

## MASTER CONSULTING SERVICES AGREEMENT

This Master Consulting Services Agreement (“Agreement”) is effective as of \_\_\_\_\_, 20\_\_ by and between El Paso Electric Company (“EPE”), a Texas corporation, and [Name of Consultant] (“Consultant”), a [State of incorporation or business registration and type of business organization].

### 1. Recitals.

- 1.1 EPE seeks to retain Consultant from time to time to provide certain consulting and other professional services and related deliverables.
- 1.2 Consultant is ready, willing, and able to undertake the duties and obligations set forth in this Agreement.
- 1.3 In consideration of the foregoing recitals and the mutual covenants contained in this Agreement, EPE and Consultant agree as provided below.

### 2. Services to Be Performed.

- 2.1 Subject in each instance to the parties’ execution of a statement of work (each a “Statement of Work” and, collectively, the “Statements of Work”) issued on a project-by-project basis, each of which shall be incorporated into this Agreement for all purposes, Consultant shall furnish all necessary supervision, labor, materials, tools, personal protective gear, and equipment to perform the services and provide the deliverables specified in and in the manner prescribed by this Agreement and the applicable Statement of Work. Changes to the scope of services or deliverables described in the applicable Statement of Work (including any corresponding increase or decrease in pricing) shall not be effective unless set forth in a written change order executed by EPE and Consultant.
- 2.2 No provision of this Agreement shall be interpreted or construed to preclude EPE from retaining other persons or entities to perform work or services similar to the services to be performed by Consultant under this Agreement.

### 3. Term and Termination of Agreement.

- 3.1 The term of this Agreement shall commence upon the date referenced in the initial paragraph of this Agreement (the “Effective Date”) and shall continue for a term of two (2) years from the Effective Date (the “Initial Term”). This Agreement shall automatically be renewed in successive terms of one (1) year each (each a “Renewal Term”), not to exceed three (3) Renewal Terms, unless terminated by either party upon written notice sent not less than thirty (30) days prior to the expiration of the then-current term. The foregoing provisions of this Section 3.1 notwithstanding, this Agreement shall remain in effect with respect to any applicable Statement of Work entered into prior to such termination.
- 3.2 EPE may terminate any uncompleted Statement of Work without cause upon written notice to Consultant. Upon receipt of notice under this Section 3.2, Consultant shall take immediate measures to mitigate its damages resulting from such termination and shall be entitled to payment of all fees earned plus costs and expenses reimbursable under the applicable Statement of Work and Section 5.6 of this Agreement through the date of termination (or, in the case of a fixed fee arrangement under which payment is based upon Consultant’s achievement of a specified milestone(s), the reasonable value of the services and deliverables performed and/or provided through the date of Consultant’s receipt of such notice) plus all (i) third party costs reasonably incurred to assemble the deliverables, and/or Confidential Information, if any, required to be delivered to EPE pursuant to this Section 3.2, and (ii) termination penalties and/or expenses actually paid to third parties by Consultant. If deliverables are to be prepared for and delivered to EPE pursuant to the applicable

Statement of Work or if EPE has provided Confidential Information (as defined in Section 9) to Consultant, Consultant shall, as a condition precedent to its entitlement to such payment, assemble and deliver to EPE all such work in progress and Confidential Information. Upon payment of the foregoing amounts, no further payment or reimbursements will be due Consultant for materials, tools, services, deliverables, fees, costs, expenses, or any other matter under this Agreement or the applicable Statement of Work.

- 3.3 Either party may upon written notice terminate a Statement of Work if the other party breaches a material provision of such Statement of Work or this Agreement in connection with its performance (or nonperformance) of such Statement of Work and such breach is not fully cured within thirty (30) days following the non-performing party's receipt of notice describing the nature of such breach in reasonable detail. In such event and subject to the restrictions and limitations prescribed by Section 7.3 and Section 7.4, the non-breaching party may take such action to enforce any other rights or remedies available under this Agreement, the affected Statement of Work, applicable law, and/or principles of equity.

