complete satisfaction of Company, or in the event Work is not proceeding with such speed as, in the reasonable judgment of Company, is necessary to timely complete same, or if Contractor materially fails to comply with any of the provisions of this Agreement and such failure is not cured (if capable of being cured in the reasonable judgment of Company) within thirty (30) days after Contractor's receipt of Company's notice of termination; or
- c. terminate this Agreement and/or performance of Work under one or more SOWs immediately through written notice of termination (i) in the event of any act or omission by Contractor that would be likely to constitute gross negligence, a criminal activity, or fraud, or any other act that, in Company's reasonable determination, would be likely to cause material damage, harm or injury to Company's or any of its Affiliates' personnel, property, business or business reputation; or (ii) upon the bankruptcy, insolvency or dissolution of Contractor, Contractor's ceasing to carry on business as a going concern, making an assignment or any general arrangement for the benefit of creditors, or being unable to pay its debts as they fall due.

16.2. Contractor Termination. Notwithstanding anything contained herein to the contrary, Contractor may:

- a. terminate the performance of Work under a SOW to which the failure applies in the event Company fails to pay any undisputed amounts within sixty (60) days of the due date under such SOW for Work accepted by Company; or
- b. terminate this Agreement at the end of the primary term or the end of any renewal term by providing Company with at least thirty (30) days' prior written notice; provided that Contractor may not terminate this Agreement for its convenience as to any specific project upon which Work has commenced.

16.3. Effect of Termination. Upon receipt of Company's notice of termination, Contractor shall unless otherwise stated in Company's notice of termination (a) place no further subcontracts or orders for materials, services, or facilities, except as necessary to complete any continued portion of the Work; (b) terminate all subcontracts, to the extent they relate to the Work terminated, or, as directed by Company, and to the extent assignable, assign to Company all right, title, and interest of Contractor under such subcontracts, (c) as directed by Company, transfer and deliver to Company title to all Work in progress, all completed Work Product, supplies, documentation, other materials produced or acquired for the Work, and any other property that, if the Agreement and terminated SOW(s) had been completed, would be required to be furnished to Company, and (d) provide technical assistance to Company and/or at Company's request assist Company in engaging another Contractor to finish the Work and in transferring the Work to such new contractor. Company shall pay Contractor for such technical assistance and transition services in accordance with Contractor's rates set forth in the applicable SOW or Contractor's published rates whichever is the lesser rate. Termination of this Agreement and/or any SOW shall not relieve any party from any obligation accrued up to and including the date of such termination, nor deprive a party not in default of any remedy otherwise available to it.

16.4. Payment on Termination. In the event of termination under Section 16.1(a) after the commencement of Work, Company shall pay Contractor such sum as is due and owing for Work authorized and performed to Company's sole satisfaction to the point of termination, subject to the provisions for retainage set forth in the terminated SOW and the payment terms of this Agreement and the SOW. In the event termination by Company occurs prior to commencement of Work, Company shall incur no liability whatsoever to Contractor, including, but not limited to, Contractor's costs associated with proposal preparation, the purchase of equipment or materials or supplies, and the hiring or reassignment of Contractor's employees or its subcontractor's employees. The payment obligations set forth in this Agreement shall survive termination, expiration or suspension of this Agreement and/or any applicable SOW, in whole or in part.

16.5. Survival. The rights and obligations of the parties, which by their nature must survive termination, or expiration of this Agreement and/or SOW in order to achieve the fundamental purposes including, without limitation, any approved payment obligations and the provisions of the following Sections: (Term), (Representations and Warranties), (Confidentiality), (Intellectual Property Rights), (Indemnification), (Insurance), (Termination) and (Miscellaneous) shall survive the expiration or termination of this Agreement. Termination will not affect any right or remedy at law or in equity of either party.

16.6. Limitation of Liability. NOTWITHSTANDING ANY PROVISIONS IN THIS AGREEMENT TO THE CONTRARY, CONTRACTOR AGREES THAT IN THE EVENT OF TERMINATION OF THIS AGREEMENT OR ANY SOW FOR ANY REASON, CONTRACTOR SHALL HAVE NO RIGHT TO, AND COMPANY SHALL NOT BE LIABLE FOR, ANY LOST OR PROSPECTIVE PROFITS OR ANY OTHER CONSEQUENTIAL, INCIDENTAL, EXEMPLARY, SPECIAL, PUNITIVE OR INDIRECT LOSSES OR DAMAGES (IN TORT, CONTRACT OR OTHERWISE) ARISING OUT OF THIS AGREEMENT OR THE WORK PERFORMED UNDER ANY SOW, EVEN IF COMPANY HAS BEEN ADVISED OF THE POSSIBILITY OF THE OCCURRENCE OF SUCH DAMAGES.

17. FORCE MAJEURE. Delay or failure of performance of this Agreement by a party hereto shall not constitute default under this Agreement if and to the extent such delay or failure of performance is caused by occurrences beyond the reasonable control of the non-performing party and which by the exercise of due diligence such party shall not have been able to avoid or overcome, resulting from acts of God or nature. In the event of a force majeure occurrence, the party whose performance is prevented by such occurrence shall notify the other party, in writing, as soon as reasonably possible and shall diligently

endeavor to remedy the situation as soon as possible.

