



**CITY OF WHARTON
FINANCE COMMITTEE MEETING**

**Monday, October 14, 2024
6:00 PM**

***CITY HALL 120 EAST CANEY STREET
WHARTON, TEXAS 77488***

**NOTICE OF
CITY OF WHARTON
FINANCE COMMITTEE MEETING**

Notice is hereby given that a Finance Committee Meeting will be held on Monday, October 14, 2024, at 6:00 PM at the Wharton City Hall, 120 East Caney Street, Wharton, Texas, at which time the following subjects will be discussed to-wit:

SEE ATTACHED AGENDA

Dated this 10th day of October 2024.


By: 
Joseph R. Pace, City Manager

I, the undersigned authority, do hereby certify that the above Notice of Meeting of the Finance Committee Meeting is a true and correct copy of said Notice and that I posted a true and correct copy of said Notice on the bulletin board at City Hall of said City or Town in Wharton, Texas, a place convenient and readily accessible to the general public at all times, and said Notice was posted on October 10, 2024, at 4:30 p.m. and remained so posted continuously for at least 72 hours preceding the scheduled time of said Meeting.

The Wharton City Hall is wheelchair accessible. Access to the building and special parking is available at the primary entrance. Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services, such as interpreters for persons who are deaf or hearing impaired, readers, or large print, are requested to contact the City Secretary's Office at (979) 532-4811 Ext. 225 or by FAX (979) 532-0181 at least two (2) days prior to the meeting date. BRAILLE IS NOT AVAILABLE.

Dated this 10th day of October 2024.

CITY OF WHARTON

By: 
Paula Favors
City Secretary



A G E N D A
CITY OF WHARTON
Finance Committee Meeting
Monday, October 14, 2024
City Hall - 6:00 PM

Call to Order.

Roll Call.

Public Comments.


Review & Consider:

1. Minutes from the meeting held September 23, 2024.
2. Resolution: A resolution of the Wharton City Council authorizing the City Manager to approve concrete repairs at the Wharton Fire Station and authorizing the City Manager to execute all documents related to said repairs.
3. Resolution: A resolution of the Wharton City Council authorizing the purchase of a 2026 International HV607 4x2 with a 6–8-yard Dump Body Truck for the Public Works Department from Santex Truck Centers, LTD through the HGACBuy Cooperative Program and authorizing the City Manager to execute all documents related to said purchase.
4. Resolution: A resolution of the Wharton City Council authorizing the purchase of a Netzsch Nemo Progressing Cavity Pump for the Public Works Department from Odessa Pumps & Equipment, Inc. through the Buyboard Cooperative Program and authorizing the City Manager to execute all documents related to said purchase.
5. Resolution: A resolution of the Wharton City Council approving an Interlocal Agreement for the Municipally Owned Building Energy Efficiency Retrofits Program with the State Energy Conservation Office (SECO) and authorizing the City Manager of the City of Wharton to execute all documents related to said agreement.

Adjournment.

City of Wharton
 120 E. Caney Street
 Wharton, TX 77488

FINANCE COMMITTEE

Meeting Date:	10/14/2024	Agenda Item:	Minutes from the meeting held September 23, 2024.
<p>Attached is a copy of the draft minutes from the meeting held on September 23, 2024.</p>			
City Manager: Joseph R. Pace		Date: Thursday, October 10, 2024	
Approval: 			
Mayor: Tim Barker			

**MINUTES
OF
CITY OF WHARTON
FINANCE COMMITTEE MEETING
120 EAST CANEY STREET
WHARTON, TEXAS 77488
Monday, September 23, 2024–6:30 p.m.**

City Manager Joseph R. Pace declared a meeting of the City Council Finance Committee duly open for the transaction of business at 6:30 p.m.

Committee Members present: Mayor Tim Barker, Councilmember Larry Pittman, and Councilmember Russell Machann.

Committee Members absent: None.

City Council Members present: Councilmember Terry Freese and Councilmember David Voulgaris.

Staff members present: City Manager Joseph R. Pace, Finance Director Joan Anandel, Assistant to the City Manager Brandi Jimenez, City Secretary Paula Favors, EMS Director Christy Gonzales, Building Official Claudia Velasquez, Finance Accountant London Davis, Building Official Assistant Shelby Robertson, and Public Works Director Roderick Semien.

Staff members absent: None.

Visitors: None.

Public Comments. There were no public comments.

The first item on the agenda was to review and consider minutes from the meeting held on August 26, 2024. Councilmember Russell Machann made a motion to approve the minutes as presented. Councilmember Larry Pittman seconded the motion. All voted in favor.

The second item on the agenda was to review and consider an Ordinance: An ordinance levying a tax rate for the City of Wharton, Texas, for the Tax Year 2024; directing the Tax Assessor-Collector to assess, account for, and distribute the taxes as herein levied; and providing repealing and severability clauses. Finance Director Joan Anandel presented the draft ordinance levying a tax rate for the City of Wharton, Texas, for the Tax Year 2024 to the Committee. After some discussion, Mayor Tim Barker made a motion to approve the ordinance as presented. Councilmember Larry Pittman seconded the motion. All voted in favor.

The third item on the agenda was to review and consider a Resolution: A resolution of the Wharton City Council rescinding the City of Wharton Resolution No. 2024-85 and approving the purchase of a vehicle from Wharton County. EMS Director Christy Gonzales stated to the Committee that on August 26, 2024, the City Council approved Resolution No. 2024-85 for the purchase of a vehicle for the EMS Department from Lavaca County in the amount of \$10,000.00. She stated that since then, it had been determined that Lavaca County could not sell to a city outside of their county but that they could sell to another county. She stated that the City had to purchase the vehicle through Wharton County. She stated that on Monday, September 23, 2024, Wharton County presented this item before the Commissioners Court and they voted to approve the purchase of the vehicle from Lavaca County for \$10,000.00 and sell it to the City of Wharton. After some discussion, Councilmember Russell Machann made a motion to approve the resolution as presented. Mayor Tim Barker seconded the motion. All voted in favor.