#### **4. Compliance with Applicable Laws.**

- 4.1 Consultant shall perform all services in accordance and compliance with all federal, state, and local statutes, laws, ordinances, codes, rules, and regulations (collectively "Laws") including, without limitation, Laws governing workplace health and safety and the protection of the environment.

#### **5. Inspection, Acceptance, and Payment.**

- 5.1 EPE shall pay Consultant compensation for services and deliverables in accordance with the provisions of this Agreement and the applicable Statement of Work.
- 5.2 Each invoice shall conform to the particular requirements prescribed by the applicable Statement of Work and be sent to EPE by (i) electronic mail to [ap@epelectric.com](mailto:ap@epelectric.com), (ii) facsimile to (915) 543-2204, or (iii) United States mail or overnight courier service addressed to El Paso Electric Company, Attention Accounts Payable, 100 N. Stanton Street, El Paso, Texas 79901. A copy of each invoice shall be contemporaneously sent to the EPE project manager identified on the Work Order.
- 5.3 EPE may, for a period of fifteen (15) days following receipt of each of Consultant's invoices for services or deliverables, or both, review and inspect the corresponding services and deliverables for conformance with the provisions of Section 6.1, the applicable Statement of Work, and any change order. Consultant shall remedy all nonconforming services and deliverables within thirty (30) days (or such longer period as EPE may approve in writing in the exercise of its sole discretion) following its receipt of written notice describing such nonconformity(s) in reasonable detail. Services and deliverables that conform to the applicable requirements prescribed by Section 6.1, the applicable Statement of Work, and any corresponding change order shall be accepted by EPE for payment under and in accordance with Section 5. Services or deliverables that are neither accepted nor rejected within such fifteen (15) day period shall be deemed accepted for purposes of payment of any amount conditioned upon acceptance under the applicable Statement of Work or change order. Acceptance of services and deliverables shall not relieve or diminish Consultant's warranty obligations under Section 6 or any other duty or obligation prescribed in this Agreement or the applicable Statement of Work or change order.
- 5.4 EPE shall pay the undisputed portion of each invoice within thirty (30) days following receipt. In the event EPE disputes all or any portion of any invoice, it shall provide Consultant written notice within such thirty (30) day period describing the nature and scope of such dispute in reasonable detail. EPE shall pay simple interest at the rate of eight percent (8%) per annum on any payment made more than thirty (30) days after the date of receipt of the invoice;

provided, however, such interest shall not apply to any disputed portion of any invoice resolved in favor of EPE.

- 5.5 All payments or reimbursements otherwise due Consultant under this Agreement shall be subject to EPE's right to contractual setoff, which is hereby granted by Consultant to EPE to the fullest extent allowed by applicable law.
- 5.6 Regardless of whether Consultant's reasonable travel costs and expenses are reimbursable under the applicable Statement of Work, no reimbursement will be made for (i) alcoholic beverages, (ii) hotel pay-per-view movies or other entertainment expenses, or (iii) undocumented costs or expenses. Consultant shall use reasonable efforts to limit travel and living expenses by using coach airfare, booked at least seven (7) days in advance (unless otherwise approved in advance by EPE), staying in housing identified by EPE as offering contractors a discounted rate, and sharing rental cars.