18. COMPLIANCE WITH DOT ANTI-DRUG AND ALCOHOL MISUSE REGULATIONS.

The provisions of this Section 18 will apply in the event any Work performed by Contractor, its subcontractors, or agents under any SOW to this Agreement constitutes operations, maintenance, or emergency response functions on a pipeline or LNG facility of Company or any of its Affiliates that is subject to pipeline safety regulations set forth in Parts 191, 192, 193 and 195 of Title 49 of the U.S. Code of Federal Regulations (“**49 CFR**”). Company under 49 CFR Parts 199 and 40, is required by law to ensure compliance with the pipeline safety regulations for drug and alcohol testing applicable to its contractors, subcontractors and their agents, performing operations, maintenance, or emergency response functions on a pipeline or LNG facility subject to Parts 191, 192, 193 and 195 of 49 CFR as follows: (a) Contractor agrees that Contractor, its subcontractors, and agents will abide by a DOT Anti-drug Plan and Alcohol Misuse Program which applies to all employees of Contractor, its subcontractors and agents if performing an operations, maintenance or emergency response function; (b) Contractor agrees that Contractor, its subcontractors and their agents shall provide to their respective employees an Anti-drug Plan and Alcohol Misuse Program, the drug and alcohol testing, education, and training required by 49 CFR Parts 199 and 40; (c) Contractor agrees that all employees of Contractor, its subcontractors, and their agents, are in compliance with the drug and alcohol testing regulations at 49 CFR Parts 199 and 40 and the Motor Carrier Regulations at 49 CFR Parts 391 and 394, if applicable; (d) Contractor agrees that Contractor, its subcontractors, and their agents shall allow Company, the administrator and/or representative of a state agency (as defined in 49 CFR Part 199) access to property and records for the purpose of monitoring compliance with the requirements of the Research and Special Programs Administration for drug testing at 49 CFR Part 199. This access shall occur periodically, and without prior notice to allow Company, the administrator and/or representative of a state agency to audit Contractor, its subcontractors, and their agents’ Anti-drug Plan and Alcohol Misuse Program, the required drug testing and alcohol testing and results thereof.

19. MISCELLANEOUS.

19.1. Notices. Unless otherwise expressly provided herein, all notices, consents, requests, invoices, statements and other communications provided for or permitted to be given under this Agreement must be in writing. Notices shall be sent to the parties by United States mail, registered or certified mail, return receipt requested, postage prepaid, hand delivery, or next business day courier service and addressed as set forth below, and shall be deemed given when delivered in hand, or three (3) days after the day of mailing. Notice may also be sent by facsimile at the facsimile numbers set forth below during working hours, 8:00 a.m. to 5:00 p.m., of the addressee thereof and shall be deemed received simultaneously with the transmission thereof if delivery of such facsimile is confirmed. Either Contractor or Company may change its address, telephone and facsimile telephone numbers, or designation of contact persons by providing written notice to the other party in accordance with this Notices section.

NOTICES TO COMPANY:

Missouri Gas Energy
3420 Broadway
Kansas City, MO 64111
Attn.: Legal
Telephone: (816) 360-5609
Fax: (816) 360-5903

INVOICES TO COMPANY:

Missouri Gas Energy
3420 Broadway
Kansas City, MO 64111
Attn.: _____

NOTICES TO CONTRACTOR:

Attn.: _____
Telephone: (_____) _____-_____
Fax: (_____) _____-_____

19.2. Waiver. Company's failure at any time to require performance by Contractor of any provision hereof shall not affect Company's right hereafter to enforce the same. Nor shall any waiver by Company of its rights with respect to any breach of any provision hereof be taken or held to be a waiver of any succeeding breach of such provision or as a waiver of this provision itself.

19.3. Applicable Law/Venue. The laws of the State of Missouri (except for any Missouri conflict-of-law principle that might require the application of some other state's laws) will govern the interpretation, validity and effect of this Agreement. Company and Contractor agree that the state and federal courts situated in Jackson County, Missouri, shall have personal jurisdiction over and shall constitute proper and exclusive venue for Company and Contractor to hear all disputes arising under this Agreement. In the event either Company or Contractor is not able to effect service of process upon the other with respect to such disputes, Company and Contractor expressly agree that the Secretary of State for the State of Missouri shall be an agent of Company and/or Contractor to receive service of process on behalf of Company and/or Contractor with respect to such disputes.

19.4. Severability. The terms in this Agreement shall be enforceable to the fullest extent permitted by law. If any such term or covenant or the application thereof to any Person or circumstance shall be construed to be invalid or unenforceable, then such term shall be construed in a manner as to permit its enforceability to the fullest extent permitted by law. The remaining provisions of this Agreement shall remain in full force and effect.

19.5. Successors and Assignment. This Agreement automatically shall be binding upon and shall inure to the benefit of any Person, that may hereafter acquire or succeed to all or substantially all of the business or assets of Company by purchase, merger, consolidation, or any other means whatsoever, whether direct or indirect. Company may assign or transfer this Agreement and its rights and obligations hereunder without the consent of Contractor. This Agreement shall not be subcontracted or assigned by Contractor without Company's prior written consent, which shall not be unreasonably withheld. Any attempted assignment or transfer by Contractor without the consent of Company shall be void and of no effect.