The fourth item on the agenda was to review and consider a Resolution: A resolution of the Wharton City Council authorizing the purchase of equipment for the Public Works Department from Mustang CAT through the Sourcewell Cooperative Program and authorizing the City Manager to execute all documents related to said purchase. Public Works Director Roderick Semien stated to the Committee he received quotes for the purchase of the following items:

1. Caterpillar 920 Wheeled Roller in the amount of \$190,765.90.
2. Caterpillar 308 Mini Excavator in the amount of \$140,469.23.

He stated that both quotes were obtained from Mustang Machinery Company, LLC. D/B/A Mustang Cat and was a part of the Sourcewell Cooperative Program. He stated that the funds to pay for the equipment purchases had been allocated through the FEMA Alternate project funds. After some discussion, Councilmember Russell Machann made a motion to approve the resolution as presented. Councilmember Larry Pittman seconded the motion. All voted in favor.

The fifth item on the agenda was to review and consider a Resolution: A resolution of the Wharton City Council authorizing the City Manager to purchase two (2) vehicles for the City of Wharton Code Enforcement Department from Caldwell Country Chevrolet through the Buyboard Co-operative and authorizing the City Manager to execute all documents related to said purchase. Building Official Claudia Velasquez stated to the Committee that she had received a quote for the purchase of two (2) 2025 Chevrolet Trax vehicles for the Code Enforcement Department. She stated that the quote was received from Caldwell Country Chevrolet who was a member of the BuyBoard Co-operative and was in the amount of \$43,790.00 for the two vehicles. She stated that the funds to pay for the vehicles had been allocated through the FEMA Alternate project funds. After some discussion, Councilmember Larry Pittman made a motion to approve the resolution as presented. Mayor Tim Barker seconded the motion. All voted in favor.


The sixth item on the agenda was adjournment.

The meeting was adjourned at 6:40 p.m.

Joseph R. Pace, City Manager

City of Wharton
120 E. Caney Street
Wharton, TX 77488

FINANCE COMMITTEE

Meeting Date:	10/14/2024	Agenda Item:	Resolution: A resolution of the Wharton City Council authorizing the City Manager to approve concrete repairs at the Wharton Fire Station and authorizing the City Manager to execute all documents related to said repairs.
<p>Attached is a memo from Fire Chief Hector Hernandez regarding concrete repairs at the Wharton Fire Station. The City Staff solicited quotes for the concrete work; three (3) quotes were received.</p> <p>They are as follows:</p> <ul style="list-style-type: none">1. JJ Construction-\$17,500.002. Total Outdoor Solutions-\$14,858.003. Cuevas Renovations and Construction-\$17,800.00 <p>Funds to pay for the concrete repairs have been included in the FY25 Fire Department Budget.</p> <p>Chief Hernandez will be present to answer any questions.</p>			
City Manager: Joseph R. Pace			Date: Thursday, October 10, 2024
Approval: 			
Mayor: Tim Barker			



City of Wharton
120 E. Caney Street ° Wharton, TX
77488
Phone (979) 532-2491° Fax (979) 532-
0181

MEMORANDUM

To: Joseph R. Pace, City Manager

From: Hector Hernandez Fire Chief Wharton Fire Department

Date: October 7, 2024

Re: Construction Repair to Apparatus Apron

I received the following quotes for the concrete work needed on the apparatus apron and water fill site at the Fire Station.

Quotes were solicited from:

JJ Construction	\$17,500.00
Total Outdoor Solutions	\$14,858.00
Cuevas Renovations and Construction	\$17,800.00

It is recommended that Total Outdoor Solutions be approved for this project. Funds to pay for the concrete work and project have been included in the FY25 Fire Department Budget.

Please include this item on the October 14, 2024, Finance Committee agenda, and if approved, please place this item on the City Council Meeting on the same evening.

Please contact the undersigned for any questions.

Hector Hernandez
Fire Chief

ESTIMATE

Cuevas Renovations and
Construction
1819 Elm Hollow Way
Rosenberg, Texas 77471

victor.cuevas04@yahoo.com
+1 (979) 253-2211



Wharton Fire Department

Bill to

Wharton Fire Department

Ship to

Wharton Fire Department

Estimate details

Estimate no.: 1008

Estimate date: 05/13/2024

#	Date	Product or service	Description	Qty	Rate	Amount
1.		Concrete	11'x88'x8" thick	1	\$17,800.00	\$17,800.00
			-pull city permit			
			-break out concrete with rebar and haul off will use manual jack hammer around areas where existing electrical and water lines are present			
			-Grade area for 8" of concrete			
			-5/8" rebar 12" OCEW			
			-Install heavy duty yellow plastic chairs to raise rebar			
			-pour and finish 3500 psi concrete			
Total						\$17,800.00

**BID**

June 7, 2024

Total Outdoor Solutions, LLC
 Mark Mata
 1825 Foote St.
 Wharton, TX. 77488
 979-559-6027

Wharton Volunteer Fire Department
 319 N Fulton St
 Wharton, TX 77488
 979-532-4811
 firechief@cityofwharton.com

*Break out and dispose of 11x88 concrete	\$3,775.00
*Grade 11x88	
*5/8" rebar, 16" on center	
*Dial into existing	
*Pour concrete – 3500 PSI – 8"	
Labor and Materials	\$11,083.00

This estimate is for completing the job described above based on our evaluation. It does not include unforeseen price increases or additional labor and materials which may be required should problems arise.
50% of balance due before work begins. Remaining balance due upon completion.



806 Rice St • El Campo, Texas 77437

Invoice

0324

DATE 5-17-24

Name Fire Department Heriberto Hernandez

ADDRESS 219 N Fulton Wharf Ln 11458

PHONE _____

Signature _____

**CITY OF WHARTON
RESOLUTION NO. 2024-XX**

A RESOLUTION OF THE WHARTON CITY COUNCIL AUTHORIZING THE CITY MANAGER TO APPROVE CONCRETE REPAIRS AT THE WHARTON FIRE STATION AND AUTHORIZING THE CITY MANAGER TO EXECUTE ALL DOCUMENTS RELATED TO SAID REPAIRS.