## **6. Warranties and Ownership.**

- 6.1 All services and deliverables shall conform to all descriptions, specifications, and standards included or referenced in the applicable Statement of Work and be performed in good faith and with that level of care and skill ordinarily exercised by members of Consultant's profession. All deliverables media (including documentation) shall be free from defects in material and workmanship.
- 6.2 If, during the one (1) year period following EPE's acceptance (as described in Section 5.3) of all services and deliverables required to be provided under the applicable Statement of Work, any of such services or deliverables fails to conform to the warranty prescribed by Section 6.1, Consultant shall at its sole cost and expense and within thirty (30) days following its receipt of written notice describing such nonconformity in reasonable detail, re-perform such service or repair or replace such deliverable to correct such nonconformity. In the event such nonconformance is not cured within such thirty (30) day period, EPE may, as its sole alternative remedy for breach of such warranty, either (i) return all services and deliverables (to the extent reasonably practicable) and receive a refund of all fees and expenses paid to Consultant under the applicable Statement of Work, or (ii) retain the services and deliverables and, subject to the restrictions and limitations prescribed by Section 7.3 and Section 7.4, pursue its remedies at law to recover direct damages for such breach.
- 6.3 THE REMEDY PRESCRIBED BY SECTION 6.2 SHALL BE EPE'S SOLE AND EXCLUSIVE REMEDY FOR CONSULTANT'S BREACH OF THE LIMITED WARRANTIES PRESCRIBED BY SECTION 6.1.
- 6.4 EXCEPT AS PROVIDED IN SECTION 6.1, CONSULTANT DISCLAIMS ALL OTHER WARRANTIES WITH RESPECT TO THE SERVICES AND DELIVERABLES, INCLUDING WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.
- 6.5 Subject to the restrictions prescribed by this Agreement, EPE will own all written materials and other deliverables originally prepared for and delivered to EPE under this Agreement, excluding any Consultant Materials (as defined below) contained or embodied therein. Except to the extent specifically provided in the applicable Statement of Work, Consultant shall own any general skills, know-how, expertise, ideas, concepts, methods, techniques, processes, software, or other intellectual property or information that may have been discovered, created, developed or derived by Consultant either prior to or as a result of its provision of services under this Agreement ("Consultant Materials"). Consultant hereby grants to EPE a perpetual, royalty, irrevocable, non-exclusive license to use and modify Consultant Materials for EPE's own internal use.

## 7. Indemnification and Limitation of Liability.

- 7.1 Each party shall indemnify and hold harmless the other party and its respective owners, directors, officers, and employees for, against, and from any and all claims, liabilities, damages, losses, costs, and expenses of any kind or nature (including reasonable attorneys' fees) for personal injury (including mental anguish) to or death of any person or for destruction or loss of or damage to the property of any third person or entity in each instance to the extent determined to be proportionately attributable to the (i) negligence (including strict liability in tort), gross negligence, or willful misconduct of the indemnitor, its owners, directors, officers, employees, agents, or contractors arising from, in connection with, or in any way related to this Agreement or any Statement of Work (including the performance or nonperformance thereof), or (ii) breach of this Agreement or the applicable Statement of Work by the indemnitor, its owners, directors, officers, employees, agents, or contractors. It is the intention of the parties that the indemnitees shall be entitled to reciprocal and comparative indemnification under this Section 7.1.
- 7.2 Consultant shall indemnify, defend, and hold EPE harmless against any loss, cost, liability, or expense arising out of any claim that Consultant's services or deliverables or EPE's use of the deliverables under this Agreement or the applicable Statement of Work infringes any United States patent, copyright, or trade secret. Should Consultant's services or deliverables or EPE's use of the services or deliverables be determined to have infringed, or, if in Consultant's judgment such use is likely to infringe, any such patent, copyright, or trade secret, Consultant shall, at its option and at its sole cost and expense (i) obtain for EPE the right to continue to use the affected services and deliverables, (ii) replace or modify the affected services and deliverables to make such use non-infringing and substantially equivalent in function, or (iii) terminate the applicable Statement of Work and, upon EPE's return of the deliverables, refund all amounts paid by EPE under the applicable Statement of Work. This indemnity does not cover infringement claims arising directly from or caused directly by modifications to Consultant's services or the deliverables that are not made by Consultant, its agents, affiliates, or subcontractors or that result from the combination of such services or deliverables with products or services not provided or approved by Consultant. Consultant's obligations under this Section 7.2 are conditioned upon:
- (a) EPE promptly notifying Consultant in writing of any such claim;
  - (b) Consultant being able to control the defense and settlement of such claim; and
  - (c) EPE cooperating with all reasonable requests of Consultant (at Consultant's expense) in defending or settling such claim. EPE shall have the right, at its option and expense, to participate in the defense of any action, suit, or proceeding relative to such claims through counsel of its own choosing.
- 7.3 EXCEPT FOR CLAIMS FOR (i) INDEMNIFICATION UNDER SECTION 7.1 OR SECTION 7.2 OR BREACH OF THE CONFIDENTIALITY PROVISIONS OF SECTION 9, EACH TO WHICH THE PROVISIONS AND LIMITATIONS OF THIS SECTION 7.3 SHALL NOT APPLY, OR (ii) DAMAGE TO OR DESTRUCTION OF THE REAL PROPERTY OR TANGIBLE PERSONAL PROPERTY OF A PARTY, WHICH SHALL BE LIMITED TO THE AMOUNTS REQUIRED TO FULLY ABATE OR REPAIR SUCH DAMAGE TO OR TO REPLACE SUCH PROPERTY, NOT TO EXCEED \$1,000,000 PER OCCURRENCE, NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, OR EXEMPLARY DAMAGES, LOSS OF PROFITS OR REVENUE, LOSS OF USE OF PROPERTY, OR OTHER ECONOMIC DAMAGES. ALL PAYMENTS DUE CONSULTANT UNDER THIS AGREEMENT FOR SERVICES, DELIVERABLES, COSTS, AND EXPENSES SHALL BE DEEMED TO CONSTITUTE DIRECT DAMAGES (AND NOT SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES) FOR THE PURPOSES OF THIS SECTION 7.3.