19.6. Other Agreements /Modifications. This Agreement supersedes all other preceding agreements between the parties and constitutes the entire agreement of the parties regarding the Work. This Agreement may not be modified without a written instrument executed by both parties.

19.7. Advertising and Publicity. Contractor shall not use the name of Company or any of its Affiliates or any of their respective employees in any advertising, publicity, or selling material without Company's or such Affiliate's prior written approval.

19.8. Remedies. Money damages may not be sufficient remedy to Company for any breach of this Agreement by Contractor, and Company shall be entitled to specific performance and injunctive relief as remedies for any such breach. Such remedies shall not be deemed to be the exclusive remedies for a breach of this Agreement by Contractor or Contractor's employees, but shall be in addition to all other remedies available at law or in equity to Company and its Affiliates.

19.9. Records and Audits. Contractor shall maintain during the course of the Work, and retain not less than two (2) years after the completion thereof, complete and accurate records of all of Contractor's costs which are chargeable to Company for Work under this Agreement. Upon prior reasonable notice to

Contractor, and at no cost to Contractor, Company shall have access, during normal business hours, to those original receipts, ledgers and other records of Contractor as may be reasonably appropriate for Company or its accountants to review for the sole purpose of verifying the amount and nature of all reimbursable expenses, costs and disbursements incurred by Contractor in performing the Work.

19.10. Priority. In the event of any conflict between this Agreement and any SOW, the terms and conditions of the SOW shall prevail and control only with respect to the scope of the Work to be provided and compensation for such Work under the SOW. Except with regard to the scope of the Work and compensation for such Work, any additional or inconsistent terms contained in SOWs with respect to this Agreement will be of no force and effect. Additional or inconsistent terms or conditions may be added only by formal amendment to this Agreement and not through SOWs. In the event of any conflict among the exhibits, the exhibit of the latest date shall control. Purchase orders that may be issued and accepted by Company and Contractor for Work under a SOW are effective solely to specify the Work ordered. The terms and conditions of this Agreement and any SOW take precedence over the terms and conditions of any such purchase order.

19.11. Third-Party Beneficiaries. Contractor acknowledges and agrees that (i) in the event any Affiliates receiving the benefits of the Work are named on a SOW, such named Affiliates are known third-party beneficiaries of the Work pursuant to that SOW with respect to Contractor's obligations required by this Agreement; and (ii) the indemnification provisions in Section 12 of this Agreement shall inure to the benefit of the Indemnified Parties as provided in Section 12.

19.12. Execution in Counterparts; Facsimile Delivery. This Agreement and any SOW may be executed in several counterparts, each of which shall be an original, and all of which, when taken together shall constitute but one and the same agreement. This Agreement and any SOW may be delivered by facsimile transmission of an executed counterpart signature page hereof, and after attachment of such transmitted signature page to a copy of this Agreement or SOW, such copy shall have the same effect and evidentiary value as copies delivered with original signatures. Any party delivering this Agreement or a SOW by facsimile transmission shall deliver to the other party, as soon as practicable after such delivery, an original executed counterpart signature page of this Agreement or SOW.

20. AGREEMENT NOT AN OBLIGATION. Contractor and Company acknowledge that execution of this Agreement shall not in and of itself create any obligation on the part of either party and that no obligations on the part of either party shall be created until such time as a fully executed SOW is entered into by the parties. The following exhibits that are attached hereto are made an integral part of this Agreement.

Exhibit A - Statement of Work Form

Exhibit B - Contractor's Completion Affidavit

IN WITNESS WHEREOF, the parties have caused this Agreement to become effective as of the Effective Date first above written.

CONTRACTOR:
(Contractor's Name)

COMPANY:
Missouri Gas Energy, a division of Southern
Union Company

Signature: _____

Signature: _____

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

**EXHIBIT A
STATEMENT OF WORK**

Agreement No: _____

SOW No: _____

This Statement of Work (“**SOW**”) for Work shall be attached to and become part of the **Master Professional Services Agreement** dated _____ (the “**Agreement**”) by and between **Missouri Gas Energy, a division of Southern Union Company** (“**Company**”) and _____ (“**Contractor**”).

The Work provided under this SOW is for the benefit of:

☐ Company

☐ Company’s Affiliate: _____
(name of Company’s Affiliate_

Company and its Affiliates(s) are hereinafter collectively referred to as the “**Beneficiaries**”.

Project Name:

Description of Work:

Designation of the rates and/or classifications of the Work:

Contractor employees who will perform the Work:

Site and location of the Work:

Performance schedule:

Milestones and deliverables:

Project Costs: Contractor shall complete the Work in accordance with the terms and conditions of the Agreement and this SOW for the following consideration, exclusive of all applicable sales, use and like taxes, which shall constitute full and complete payment by Company for the Work:

☐ (a) the total lump sum amount of \$_____.

☐ (b) in accordance with the Hourly Billing Rate stated above. The cost of the Work under this SOW shall not exceed \$_____.