WHEREAS, The Wharton City Council has appropriated funds for the repair of the concrete at the Wharton Fire Department; and,

WHEREAS, The Wharton City Council wishes to authorize the City Manager to approve the concrete repairs at the Wharton Fire Department from _____ in the amount of \$ _____; and,

WHEREAS, The Wharton City Council wishes to authorize the City Manager to execute all documents related to the said concrete repairs.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WHARTON, TEXAS:

SECTION I. The Wharton City Council hereby authorizes the City Manager to approve the concrete repairs at the Wharton Fire Department from _____ in the amount of \$ _____.

SECTION II. The Wharton City Council hereby authorizes the City Manager to execute all documents related to the concrete repair.

SECTION III. That this resolution shall become effective immediately upon its passage.

PASSED AND APPROVED this 14th day of October 2024.

CITY OF WHARTON


TIM BARKER
Mayor

ATTEST:

PAULA FAVORS
City Secretary

City of Wharton
120 E. Caney Street
Wharton, TX 77488

FINANCE COMMITTEE

Meeting Date:	10/14/2024	Agenda Item:	Resolution: A resolution of the Wharton City Council authorizing the purchase of a 2026 International HV607 4x2 with a 6–8-yard Dump Body Truck for the Public Works Department from Santex Truck Centers, LTD through the HGACBuy Cooperative Program and authorizing the City Manager to execute all documents related to said purchase.
<p>The City Staff received a quote for the purchase of a 2026 International HV607 4x2 with a 6-8-yard dump body truck for the Public Works Department from Santex Truck Centers, LTD, in the amount of \$123,870.00. The City is a member of and participates in the HGACBuy Cooperative Purchasing Program.</p> <p>Public Works Director Roderick Semien will be present to answer any questions.</p>			
City Manager: Joseph R. Pace			Date: Thursday, October 10, 2024
Approval: 			
Mayor: Tim Barker			



City of Wharton
Public Works Department
1005 E. Milam Street ° Wharton, TX
77488
Phone (979) 532-2491 ext. 801 ° Fax
(979) 531-1744

MEMORANDUM

Date: October 9th 2024

To: Mr. Joseph R. Pace, City Manager

From: Roderick Semien, Public Works Director

Re: Authorization to purchase a 2026 International HV607 4x2 with 6–8-yard Dump Body.

Attached please find the quote for a Non CDL 6-8yard dump truck from Santex Truck Centers LTD. The vendor is a member of the HGAC Buy Cooperative and the vehicle will be purchased through the FEMA alternate river project funds. The total price of the vehicle is listed below.

2026 International HV607 4x2 with 6–8-yard Dump body: \$123,870

I would like this placed on the City Council agenda for October 14th, 2024

Should you have any questions, please contact me. (979) 523-2491 Ext. 800

Thank you.



CONTRACT PRICING WORKSHEET
For MOTOR VEHICLES Only

Contract
No.:

HT06-20

Date
Prepared:

Item-3.
9/26/2024

This Worksheet is prepared by Contractor and given to End User. If a PO is issued, both documents MUST be faxed to H-GAC @ 713-993-4548. Therefore please type or print legibly.

Buying Agency:	CITY OF WHARTON	Contractor:	SANTEX TRUCK CENTERS, LTD
Contact Person:	RODERICK SEMIEN	Prepared By:	CARLOS WEEBER
Phone:	979-532-4811	Phone:	713-674-3444
Fax:		Fax:	
Email:	rsemien@cityofwharton.com	Email:	cweeber@kyrishtrucks.com

Product Code:	F5	Description:	2026 INTERNATIONAL HV607 4x2 WITH 6-8 YARD DUMP BODY
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A. Product Item Base Unit Price Per Contractor's H-GAC Contract: 74751

B. Published Options - Itemize below - Attach additional sheet(s) if necessary - Include Option Code in description if applicable.

(Note: Published Options are options which were submitted and priced in Contractor's bid.)

Description	Cost	Description	Cost
01CBU FRAME RAILS HEAT TREATED 120K PSI	118	08XHN HORN AIR, SINGLE	94
4619 TRAILER CONNECTIONS 4-WHEEL HAND CTRL	542	08XPK POWER SOURCE ADDL USB-A, USB-C	109
04EBS AIR DRYER BENDIX AD-9 W/HEATER	450	10WCY SAFETY TRIANGLES	47
5708 STEERING COLUMN TILT	125	10XAN FIRE EXTINGUISHER 5 LB	154
07SCP ENGINE EXH BRAKE CUMMINS ISB	184	12EXT ENGINE, DIESEL CUMMINS B6.7 240 HP	1776
07WCW TAIL PIPE HORIZ 90 DEGREE RIGHT SIDE	120	12WVG EPA COMPLIANCE DECAL	97
08HAB BODY BUILDER WIRING LIGHTS CONNECT	100	13BBK TRANS, AUTO ALLISON 2500 RDS 6-SPEED	479
08HAH ELECTRIC TRAILER BRAKE ACCOM PACKAGE	363	13WLN TRANS SYNTH OIL	151
08RMH BATTERY DISCONNECT SWITCH	176	14VAG SUSP, REAR 20K SPRING, 4500LB AUX SPRING	134
08RPS RADIO AM/FM/WB/CLOCK BLUETOOTH	483	15SGJ FUEL TANK 50 GAL ALUMIN	100
08THB BACK UP ALARM	120	Subtotal From Additional Sheet(s):	35087
08TKK TRAILER AUX FEED CIRCUIT	123	Subtotal B:	41132

C. Unpublished Options - Itemize below / attach additional sheet(s) if necessary.

(Note: Unpublished options are items which were not submitted and priced in Contractor's bid.)