7.4 EXCEPT FOR CLAIMS FOR (i) INDEMNIFICATION UNDER SECTION 7.1 OR SECTION 7.2 OR BREACH OF THE CONFIDENTIALITY PROVISIONS OF SECTION 9, EACH TO WHICH THE PROVISIONS OF THIS SECTION 7.4 SHALL NOT APPLY, OR (ii) DAMAGE TO OR DESTRUCTION OF REAL PROPERTY OR TANGIBLE PERSONAL PROPERTY OF EPE, WHICH SHALL BE SUBJECT TO THE PROVISIONS AND LIMITATIONS PRESCRIBED BY SECTION 7.3, THE LIABILITY OF CONSULTANT TO EPE ARISING FROM OR IN CONNECTION WITH ANY PARTICULAR STATEMENT OF WORK (INCLUDING ANY ASSOCIATED CHANGE ORDER) SHALL NOT EXCEED THE AGGREGATE AMOUNT TO BE PAID BY EPE UNDER SUCH STATEMENT OF WORK (INCLUDING ALL ASSOCIATED CHANGE ORDERS).

## **8. Force Majeure.**

8.1 Neither party shall be liable to the other for failure to perform or delay in performance of its obligations under any Statement of Work if and to the extent that such failure or delay is caused by or results from causes beyond its control, including, without limitation, any act (including delay, failure to act, or priority) of the other party or any governmental authority, civil disturbances, fire, acts of God, acts of public enemy, compliance with any regulation, order, or requirement of any governmental body or agency, or inability to obtain transportation or necessary materials in the open market.

8.2 As a condition precedent to any extension of time otherwise prescribed by Section 8.3, the party seeking an extension of time shall, not later than ten (10) days following the occurrence of the event giving rise to such delay, provide the other party written notice of the occurrence and nature of such event.

8.3 In the event of a delay in performance excusable under Section 8, the date of delivery or time for performance of the work will be extended by a period of time reasonably necessary to overcome the effect of such delay.

## **9. Confidentiality and Nondisclosure.**

9.1 For purposes of Section 9, "Confidential Information" shall mean all:

- (i) financial, statistical, marketing, customer, and personnel data and information furnished by or obtained from EPE;
- (ii) deliverables, output data, and information prepared for EPE under any Statement of Work;
- (iii) working papers, proprietary software, tools, and other methodologies of each party;
- (iv) software or other intellectual property licensed to EPE by any third party;
- (v) computer system and network security configuration and infrastructure, network diagrams and infrastructure (including network configuration), transmission data and information, information pertaining to systems defined as "Critical Cyber Assets" under the Critical Infrastructure Protection Standards promulgated by the North American Electric Reliability Corporation;
- (vi) all "critical energy infrastructure information" and other information concerning "critical infrastructure" as such terms are defined by the Federal Energy Regulatory Commission pursuant to 18 C.F.R. § 388.113(c) as may be amended or recodified from time to time;
- (vii) other data or information identified by a party in writing as confidential, proprietary, or secure or bearing a similar legend affixed by a party; and