☐ Waive 10% Retainage Fee

☐ Do not Waive 10% Retainage Fee

The amounts set forth in Clauses (a) or (b) above SHALL NOT BE EXCEEDED without the prior written consent of Company’s Representative. All invoices must show the Agreement Number and the SOW Number in order to be paid.

Payment Terms: Payment shall be based on achievement of Deliverables and shall be pursuant to the provisions in Section 8 (Payment to Contractor) of the Master Professional Services Agreement.

Invoices: All invoices sent to Company shall be in accordance with the provisions in the Notices section of the Agreement and shall be addressed as follows:

Missouri Gas Energy
3420 Broadway
Kansas City, MO 64111
Attn.: _____

IN WITNESS HEREOF, the parties have caused this Statement of Work to be executed by their respective duly authorized representatives and effective as of the Start Date upon execution by the parties.

(Contractor's Name)

Missouri Gas Energy, a division of Southern Union Company

Signature: _____

Signature: _____

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

EXHIBIT B
CONTRACTOR'S COMPLETION AFFIDAVIT

Contractor, having entered into an Agreement with Company, dated _____, 20____, to perform certain Work under SOW No. _____ does hereby certify that the Work under said SOW has been fully and finally completed: that all labor has been fully and entirely paid; that all federal and state unemployment and Federal Insurance Compensation Act taxes have been paid, or will be paid when due; that all valid state sales and use taxes properly levied on any materials, equipment, supplies and services furnished by Contractor have been paid; that all federal and state income taxes required by law to be withheld from employees or others have been withheld and remitted to the proper taxing authority, or will be remitted when due; that all premiums for insurance requirements, all claims for damages of any nature arising from the fulfillment of said contract, all materials, supplies, etc., all labor and bills for materials, supplies, etc. of any and all subcontractors, have all been paid; that payment has been made in full of all claims for damages for which Contractor is required to indemnify the Indemnified Parties pursuant to the Agreement, and that any other items payable by Contractor under the Agreement have all been paid.

Contractor agrees to indemnify, save and hold harmless Company from any claims, damages, or expenses arising from Contractor's failure to perform or fulfill any of the acts or obligations referred to above.

(Contractor's Name)

Signature: _____

Printed Name: _____

Title: _____

Date: _____

STATE OF _____ §

§

COUNTY OF _____ §

§

_____, an individual, known to me to be the true and identical person who signed the above Affidavit, makes oath and says that he/she is an officer of _____ with offices located at _____, and that he/she has examined the foregoing statement and that it is a true and correct statement of the facts in respect to each and every matter set forth therein.

Subscribed and sworn to before me this _____ day of _____, 20____.

Notary Public

My Commission Expires: _____

ATTACHMENT 2
RESPONDENT'S STATEMENT

The undersigned certifies that:

1. S(He) is authorized to submit this Proposal on behalf of the respondent named below; and
2. Respondent has thoroughly reviewed this RFP, accepts all terms and conditions of this RFP and has the capability to perform the Work; and
3. Respondent is able and willing to comply with all representations made in its proposal and in any discussions related thereto.

(Respondent's Name)

Signature: _____

Printed Name: _____

Title: _____

Date: _____

**ATTACHMENT 3
RESPONDENT PROFILE**

1. **Respondent Name:** _____
(Provide exact legal name as it will appear on the Contract, if awarded)

2. **Business Structure:** ☐ Individual/Sole Proprietorship ☐ Partnership ☐ Corporation
☐ Other _____

3. **Principal Address:** _____

City: _____ State: _____ Zip: _____

Phone: _____ Fax: _____

Website: _____

4. **Federal Employer Identification Number (EIN):** _____

5. **Officer or Principal of Firm and Title:** _____

6. **Contact Information: (For questions regarding proposal)**

Name and Title: _____

Address: _____

City: _____ State: _____ Zip: _____

Phone: _____ Fax: _____

Email: _____

7. **References: (Provide three (3) references, one of which must be from a financial institution that has provided respondent with banking services during the past three (3) years.)**

Reference No. 1: (Financial Institution)

Firm/Company Name: _____

Contact Name and Title: _____

Address: _____

City: _____ State: _____ Zip: _____

Phone: _____ Fax: _____

Email: _____

Reference No. 2:

Firm/Company Name: _____

Contact Name and Title: _____

Address: _____

City: _____ **State:** _____ **Zip:** _____

Phone: _____ **Fax:** _____

Email: _____

Reference No. 3:

Firm/Company Name: _____

Contact Name and Title: _____

Address: _____

City: _____ **State:** _____ **Zip:** _____

Phone: _____ **Fax:** _____

Email: _____

P.S.C. MO. No. 1
Cancelling P.S.C. MO. No. 1

Eighth Revised
Seventh Revised

SHEET No. 98
SHEET No. 98

Missouri Gas Energy,
a Division of Southern Union Company

For: All Missouri Service Areas

PROMOTIONAL PRACTICES

PP

RESIDENTIAL NATURAL GAS ENERGY EFFICIENCY INITIATIVES

A. Energy Efficiency Education Program

As an Energy Star® partner, MGE will continue to make information available to customers and, where possible, work in cooperation with other Energy Star® partners and other energy efficiency collaboratives to further public education programs. In addition MGE will continue to promote the use of an online energy analyzer through its web site.