Description	Cost	Description	Cost
UNPUBLISHED DUMP TRUCK FEATURES	3887		
		Subtotal From Additional Sheet(s):	
		Subtotal C:	3887

Check: Total cost of Unpublished Options (C) cannot exceed 25% of the total of the Base Unit Price plus Published Options (A+B).	For this transaction the percentage is:	3%
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D. Total Cost Before Any Applicable Trade-In / Other Allowances / Discounts (A+B+C)

Quantity Ordered:	1	X Subtotal of A + B + C:	119770	=	Subtotal D:	119770
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E. H-GAC Order Processing Charge (Amount Per Current Policy)	Subtotal E:	1000
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F. Trade-Ins / Special Discounts / Other Allowances / Freight / Installation / Miscellaneous Charges

Description	Cost	Description	Cost
FREIGHT	3100		
		Subtotal F:	3100

Delivery Date:	G. Total Purchase Price (D+E+F):	123870
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CONTRACT PRICING WORKSHEET

For MOTOR VEHICLES Only

**Contract
No.:**

HT06-20

Date
Prepared:

9/26/2024

This Worksheet is prepared by Contractor and given to End User. If a PO is issued, both documents MUST be faxed to H-GAC @ 713-993-4548. Therefore please type or print legibly.

Buying Agency:	CITY OF WHARTON		Contractor:	SANTEX TRUCK CENTERS, LTD	
Contact Person:	RODERICK SEMIEN		Prepared By:	CARLOS WEEBER	
Phone:	979-532-4811		Phone:	713-674-3444	
Fax:			Fax:		
Email:	rsemien@cityofwharton.com		Email:	cweeber@kyrishtrucks.com	
Product Code:	F5	Description:	2026 INTERNATIONAL HV607 4x2 WITH 6-8 YARD DUMP BODY		

A. Product Item Base Unit Price Per Contractor's H-GAC Contract:

B. Published Options - Itemize below - Attach additional sheet(s) if necessary - Include Option Code in description if applicable.

(Note: Published Options are options which were submitted and priced in Contractor's bid.)

Description	Cost	Description	Cost
16SDH MIRROR CONVEX HOOD MTD RIGHT SIDE	110	40RBJ TOWING SVC 48 MONTH - \$550 MAX	1400
16SMN SEAT, PASS, NON-SUSP HIGH BACK VINYL	368	40YAK EXT VEH COVERAGE 48 MON/100 K MILES	2250
16SNP MIRROR C-LOOP PWR ADJ, HEATED BLACK	267	40YYJ EXT CUMMINS ENG/AFT 60MO/100 K MILES	3380
16XDU TELEMATIC BRKT MOUNT SCREEN USB	265		
10AKG BDY INTG, PTO, ROCKER SWITCHES	148		
		CURRY SUPPLY 6YD DUMP BODY QUOTE Q-03355-1	26899
		Subtotal From Additional Sheet(s):	
		Subtotal B:	35087

C. Unpublished Options - Itemize below / attach additional sheet(s) if necessary.

(Note: Unpublished options are items which were not submitted and priced in Contractor's bid.)

Description	Cost	Description	Cost
		Subtotal From Additional Sheet(s):	
		Subtotal C:	0

Check: Total cost of Unpublished Options (C) cannot exceed 25% of the total of the Base Unit Price plus Published Options (A+B).

For this transaction the percentage is:

0%

D. Total Cost Before Any Applicable Trade-In / Other Allowances / Discounts (A+B+C)

Quantity Ordered:	1	X Subtotal of A + B + C:	35087	=	Subtotal D:	35087
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E. H-GAC Order Processing Charge (Amount Per Current Policy)	
1. H-GAC Order Processing Charge (Amount Per Current Policy)	

Subtotal E:[illegible][illegible]**Delivery Date:**

G. Total Purchase Price (D+E+F):

35087



Curry Quote

Item-3.

Quote #: Q-03355-1
Date: 9/24/2024, 8:32 AM
Expires On: 11/23/2024

Curry Supply

Your Jobs. Our Trucks.
[VISIT OUR WEBSITE!!](#)

1425 11th Ave
Altoona, Pennsylvania 16601
USA
Phone: 814-793-2829
Fax: 814-793-4877
Email: sales@currysupply.com

Salesperson: Marshall Hale
Phone: (281) 428-6539
Email: ehale@currysupply.com

PRODUCT CODE	TERMS	STOCK LOCATION (FOB)
	Net 30	Hockley, TX

Bill To

Kyrish Truck Centers
8900 N. Loop E.
Houston, TX 77029
USA

Ship To

Carlos Weeber
Kyrish Truck Centers
8900 N. Loop E.
Houston, TX 77029
USA
(713) 674-3444
cweeber@kyrishtrucks.com

0. OTHER OPTIONS

QTY	PART #
1.00	6YD-HY-FLO

Chassis Requirements:

CA/CT Required (Inches): 84", AF Required (Inches): 39.5"
BOC to EOF Required (Inches): 123.5", Minimum Front Axle Rating: 10,000
Minimum Rear Axle Rating: 19,000, Minimum GVWR: 25,999
Minimum Engine HP: 200 HP, PTO Prevision Required: No

TI00675812 Curry Supply 6 Yard Dump Body - Hy Flo
PC-SL316-84-120-40/26/32-5020-QINST
Body ID: 84, Body OD: .96, Body Length: 10 FT
Hoist Model:5020, W/SUBFRAME QUICK MOUNT *
Frame Style: .TRAPEZOIDAL, Crossmember Spacing: NO CROSSMEMBERS
Floor Style:.45 DEG 8" BEVEL, Front Style: STRAIGHT
Rear Style.: STRAIGHT, Tailgate Style: DOUBLE ACTING
Front Height: 40, Side Height Front:.26, Side Height Rear:26, Rear Height:32
Front Material, Side Material, Rear Material; SHEET-10GA A1011 45K MIN
Floor Material:PLATE-3/16 A572 GR50
Longmember Material:PLATE-3/16 A572 GR50
Rear Cornerpost and Rear Apron Material: HI-TEN
Side Bracing: .NO SIDE, BRACING-FRONT POST ONLY
Rear Cornerpost Width: 10
Tailgate Release Style: MANUAL