- (viii) oral information that is designated as confidential, proprietary, or secure at the time of disclosure and which is summarized and reduced to a writing otherwise conforming to Section 9.1(vii) within ten (10) business days following disclosure.
- 9.2 Each party receiving Confidential Information (a "Recipient") shall use its best efforts and take all reasonable steps to ensure that Confidential Information of the disclosing party is not disclosed or transmitted to any person or entity other than such Recipient's officers, employees, contractors, and subcontractors (collectively "Representatives") who (i) have a need to review or know such Confidential Information in order to perform the services or provide the deliverables described in the applicable Statement of Work, (ii) are informed of the confidential nature of the Confidential Information, and (iii) agree to be bound by the terms of Section 9. Recipient shall not be required to hold confidential any Confidential Information that (a) becomes publicly available other than through Recipient, (b) is required to be disclosed by a governmental or judicial order, rule or regulation, (c) is independently developed by Recipient, or (d) becomes available to Recipient without restriction from a third party. Recipient shall be responsible for any breach of Section 9 by its Representatives.
- 9.3 Should any person or entity seek to legally compel Recipient (by oral or written questions, interrogatories, request for information or documents, subpoena, civil investigative demands, regulation, statute, or otherwise) to disclose any Confidential Information, Recipient will provide the disclosing party prompt written notice so that the disclosing party may seek a protective order or other appropriate remedy (including participating in any proceeding to which Recipient is a party, which Recipient will use its reasonable business and legal efforts to permit). If, in the absence of a protective order, Recipient is, in the opinion of its legal counsel, compelled to disclose the Confidential Information, Recipient may disclose only such of the Confidential Information to the person or entity compelling disclosure as is required by applicable law, order, rule, or regulation.
- 9.4 Recipient acknowledges that the disclosing party would be irreparably injured by any breach of Section 9 and that remedies at law may be inadequate to protect the disclosing party against such injury. Accordingly, Recipient agrees that the disclosing party shall be entitled to equitable relief including, without limitation, injunctive relief and specific performance, without proof of actual damages in the event of any actual or threatened breach of any provision of Section 9 by Recipient, and any requirement for the posting of a bond or similar security as a condition precedent to such relief is hereby waived. Such remedies shall not be deemed to be the exclusive remedies for a breach of Section 9 by Recipient, but shall be in addition to all other remedies available at law or in equity.
- 9.5 Recipient shall return all Confidential Information within ten (10) days following receipt of the disclosing party's written request for the return of such information.

## **10. Insurance.**

- 10.1 Consultant shall at all times during the term of this Agreement carry and maintain at its sole cost and expense the following insurance coverage in each case issued by an insurer having an A. M. Best Company financial strength rating of A- or greater and a financial size category ranking of class IX or higher:
- (i) commercial general liability coverage including broad form contractual liability with minimum limits of \$1,000,000 per occurrence and \$2,000,000 general aggregate;
  - (ii) business automobile liability coverage including owned, non-owned, and hired vehicles with a combined single limit of liability of not less than \$1,000,000 per occurrence;
  - (iii) workers' compensation and employer's liability coverage with minimum limits of liability of \$1,000,000; and

(iv) commercial umbrella liability coverage with minimum limits of \$3,000,000 per occurrence and \$3,000,000 general aggregate.

10.2 Each policy of insurance referenced in Section 10.1 shall be endorsed to (i) provide EPE not less than thirty (30) days advance written notice of the expiration, termination, cancellation, or modification of such policy, and (ii) waive subrogation of all claims against EPE. Each policy of insurance referenced in Section 10.1(i) and Section 10.1(ii) shall also be endorsed to name EPE as an additional insured.

10.3 On or before the commencement of services or conveyance of deliverables under this Agreement, Consultant shall provide EPE certificates of insurance evidencing the coverage and policy endorsements required by Section 10.1 and Section 10.2.