B. High-Efficiency Natural Gas Water Heating and Space Heating Incentive Program

The High-Efficiency Natural Gas Water Heater and Space Heating Incentive Program is an incentive program designed to encourage customers to use energy efficient equipment through the purchase and installation of high efficiency natural gas water heaters and/or space heating systems. Incentives are offered for a portion of the cost of such systems that meet Energy Star® criteria (where applicable). Company's participation in such financial incentives is limited to the funding levels specified in the Commission's Report and Order in Case No. GR-2009-0355 subject to adjustment as provided therein.

DEFINITIONS:

Administrator – MGE may administer the program exclusively in-house and/or in partnership with contracted vendors (as necessary).

Participant – An existing customer with an active account who is being served under the Company's Residential rate class who purchase and install a qualifying natural gas water heating or space heating systems, as described in the program, within MGE's service territory.

AVAILABILITY:

The program is available to any active MGE residential customer (no final bill or inactive accounts) who purchase and install a natural gas space heating or water heating system that meets Energy Star® criteria (where applicable) within MGE's service territory.

Residential customers will be eligible to receive the following rebates:

- \$40 for a tank water heating system that meets Energy Star® criteria.
- \$200 for a tankless water heating system that meets Energy Star® criteria.
- \$200 for a natural gas furnace that meets Energy Star® criteria.
- \$450 for a combination furnace/water heater that meets Energy Star® criteria.
- \$200 for a natural gas boiler system that meets Energy Star® criteria.
- \$25 for a programmable thermostat if purchased in conjunction with a space heating system.

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ISSUED BY: Michael R. Noack

Director, Pricing and Regulatory Affairs
Missouri Gas Energy, Kansas City, MO. 64111

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Missouri Public
Service Commission
GT-2011-0049; YG-2011-0115

P.S.C. MO. No. 1
Cancelling P.S.C. MO. No. 1

Eighth Revised
Seventh Revised

SHEET No. 99
SHEET No. 99

Missouri Gas Energy,
a Division of Southern Union Company

For: All Missouri Service Areas

PROMOTIONAL PRACTICES

PP

Rebate limit: Individual dwelling units, as determined by account number, whether owner-occupied or rental property, are eligible for a maximum of two heating system rebates (furnace, boiler, or combination unit), two tank or tankless water heater rebates, and two programmable thermostat rebates. This rebate is independent of any other incentives or State and/or Federal tax credits for which the customer may be eligible for the purchase of the high-efficiency natural gas water heating or space heating system.

PROGRAM FUNDING

For the Commission Report and Order in GR-2009-0355, the Company will initially fund \$1,500,000 on an annual basis, subject to increases toward the goal of .5% of the Company's gross operating revenues with 90% allocated to the residential customer class. These amounts will be deferred and treated as a regulatory asset with a ten-year amortization period. Such amortization will begin on the effective date of rates in the Company's next general rate case. Amounts spent under these programs will be included in MGE's rate base in its next general rate case. Each year on or around November 1, Company will prepare a budget of program expenditures subject to approval by the MGE Energy Efficiency Collaborative (EEC). The approved budget will be used for the ensuing 12 months unless the EEC agrees that there is a need to make changes within a budget year. Any excess funds remaining as of the effective date of rates in GR-2009-0355, shall have interest applied equal to 7.72%, until such funds are expended. MGE's expenditures will be subject to a prudence review in any relevant MPSC proceedings.

ENERGY EFFICIENCY COLLABORATIVE

The Energy Efficiency Collaborative (EEC), which was formed in GT-2008-0005, will provide oversight for the design and implementation of energy efficiency programs for MGE's Residential and SGS classes. The members of the EEC include designated representatives from MGE, Commission Staff, Public Counsel and Department of Natural Resources. Each entity shall have one vote each. The EEC will seek to make decisions by consensus, but where consensus cannot be reached, any of the charter members may petition the Commission to resolve, in accordance with its normal procedural rules, any differences over the selection of specific future programs for implementation, funding, or any other aspects of the energy efficiency program development and evaluation process. Other appropriate parties, such as electric utilities with service territories that overlap MGE's service territory, that are acceptable to the EEC charter members may also participate in the EEC process but will not be part of the EEC decision making process.

OTHER CONDITIONS:

MGE will submit to the Commission Staff and the Office of the Public Counsel reports on a quarterly basis (due within 45 days from the end of the quarter) which will detail the cost and participation in the program. The following information will be included in the quarterly reports:

1. For the Energy Efficiency Education Program, MGE will report:
 - a. Summary information regarding the cost, type and number of educational programs implemented;
 - b. MGE's involvement in other energy conservation programs where MGE has worked in cooperation with other Energy Star® partners or energy conservation collaboratives to further public education;
 - c. Dollars spent on program including evaluation, administrative expenses and promotion/advertising; by type of promotion/advertising; and
 - d. Number of web site hits on the various pages of MGE's customer site.