QTY	PART #	Item-3.
<p>Upper Tailgate Hardware: 3/4 THICK HINGE PLATE Tailgate Bracing Style: 1 HORIZONTAL / 2 VERTICALS Coal Chute: YES * Coal Chute Style: PULL DOWN W/OFFSET HANDLE * Coal Chute Location.: .CENTER *</p> <p>Rear Cornerpost Light Cutouts: 1 OVAL + MARKERS * 3/4" MARKER LIGHTS AT FRONT* * BOLT ON CABSHIELD FOR F650/750* * MUD FLAP BRACKETS TO REAR OF BODY* * TARP MOUNTING BUCKETS FOR FRONT BULKHEAD TO FIT TARP #1644323* * TARP ROPE HOOKS* * BLAST & PAINT BLACK* * ADD CONSPICUITY TAPE TO LOWER SIDE RUBRAIL & LOWER TG BRACE* * * SIDES - 1 3/4" FROM BOTTOM EDGE TO THE TAPE, 2" IN FROM EACH END OF BODY** * TAPE TO HAVE CURRY LOGO* ** TAILGATE - CENTERED ON LOWER BRACE, 6" FROM EACH SIDE**</p> <p>QUICK INSTALL HY-FLO EDA HYDS *RAISE HYD TANK UP BETWEEN SUBFRAME* ASSY CABSHIELD BOLTON2 24" 10GA W&P BLK, TARP SPRING TYPE ASPHALT 10' X 96 ASSY HITCHPLATE CURRY PNT, BODY RAISED IND. KIT FOR SERVICE</p> <p>KIT CURRY PARTS 6YD - Includes: - PINTLE HOOK, 20 TON (ATTACH) - 7 WAY RV BLADE, FEMALE WAYTEK 37676 - 7 WAY SOCKET BOOT FASTENAL 10270-11074 - BRAKE CONTROLLER, ELECTRONIC - BREAKER, 20 AMP, 12V - LAMP, LIC CHROME HOUSING - FUSE HOLDER, ANL300 BUSS (qty. 2), - FUSE, 300 AMP, BUSS (75270) (qty. 2) - BACKUP ALARM, - CABLE, EXTENSION - 7' DA (4-WIRE) A15 (1) 9030 (89749)BRAKE CONTROLLER, VOYAGER ELEC, (1) 1008934 BACK UP ALARM (2) B36LC-1 MUDFLAP, 36" SINGLE (SRI2436A1WR.12700) (1) RS-73B-720NCS Curry Supply Back Up Camera Standard 6 yard Hy-Flo dump install, Install by Curry Supply</p> <p>Safety Add Ons 1 Roadside Safety Kit, 5LB Fire Extinguisher (PN:01797877) - 10 Person ANSI First Aid (PN:30143), Roadside Emergency Warning Triangle</p>		
Total:		\$26,899.00

TOTAL DEPOSIT REQUIRED: \$4,673**Terms & Conditions**

All quotes may be subject to an imposed chassis and/or supplier surcharge prior to shipment of the completed unit. Chassis availability and pricing are subject to prior sale.

Any invoice not paid within thirty- (30) days of billing is subject to a 1.5% monthly interest charge.

If customer terminates or cancels this sale prior to full delivery and payment, customer shall be liable for a cancellation fee per Curry Supply standard cancellation policy. Customer agrees to pay any Cancellation Fee within ten (10) days of the cancellation notice to Curry Supply.

ALL QUOTES VALID FOR 30 DAYS - ALL IN STOCK UNITS SUBJECT TO PRIOR SALE - PRICES BASED UPON TOTAL PURCHASE - ALL DELIVERY, TRAINING OR CONSULTING SERVICES TO BE BILLED AT PUBLISHED RATES FOR EACH ACTIVITY INVOLVED - WE SHALL NOT BE LIABLE FOR ANY LOSS OF PROFITS, BUSINESS, GOODWILL, DATA, INTERRUPTION OF BUSINESS, NOR FOR INCIDENTAL OR CONSEQUENTIAL MERCHANTABILITY OR FITNESS OF PURPOSE, DAMAGES RELATED TO THIS AGREEMENT.

Signature:

Effective Date:

Name (Print):

#:

PURCHASE ORDER

Please sign and email to Marshall Hale at ehale@currysupply.com.

If you have any further questions please call me at (281) 428-6539

THANK YOU FOR YOUR BUSINESS!

**CITY OF WHARTON
RESOLUTION NO. 2024-XX**

A RESOLUTION OF THE WHARTON CITY COUNCIL AUTHORIZING THE PURCHASE OF A 2026 INTERNATIONAL HV607 4X2 WITH A 6-8-YARD DUMP BODY TRUCK FOR THE PUBLIC WORKS DEPARTMENT FROM SANTEX TRUCK CENTERS, LTD THROUGH THE HGACBUY COOPERATIVE PROGRAM AND AUTHORIZING THE CITY MANAGER TO EXECUTE ALL DOCUMENTS RELATED TO SAID PURCHASE.

WHEREAS, A quote was received for the purchase of a 2026 International HV607 4x2 with 6-8 Yard dump body truck for the Public Works Department; and,

WHEREAS, The City of Wharton is a member of and participates in the HGACBuy Cooperative Purchasing Program; and,

WHEREAS, Santex Truck Centers, LTD submitted a quote in the amount of \$123,870.00; and,

WHEREAS, The Wharton City Council wishes to approve Santex Truck Centers, LTD for the purchase of a 2026 International HV607 4x2 with 6-8 yard dump body in the amount of \$123,870.00 for the Public Works Department; and,

WHEREAS, The Wharton City Council wishes to authorize the City Manager of the City of Wharton to execute all documents related to said purchase.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WHARTON, TEXAS:

SECTION I. The Wharton City Council hereby authorizes the City Manager to purchase a 2026 International HV607 4x2 with 6-8 yard dump body truck for the Public Works Department from Santex Truck Centers, LTD through the HGACBuy Cooperative Purchasing Program in the amount of \$123,870.00

SECTION II. The Wharton City Council hereby authorizes the City Manager to execute all documents related to the purchase of the equipment.