## 11. Notices.

11.1 Except as otherwise provided in this Agreement, all notices under this Agreement shall be in writing and be effective upon delivery if delivered by (i) hand, (ii) certified or registered United States Mail postage prepaid, or (iii) facsimile, provided that service by facsimile after 5:00 p.m. local time of the recipient shall be deemed delivered on the following business day, as follows:

(i) if notice is to Consultant:

[Name of Consultant]

Attention [redacted]

[Company Address]

[redacted]

Facsimile ( [redacted] ) [redacted]; or

(ii) if notice is to EPE:

El Paso Electric Company

Attention [redacted]

100 N. Stanton Street

El Paso, Texas 79901

Facsimile (915) [redacted]; and

if the notice is sent for the purposes described in Section 3.3, Section 8.2, Section 9.4, or Section 11.2, with a copy to:

El Paso Electric Company

Office of the General Counsel

100 N. Stanton Street

El Paso, Texas 79901

Facsimile (915) 521-4412.

11.2 Each party may change its address for purposes of notice under this Agreement by notice complying with Section 11.1.

## 12. Taxes.

12.1 The applicable Statement of Work shall prescribe the parties' respective responsibilities with respect to the invoicing and payment of state sales, use, gross receipts, or similar taxes, if any, applicable to the services and deliverables to be provided by Consultant thereunder.

12.2 EPE shall have no responsibility with respect to withholding, deductions, or payment of any federal or state income or employment-related taxes on behalf of Consultant or any of

Consultant's employees. Consultant agrees to pay and comply with and hold EPE harmless from and against the payment of all income and employment-related taxes that may be payable by Consultant under federal, state, or local laws arising out of the performance of any Statement of Work, including any interest or penalties. Consultant waives any and all claims for compensation because of any increase in the aforementioned taxes.

**13. Contracting and Subcontracting.**

- 13.1 Consultant may not subcontract all or any part of the services or deliverables without the prior written approval of EPE, and such subcontracting shall not relieve Consultant of any of its duties or obligations under this Agreement or the applicable Statement of Work.
- 13.2 As a condition precedent to any contracting or subcontracting under Section 13.1, such contractor or subcontractor must enter into an agreement with Consultant or its contractor, as applicable, containing the same restrictions and obligations imposed on Consultant under this Agreement and the applicable Statement of Work.

**14. Independent Contractors.**

Consultant is an independent contractor and nothing in this Agreement shall be construed or deemed to create a joint venture, partnership, or employer– employee relationship between the parties. Subject to the provisions of this Agreement, Consultant shall be solely responsible for and shall wholly control the details of the services to be performed under this Agreement including, but not limited to, (i) the means and methods of performing the services, (ii) when to start and stop work and to take breaks and to control the progress of the services, (iii) coordination of Consultant's services with the efforts of EPE's employees and other contractors retained by EPE, and (iv) the duty and obligation to select and furnish the personal protective gear, transportation, tools, implements, and supplies necessary to accomplish Consultant's duties and obligations under this Agreement.

**15. Consultant's Personnel.**

- 15.1 Consultant shall provide competent, experienced, and skilled personnel to perform all services.
- 15.2 Consultant shall remove from the performance or supervision of services each employee of Consultant (or its contractors or subcontractors as may be permitted by Section 13 of this Agreement) that EPE reasonably finds objectionable.
- 15.3 In the event Consultant's personnel require unescorted physical access or cyber access to any of EPE's Critical Cyber Assets (as described in Section 9.1(v)), Consultant shall:
  - (i) provide documentation (or a letter of affirmation) that such personnel have passed Consultant's personnel risk assessment and that such assessment satisfies all requirements prescribed by the Critical Infrastructure Protection Standards promulgated by the North American Electric Reliability Corporation;
  - (ii) provide immediate notification of a change in Consultant's personnel status such as termination or reassignment; and
  - (iii) require such personnel to complete on an annual basis any EPE required training for access to Critical Cyber Assets.