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Service Commission month day year

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Missouri Gas Energy, Kansas City, MO. 64111

Missouri Gas Energy,
a Division of Southern Union Company

For: All Missouri Service Areas

PROMOTIONAL PRACTICES
PP

2. For the High Efficiency Natural Gas Water Heating and Space Heating Incentive Program, MGE will report:

- a. The total number of incentive requests and the number of incentive requests approved;
 - i. The type and/or size (storage capacity) and fuel source of the water heater that was replaced, if available;
 - ii. The type and/or size and fuel source of heating equipment that was replaced, if available
- b. The dollars spent on incentives, evaluation, administrative expenses and promotion/advertising;
- c. Number and type of any complaints received and the resolution of the complaints; and
- d. Compilation of information as provided by participating customers, which will include:
 - i. Type of residence;
 - ii. Age and size of water heater and/or space heating system being replaced; and
 - iii. Reason for purchase of the Energy Star® rated natural gas water heating and/or space heating system.

MGE may in the future request permission from the Commission to expand the energy efficiency program to include additional residential natural gas energy efficiency measures.

A detailed post-implementation evaluation of the initial two (2) years of each new program shall be completed within six (6) months of the end of each program's second year. Where feasible, these reviews will include both process evaluations and cost effectiveness (impact) evaluations. Evaluations may be performed after less than two years of program evaluation if the EEC determines this is preferable.

MGE – working collaboratively with the MGE Energy Efficiency Collaborative (EEC) – will file an annual report with the Commission assessing the overall effectiveness of the program along with recommendations for improving the program and any proposed tariff changes. Post-implementation evaluations above may be used in the selection and design of future programs.

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ISSUED BY: Michael R. Noack

Director, Pricing and Regulatory Affairs
Missouri Gas Energy, Kansas City, MO. 64111

FILED
Missouri Public
Service Commission
GT-2011-0049; YG-2011-0116

Missouri Gas Energy,
a Division of Southern Union Company

For: All Missouri Service Areas

<u>PROMOTIONAL PRACTICES</u>	
<u>PP</u>	
Home Performance with ENERGY STAR®	
PURPOSE:	
<p>This voluntary Home Performance with ENERGY STAR® (HPwES) Program is intended to encourage residential customers (Customers) to identify and implement improvements that can be applied to their home to improve energy efficiency and comfort while helping to protect the environment by conducting a HPwES designed comprehensive home assessment (Assessment).</p> <p>The Company will partner with other utilities regulated by the Missouri Public Service Commission (Commission), municipal utilities, and co-op utilities in its service area per the direction of the Missouri Gas Energy Collaborative (Collaborative).</p>	
DEFINITIONS:	
Assessment –	An initial energy evaluation of the home that includes observation of lighting and appliances as well as performance testing of the ventilation and mechanical systems, building tightness and insulation levels that will result in a scope of work outlining recommended energy efficiency improvements. All improvements performed will be verified after completion.
Consultant –	Third party companies certified to perform the HPwES Assessment and provide a scope of work to the Customer detailing the recommended improvements.
Contractor –	Third party companies certified to perform the HPwES Assessment, provide a scope of work to the Customer detailing the recommended improvements, and complete the implementation of the specified improvements.
HPwES –	A national program from the U.S. Environmental Protection Agency (EPA) and U.S. Department of Energy (DOE) offers a comprehensive, whole-house approach to improving energy efficiency and comfort at home, while helping to protect the environment. The Company will partner with other utilities to implement the national program locally in cooperation with the Missouri Department of Natural Resources Energy Center (MDNR).
Improvements –	Energy efficiency changes applied to the home to eliminate air leaks, add insulation seal ductwork and improve heating and cooling systems.
AVAILABILITY:	
<p>This Program may be applied to any single family home, multiplex unit, or apartment unit where the current resident is receiving service under any generally available residential rate schedule offered by the Company. All Assessments must be requested by the owner of the property. Program rebates are limited to one rebate per Assessment. The Company reserves the right to modify or terminate this Program at any time, subject to Commission approval.</p>	

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ISSUED BY: Michael R. Noack

Director, Pricing and Regulatory Affairs
Missouri Gas Energy, Kansas City, MO. 64111

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Missouri Gas Energy,
a Division of Southern Union Company

For: All Missouri Service Areas

PROMOTIONAL PRACTICES

PP

Home Performance with ENERGY STAR®

(continued)

PROGRAM PROCESS:

- 1) The Company will promote the Program to residential Customers through mediums that may include press releases, direct mailings, bill messages, bill inserts, and web site materials.
- 2) Interested Customers will respond by email message, call a dedicated telephone number, contact a participating Contractor/Consultant, or contact the Company through the program web site at www.hpwes.net. All contacts will be directed to the MEC to facilitate and track the remaining interactions.
- 3) The MEC will make contact with the Customer to explain the Assessment process. Customers will be given the option of:
 - a) selecting a Contractor who will perform the Assessment and will be capable of installing the Improvements or
 - b) selecting a Consultant who will perform the Assessment only.
- 4) The cost to the Customer for the Assessment will typically range from \$300 to \$500.
- 5) The Contractor/Consultant will perform the Assessment and communicate the results to the Customer through a scope of work statement. The scope of work will include a list of recommended energy efficiency Improvements.
- 6) Customers who choose the Contractor will work with that Contractor to complete the Improvements.
- 7) Customers who choose the Consultant will select a Contractor from a list of participating Contractors that may be retained to complete the Improvements.
- 8) Following the implementation of the Improvements and at no additional cost to the Customer, the Contractor/Consultant will conduct a second Assessment to verify the work.
- 9) Customers that choose to implement at least one of the recommended qualifying Improvements may request a full rebate of the cost of the Assessment from the Company.
- 10) Qualifying Improvements exclude Improvements associated with existing Company Programs (i.e. Energy Sense) or Improvements related to electric-only equipment.
- 11) Customers may request a rebate of a portion of their Improvements cost such that the total rebate to the Customer does not exceed \$600 per Assessment.
- 12) Customers will be required to complete a rebate request, available from the Contractor/Consultant or the program web site at www.hpwes.net, and submit a copy of the invoices associated with the Assessment and Improvement. Improvements must be installed by a certified Contractor to qualify for the rebate.

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Missouri Gas Energy, Kansas City, MO. 64111

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Original

SHEET No. 102.1

Missouri Gas Energy,
a Division of Southern Union Company

For: All Missouri Service Areas

PROMOTIONAL PRACTICES

PP

Home Performance with ENERGY STAR®

(continued)

PROGRAM ADMINISTRATION:

The Program will be administered by the MEC. MEC will be responsible for managing the process and flow of the local HPwES Program. This will include Contractor/Consultant recruiting, training and certification, management of the lead generation process, comprehensive home assessment education for Customers, and quality assurance. All Contractor/Consultant incentives will be paid by MEC. MEC is responsible for all oversight of the Contractor/Consultants and will be responsible for resolving any reported Customer complaints.

PROGRAM COST:

The total expenditure for each year of the Program is determined annually by the MGE Collaborative. This amount will provide for incentive payments, marketing costs, evaluation cost, and Company administrative costs. Payments will be provided until the budgeted funds for the total Program are expended. To the extent there are excess funds for a given year, the amount of excess shall be "rolled over" to be utilized for the Program in the succeeding year.

EVALUATION:

The Company and its partners will provide a joint evaluation of the Program within 24 months after the start of the program. The evaluation will include a process and impact evaluation along with a billing analysis and cost effectiveness test.

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Missouri Gas Energy, Kansas City, MO. 64111

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**Missouri Gas Energy,
a Division of Southern Union Company**

For: All Missouri Service Areas

PROMOTIONAL PRACTICES

pp

SMALL GENERAL SERVICE NATURAL GAS ENERGY EFFICIENCY INITIATIVES

A. Energy Efficiency Education Program

As an Energy Star® partner, MGE will make information available to customers and, where possible, work in cooperation with other Energy Star® partners and other energy efficiency collaboratives to further public education programs. In addition MGE will implement an online energy analyzer through its web site.

B. High-Efficiency Natural Gas Water Heating and Space Heating Incentive Program

The High-Efficiency Natural Gas Water Heater and Space Heating Incentive Program is an incentive program designed to encourage customers to use energy efficient equipment through the purchase and installation of high efficiency natural gas water heaters and/or space heating systems. Incentives are offered for a portion of the cost of such systems that meet Energy Star® criteria (where applicable). Company's participation in such financial incentives is limited to the funding levels specified in the Commission's Report and Order in Case No. GR-2009-0355 subject to adjustment as provided therein.

DEFINITIONS:

Administrator – MGE may administer the program exclusively in-house and/or in partnership with contracted vendors (as necessary).

Participant -- An existing customer with an active account who is being served under the Company's SGS rate class who purchase and install a qualifying natural gas water heating or space heating systems, as described in the program, within MGE's service territory.

AVAILABILITY:

The program is available to any active MGE SGS customer (no final bill or inactive accounts) who purchase and install a natural gas space heating or water heating system that meets Energy Star® criteria (where applicable) within MGE's service territory.

SGS customers will be eligible to receive the following rebates:

- \$40 for a tank water heating system that meets Energy Star® criteria.
- \$200 for a tankless water heating system that meets Energy Star® criteria.
- \$200 for a natural gas furnace that meets Energy Star® criteria.
- \$450 for a combination furnace/water heater that meets Energy Star® criteria.
- \$200 for a natural gas boiler system that meets Energy Star® criteria.
- \$25 for a programmable thermostat if purchased in conjunction with a space heating system.

September 15, 2010

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Missouri Gas Energy, Kansas City, MO. 64111

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Missouri Gas Energy,
a Division of Southern Union Company

For: All Missouri Service Areas

PROMOTIONAL PRACTICES

PP

Rebate limit: Individual business units, as determined by account number, are eligible for a maximum of \$3600. This rebate is independent of any other incentives or State and/or Federal tax credits for which the customer may be eligible for the purchase of the high-efficiency natural gas water heating or space heating system.