SECTION III. That this resolution shall become effective immediately upon its passage.

PASSED AND APPROVED this 14th day of October 2024.

CITY OF WHARTON


TIM BARKER
Mayor

ATTEST:

PAULA FAVORS
City Secretary

City of Wharton
120 E. Caney Street
Wharton, TX 77488

FINANCE COMMITTEE

Meeting Date:	10/14/2024	Agenda Item:	Resolution: A resolution of the Wharton City Council authorizing the purchase of a Netzsch Nemo Progressing Cavity Pump for the Public Works Department from Odessa Pumps & Equipment, Inc. through the Buyboard Cooperative Program and authorizing the City Manager to execute all documents related to said purchase.
<p>The City Staff received a quote for the purchase of a Netzsch Nemo Progressing Cavity Pump for the Public Works Department in the amount of \$25,986.00. The City is a member and participates in the BuyBoard Cooperative Purchasing Program.</p> <p>Public Works Director Roderick Semien will be present to answer any questions.</p>			
City Manager: Joseph R. Pace			Date: Thursday, October 10, 2024
Approval: 			
Mayor: Tim Barker			



City of Wharton
Public Works Department
1005 E. Milam Street ° Wharton, TX
77488
Phone (979) 532-2491 ext. 801 ° Fax
(979) 531-1744

MEMORANDUM

Date: October 9, 2024
To: Mr. Joseph R. Pace, City Manager
From: Roderick Semien, Public Works Director
Re: Authorization to purchase a Progressing Cavity Pump (Sludge Pump)

Attached please find a quote from Odessa Pumps for the purchase of a sludge pump at Waste Water Treatment Plant #2. Odessa Pumps is a member of Buy Board Cooperative and will be purchased through the FEMA Alternate River Project Funds. The total price of the pump is listed below.

Odessa pump Sludge pumps: \$25,986.00

I would like this placed on the City Council agenda for October 14, 2024.

Should you have any questions, please contact me. (979) 523-2491 Ext. 800.

Thank you.

9/25/2024 2:36:51 PM

ODESSA PUMPS & EQUIPMENT, INC
www.odessapumps.com
ODESSA TX 79766
UNITED STATES

1-432-333-2817

Customer: A003839

CITY OF WHARTON
120 E CANEY ST
WHARTON TX 77488-5006
UNITED STATES

Phone:

Fax:

Estimate	Terms	Quote Date	Expiration Date	Salesperson	Customer	Currency
EO-0034631	NET 30 DAYS	9/25/2024	10/25/2024	OP307	USD	US Dollar
Quantity		Item	Unit Price		Extended Price	
1.000		QUOTED ITEM	23,986.00000		23,986.00	
EA		NE60-Progressing Cavity Pump bare shaft				
NETZSCH NEMO Progressing Cavity Pump Model NE60A bare shaft (no drive and no baseplate)						
1.000		FREIGHT - ESTIMATED	2,000.00000		2,000.00	
EA		EST. FREIGHT				

LEAD TIME 2-3 WEEKS
FREIGHT IS ESTIMATED IN PRICING
ESTIMATE VALID FOR 30 DAYS
BEST REGARDS, DEVIN RICHARD

CONTACT LOCATION:

ODESSA PUMPS
5654 KINGPIN DR.
CORPUS CHRISTI, TX 78405
(361) 289-6602

**** BUY BOARD 672-22 ****

9/25/2024 2:36:51 PM

ODESSA PUMPS & EQUIPMENT, INC
www.odessapumps.com
ODESSA TX 79766
UNITED STATES

1-432-333-2817

Customer: A003839

CITY OF WHARTON
120 E CANEY ST
WHARTON TX 77488-5006
UNITED STATES

Phone:

Fax:

Estimate	Terms	Quote Date	Expiration Date	Salesperson	Customer Currency
EO-0034631	NET 30 DAYS	9/25/2024	10/25/2024	OP307	USD US Dollar
Sale Amount:					25,986.00
Order Disc(0.0000%):					0.00
Surcharge:					N/A
Sales Tax:					0.00
Misc Charges:					0.00
Total Amount:					25,986.00

REMIT TO: ODESSA PUMPS & EQUIPMENT INC P.O. BOX 207614 DALLAS, TX 75320-7614

Terms and
Conditions



[DNOW Terms and Conditions](#)

**CITY OF WHARTON
RESOLUTION NO. 2024-XX**

A RESOLUTION OF THE WHARTON CITY COUNCIL AUTHORIZING THE PURCHASE OF A NETZSCH NEMO PROGRESSING CAVITY PUMP FOR THE PUBLIC WORKS DEPARTMENT FROM ODESSA PUMPS & EQUIPMENT, INC. THROUGH THE BUYBOARD COOPERATIVE PROGRAM AND AUTHORIZING THE CITY MANAGER TO EXECUTE ALL DOCUMENTS RELATED TO SAID PURCHASE.

WHEREAS, A quote was received for the purchase of a Netzsch Nemo Progressing Cavity Pump for the Public Works Department; and,

WHEREAS, The City of Wharton is a member of and participates in the BuyBoard Cooperative Purchasing Program; and,

WHEREAS, Odessa Pumps & Equipment, Inc. submitted a quote in the amount of \$25,986.00; and,

WHEREAS, The Wharton City Council wishes to approve Odessa Pumps & Equipment, Inc. for the purchase of a Netzsch Nemo Progressing Cavity Pump in the amount of \$25,986.00 for the Public Works Department; and,

WHEREAS, The Wharton City Council wishes to authorize the City Manager of the City of Wharton to execute all documents related to said purchase.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WHARTON, TEXAS:

SECTION I. The Wharton City Council hereby authorizes the City Manager to purchase a Netzsch Nemo Progressing Cavity Pump for the Public Works Department from Odessa Pumps & Equipment, Inc., through the BuyBoard Cooperative Purchasing Program in the amount of \$25,986.00.