**16. Incorporation of Federal Laws.**

This Agreement incorporates the requirements of 29 C.F.R. § 471, 41 C.F.R. §§ 60-1.4(a), 60-250.5, 60-300.5, and 60-741.5, and 48 C.F.R. § 52-219.9 if and to the extent applicable. Additionally, federal regulations require incorporation of the following into this Agreement:

**Consultant and each of its approved subcontractors shall abide by the requirements of 41 CFR §§ 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals on the basis of protected veteran status or disability, and require affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans and individuals with disabilities.**

**17. Entire Agreement.**

This Agreement, together with the applicable Statement of Work, constitutes the entire agreement between the parties with respect to the services and deliverables and supersedes, except to the extent expressly incorporated herein, all prior negotiations, representations, and agreements relating thereto, whether written or oral. No amendments, changes, alterations, or modifications of this Agreement shall be effective unless in writing and executed by EPE and Consultant.

**18. Captions.**

Section headings are inserted for convenience only and in no way constitute a limitation of the scope of the subject matter to which they refer.

**19. Partial Invalidity.**

If any term or provision of this Agreement is determined to be invalid, void, or unenforceable, the remaining terms and provisions of this Agreement shall, to the extent reasonable and practicable, continue in full force in effect.

**20. Waiver.**

No waiver of the terms, conditions, and covenants of this Agreement shall be binding and effective unless the same shall be in writing signed by the parties. A waiver of any breach of the terms, conditions, and covenants of this Agreement shall be for that one time only and shall not apply to any subsequent breach.

**21. Assignment.**

Consultant shall not assign this Agreement to any person or entity without the prior written consent of EPE. Any attempted assignment in violation of this Section 20.1 shall be null and void.

**22. Attorneys' Fees.**

If legal action is filed to enforce the terms of this Agreement or applicable Statement of Work, the prevailing party shall be entitled to court costs, collection costs, and reasonable attorneys' fees in addition to any other relief to which that party may be entitled.

**23. Governing Law.**

This Agreement shall be governed by and construed under the laws of the State of Texas without reference to its rules governing conflicts of law or choice of laws that would require the application of the laws of a different state.

**24. Non-Solicitation of Employees.**

Absent prior written consent of the other party in each instance, neither party nor any of its related or affiliated persons or organizations, will, for so long as this Agreement is in effect, solicit for hire, hire or in any way employ or engage the services of or otherwise compensate any person who, in the preceding twelve (12) month period, was directly employed or otherwise retained (as an independent contractor or service provider) by the other party, its subsidiaries, affiliates, contractors, or subcontractors, until a period beginning twelve (12) months after such person's employment with the other party terminated. In the event of a breach of the provisions of this Section 23.1, the non-breaching party shall provide written notice to the other party of the alleged violation hereof and shall provide a cure period of thirty (30) days for the breaching party to remedy the violation if it is able and so chooses or to obtain the written consent of the non-breaching party to the hiring or solicitation of such employee or former employee. In the event that the breaching party fails to cure the violation or obtain the written consent of the non-breaching party within the cure period specified above, the non-breaching party shall be entitled to collect liquidated damages from the breaching party in an amount equal to the first year's compensation for the employee at issue. The liquidated damages specified above shall be the exclusive remedy for a violation of this Section 23.1 and the non-breaching party shall not seek or collect any additional damages or remedies (including equitable relief) in connection with the violation.

**25. Audit, Inspection, and Reproduction of Consultant's Records.**

At all times while this Agreement is in effect and for a period of four (4) years following any termination thereof, EPE shall be permitted, at its cost and expense, during Consultant's ordinary business hours and upon not less than ten (10) days written notice to Consultant, to audit, inspect, and reproduce at Consultant's premises any and all records related to each Statement of Work. The foregoing provisions of this Section 25 shall not apply to services or deliverables procured on a fixed price or unit rate basis.

**26. Survival.**

The provisions of Sections 3, 5, 6, 7, 9, 11, 12, 13, 14, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26 and 27 shall survive the termination of this Agreement; provided, however, the provisions of Sections 6.1 and 6.2 shall not survive the termination of this Agreement under Section 3.2 or Section 3.3.

**27. Multiple Counterparts.**

This Agreement may be signed in two or more counterparts, each of which shall be treated as an original but which, when taken together, shall constitute one and the same instrument.

[Name of Consultant]

El Paso Electric Company

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

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

\_\_\_\_\_  
Name

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date