PROGRAM FUNDING

Per the Commission Report and Order in GR-2009-0355, the Company will initially fund \$1,500,000 on an annual basis, subject to increases toward the goal of .5% of the Company's gross operating revenues with 90% allocated to the residential customer class. These amounts will be deferred and treated as a regulatory asset with a ten-year amortization period. Such amortization will begin on the effective date of rates in the Company's next general rate case. Amounts spent under these programs will be included in MGE's rate base in its next general rate case. Each year on or around November 1, Company will prepare a budget of program expenditures subject to approval by the MGE Energy Efficiency Collaborative (EEC). The approved budget will be used for the ensuing 12 months unless the EEC agrees that there is a need to make changes within a budget year. Any excess funds remaining as of the effective date of rates in GR-2009-0355, shall have interest applied equal to 7.72%, until such funds are expended. MGE's expenditures will be subject to a prudence review in any relevant MPSC proceedings.

ENERGY EFFICIENCY COLLABORATIVE

The Energy Efficiency Collaborative (EEC), which was formed in GT-2008-0005, will provide oversight for the design and implementation of energy efficiency programs for MGE's Residential and SGS classes. The members of the EEC include designated representatives from MGE, Commission Staff, Public Counsel and Department of Natural Resources. Each entity shall have one vote each. The EEC will seek to make decisions by consensus, but where consensus cannot be reached, any of the charter members may petition the Commission to resolve, in accordance with its normal procedural rules, any differences over the selection of specific future programs for implementation, funding, or any other aspects of the energy efficiency program development and evaluation process. Other appropriate parties, such as electric utilities with service territories that overlap MGE's service territory, that are acceptable to the EEC charter members may also participate in the EEC process but will not be part of the EEC decision making process.

OTHER CONDITIONS:

MGE will submit to the Commission Staff and the Office of the Public Counsel reports on a quarterly basis (due within 45 days from the end of the quarter) which will detail the cost and participation in the program. The following information will be included in the quarterly reports:

1. For the Energy Efficiency Education Program, MGE will report:
 - a. Summary information regarding the cost, type and number of educational programs implemented;
 - b. MGE's involvement in other energy conservation programs where MGE has worked in cooperation with other Energy Star® partners or energy conservation collaboratives to further public education;
 - c. Dollars spent on program including evaluation, administrative expenses and promotion/advertising; by type of promotion/advertising; and
 - d. Number of web site hits on the various pages of MGE's customer site.

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ISSUED BY: Michael R. Noack

Director, Pricing and Regulatory Affairs
Missouri Gas Energy, Kansas City, MO. 64111

Missouri Gas Energy,
a Division of Southern Union Company

For: All Missouri Service Areas

PROMOTIONAL PRACTICES

PP

Rebate limit: Individual business units, as determined by account number, are eligible for a maximum of \$3600. This rebate is independent of any other incentives or State and/or Federal tax credits for which the customer may be eligible for the purchase of the high-efficiency natural gas water heating or space heating system.

PROGRAM FUNDING

Per the Commission Report and Order in GR-2009-0355, the Company will initially fund \$1,500,000 on an annual basis, subject to increases toward the goal of .5% of the Company's gross operating revenues with 90% allocated to the residential customer class. These amounts will be deferred and treated as a regulatory asset with a ten-year amortization period. Such amortization will begin on the effective date of rates in the Company's next general rate case. Amounts spent under these programs will be included in MGE's rate base in its next general rate case. Each year on or around November 1, Company will prepare a budget of program expenditures subject to approval by the MGE Energy Efficiency Collaborative (EEC). The approved budget will be used for the ensuing 12 months unless the EEC agrees that there is a need to make changes within a budget year. Any excess funds remaining as of the effective date of rates in GR-2009-0355, shall have interest applied equal to 7.72%, until such funds are expended. MGE's expenditures will be subject to a prudence review in any relevant MPSC proceedings.

ENERGY EFFICIENCY COLLABORATIVE

The Energy Efficiency Collaborative (EEC), which was formed in GT-2008-0005, will provide oversight for the design and implementation of energy efficiency programs for MGE's Residential and SGS classes. The members of the EEC include designated representatives from MGE, Commission Staff, Public Counsel and Department of Natural Resources. Each entity shall have one vote each. The EEC will seek to make decisions by consensus, but where consensus cannot be reached, any of the charter members may petition the Commission to resolve, in accordance with its normal procedural rules, any differences over the selection of specific future programs for implementation, funding, or any other aspects of the energy efficiency program development and evaluation process. Other appropriate parties, such as electric utilities with service territories that overlap MGE's service territory, that are acceptable to the EEC charter members may also participate in the EEC process but will not be part of the EEC decision making process.

OTHER CONDITIONS:

MGE will submit to the Commission Staff and the Office of the Public Counsel reports on a quarterly basis (due within 45 days from the end of the quarter) which will detail the cost and participation in the program. The following information will be included in the quarterly reports:

1. For the Energy Efficiency Education Program, MGE will report:
 - a. Summary information regarding the cost, type and number of educational programs implemented;
 - b. MGE's involvement in other energy conservation programs where MGE has worked in cooperation with other Energy Star® partners or energy conservation collaboratives to further public education;
 - c. Dollars spent on program including evaluation, administrative expenses and promotion/advertising; by type of promotion/advertising; and
 - d. Number of web site hits on the various pages of MGE's customer site.

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