SECTION II. The Wharton City Council hereby authorizes the City Manager to execute all documents related to the purchase of the equipment.

SECTION III. That this resolution shall become effective immediately upon its passage.

PASSED AND APPROVED this 14th day of October 2024.

CITY OF WHARTON


TIM BARKER
Mayor

ATTEST:

PAULA FAVORS
City Secretary

City of Wharton
120 E. Caney Street
Wharton, TX 77488

FINANCE COMMITTEE

Meeting Date:	10/14/2024	Agenda Item:	Resolution: A resolution of the Wharton City Council approving an Interlocal Agreement for the Municipally Owned Building Energy Efficiency Retrofits Program with the State Energy Conservation Office (SECO) and authorizing the City Manager of the City of Wharton to execute all documents related to said agreement.
<p>On July 26, 2024, the City Staff submitted an application to the State Energy Conservation Office (SECO) for new energy efficiency retrofit equipment for the Wharton Civic Center in the amount of \$250,000.00. The improvements included six (6) air conditioning units, replacement of fourteen (14) windows, and weatherstripping on approximately six (6) doors.</p> <p>On August 28, 2024, the Staff was notified that the application had been approved for funding.</p> <p>Attached is the Interlocal Agreement for the Municipally Owned Building Energy Efficiency Retrofits Program.</p> <p>Finance Director Joan Andel will be present to answer any questions.</p>			
City Manager: Joseph R. Pace			Date: Thursday, October 10, 2024
Approval: 			
Mayor: Tim Barker			



City of Wharton

120 E. Caney Street ° Wharton, TX
77488

Phone (979) 532-2491° Fax (979) 532-
0181

MEMORANDUM

To: Mr. Joseph R. Pace
City Manager

From: Joan Andel

Date: October 8, 2024

Re: State Energy Conservation Office Award

On July 26, 2024, I submitted an application to the State Energy Conservation Office (SECO) for new energy efficiency retrofit equipment for the Wharton Civic Center in the amount of \$250,000. The improvements included six (6) air conditioning units, replacement of fourteen (14) windows, and weatherstripping on approximately six (6) doors.

On August 28, 2024, we were notified that we had been approved for the funding. Attached is the Interlocal Agreement for the Municipally Owned Building Energy Efficiency Retrofits Program. Please place this on the Finance Committee agenda on October 14, 2024, for approval to accept the agreement and to recommend to the City Council for approval on the same evening.

Should you have any questions, please contact me.

Thank you.

STATE OF TEXAS

STATE ENERGY CONSERVATION OFFICE

COUNTY OF TRAVIS

AGREEMENT

CM24103

**INTERLOCAL AGREEMENT
FOR THE MUNICIPALLY OWNED BUILDING ENERGY EFFICIENCY RETROFITS PROGRAM**

This interlocal agreement ("Agreement") is entered into by and between the Texas Comptroller of Public Accounts ("Comptroller"), State Energy Conservation Office ("SECO") and City of Wharton ("Contractor") located at 120 E. Caney, Wharton, Texas 77488.

I. Recitals

Whereas, on June 28, 2024, Comptroller issued a Request for Applications No. EECBG-IIJA1-2024 ("RFA") for the Municipally Owned Building Energy Efficiency Retrofits Program to convert to energy efficiency retrofits;

Whereas, City of Wharton submitted an application on or before August 16, 2024, in response to Comptroller's RFA ("Application");

Whereas, City of Wharton was selected as a Successful Applicant;

Whereas, under this Agreement, City of Wharton shall fully comply with all terms, conditions, requirements and other provisions of this Contract, including those set forth in the Attachments attached hereto and incorporated herein for all purposes; and

Whereas, in consideration of City of Wharton's compliance with all requirements of this Contract, Comptroller awards this Contract to the City of Wharton.

Now, therefore, the parties hereby agree as follows:

II. Authority

This Agreement is entered into pursuant to authority granted in Chapter 403, Section 403.11, Texas Government Code; Chapter 447, Texas Government Code; the Oil Overcharge Restitutionary Act, Chapter 2305, Texas Government Code; the Interlocal Cooperation Act, Chapter 791, Texas Government Code; and the State of Texas Oil Overcharge Funds Disbursement Plan. Funding for this program is provided by federal funds approved by the United States Department of Energy ("DOE").

III. Services

City of Wharton shall provide to Comptroller all of the services and deliverables described in and in the manner required by this Agreement all of the following documents ("Services") as attached hereto and incorporated as part of this Agreement for all purposes. All terms and conditions of Comptroller's RFA shall apply.

<u>Attachment A:</u>	Deliverables Statement;
<u>Attachment B:</u>	Budget;
<u>Attachment C-1:</u>	Assurance of Compliance, Nondiscrimination in State Assisted Programs;
<u>Attachment C-2:</u>	Assurance of Compliance, Nondiscrimination in State Assisted Programs;
<u>Attachment D:</u>	Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion-Lower Tier Covered Transactions;
<u>Attachment E:</u>	Certifications Regarding Lobbying; Debarment, Suspension and Other Responsibility Matters; and Drug-Free Workplace Requirements;

<u>Attachment F:</u>	Disclosure of Lobbying Activities;
<u>Attachment G:</u>	Assurances – Non-Construction Programs;
<u>Attachment H:</u>	Intellectual Property Provisions;
<u>Attachment I:</u>	Subcontracting Provisions; Mandatory Flowdown Provision;
<u>Attachment J:</u>	Execution of Application;
<u>Attachment K:</u>	Nondisclosure Agreement;
<u>Attachment L:</u>	Comptroller's RFA;
<u>Attachment M:</u>	City of Wharton's Application;
<u>Attachment N:</u>	Build America, Buy America
<u>Attachment O:</u>	Davis-Bacon Act
<u>Attachment P:</u>	LCPTTracker Flow Chart
<u>Attachment Q:</u>	LCPTTracker Training Schedule

In the event of a conflict, the documents shall control in the following order of precedence:

1. This Agreement, excluding Attachments;
2. Attachments A and B;
3. Attachments C-1 through H;
4. Attachment I;
5. Attachment O;
6. Attachment P;
7. Attachment N;
8. Attachment J;
9. Attachment K;
10. Attachment L;
11. Attachment M;

City of Wharton represents and warrants that it completed and provided the following Attachments to Comptroller prior to executing this Agreement: C-1, D, E, F, G, H, I, J, K, N, and O. In addition, City of Wharton represents and warrants that each of its subcontractors will complete and provide an Attachment C-2 to City of Wharton and Comptroller prior to City of Wharton executing this Agreement.

City of Wharton shall retain full control over the personnel, equipment, supplies, and other items City of Wharton selects as necessary to provide all of the services described in this Agreement.

City of Wharton shall submit such records, information, and reports in such form and at such times as may be required by Comptroller; these reports shall include, but are not limited to, the reports specified in Attachment A.

City of Wharton's performance under this Agreement is limited to the requirements set forth in this Agreement, including services reasonably related to satisfying those requirements.

City of Wharton represents and warrants that it has the requisite qualifications, experience, personnel and other resources to provide all of the required Services to Comptroller in the manner required by this Agreement. Comptroller shall look solely to City of Wharton for performance of this Agreement. City of Wharton shall provide the services under the direction of Comptroller. City of Wharton shall be the sole point of Contract responsibility. City of Wharton shall be liable, both individually and severally, for the performance of all obligations under this Contract, and shall not be relieved of the non-performance of any subcontractor.

IV. Payments

Total payments to City of Wharton under this Agreement shall not exceed **TWO HUNDRED FIFTY THOUSAND AND 00/100 DOLLARS (\$250,000.00)**. City of Wharton's payments under this Agreement are limited to reimbursements of actual authorized costs incurred pursuant to the budget provided in Attachment B. No other

Page 2 of 50

amounts shall be paid. Each month, City of Wharton shall submit to Comptroller each request for payment by submitting a detailed invoice to Comptroller, listing expenses by budget categories. City of Wharton shall submit invoices that are fully supported by receipts and such other documentation. Comptroller reserves the right, in its sole discretion, to withhold payment of invoices for which City of Wharton does not submit documentation acceptable to Comptroller. City of Wharton shall submit monthly invoices for equipment purchased, services performed and costs incurred in the prior month.

Comptroller reserves the right, in its sole discretion, to authorize revisions to budgeted amounts to provide for flexibility within budget categories. Comptroller must give prior approval of all such revisions through its execution of a written amendment to this Agreement. City of Wharton may submit a request for reimbursement after contract termination provided the eligible expenses were incurred during the term of the Agreement.

V. Term

The term of this Agreement shall begin on the date executed by Comptroller, after having first been signed by City of Wharton, and shall be effective until August 31, 2025 ("Termination Date") unless terminated earlier in accordance with other provisions of this Agreement. Notwithstanding the termination or expiration of this Agreement, the provisions of this Agreement regarding confidentiality, indemnification, payments, records, and dispute resolution shall survive the termination or expiration dates of this Contract.

VI. Termination

Comptroller reserves the right, in its sole discretion, to terminate this Agreement at any time, with or without cause, upon thirty (30) days' written notice to City of Wharton.

Upon receipt of notice of termination from Comptroller, City of Wharton shall immediately cease to submit monthly statements or requests for reimbursement and shall cancel, withdraw or otherwise terminate any outstanding orders or commitments under this Agreement as of the effective date of such termination and shall otherwise cease to incur any costs. City of Wharton cannot incur new costs after termination but can seek reimbursement for eligible costs incurred during the Agreement term. Comptroller shall have no liability whatsoever for any costs incurred after such termination date. Upon termination for a breach of this Agreement or failure to comply with the terms of this Agreement, City of Wharton may be required to return any or all grant funds to Comptroller.

VII. Records Retention, Right to Audit, and Monitoring

A. Retention of Records. City of Wharton shall maintain and retain fiscal records and supporting documentation for all expenditures related to this Agreement at its principal office adequate to ensure that claims for grant funds are in accordance with applicable Comptroller and State of Texas requirements. City of Wharton shall maintain all such documents and other records relating to this Agreement for a period of seven (7) years after the date of submission of the final invoice or until a resolution of all billing questions, whichever is later.

B. Access to Records. City of Wharton shall give DOE, the Inspector General, the General Accounting Office, the Auditor of the State of Texas, Comptroller, or any of their duly-authorized representatives, access to and the right to examine all books, accounts, records, reports, files, other papers, things or property belonging to or in use by City of Wharton pertaining to this Agreement. Such rights to access shall continue as long as the records are retained by City of Wharton. City of Wharton shall cooperate with auditors and other authorized representatives of Comptroller and the State of Texas and shall provide them with prompt access to all such property as requested by Comptroller or the State of Texas. By example and not as exclusion to other breaches or failures, the City of Wharton's failure to comply with this Section shall constitute a material breach of this Agreement and shall authorize Comptroller to immediately terminate this Agreement. City of Wharton agrees to maintain such records in an accessible location and to provide citizens reasonable access to such records consistent with the Texas Public Information Act, Chapter 552 of the Texas Government Code.

C. Right to Audit. Comptroller may require, at City of Wharton's sole cost and expense, independent audits by a qualified certified public accounting firm of City of Wharton's books and records or the State's property. The independent auditor shall provide Comptroller with a copy of such audit at the same time it is provided to City of Wharton. Comptroller retains the right to issue a request for applications for the services of an independent certified public accounting firm under this Agreement. In addition to and without limitation on the other audit provisions of this Agreement, pursuant to Section 2262.154 of the Texas Government Code, the state auditor may conduct an audit or investigation of City of Wharton or any other entity or person receiving funds from the state directly under this Agreement or indirectly through a subcontract under this Agreement. The acceptance of funds by City of Wharton or any other entity or person directly under this Agreement or indirectly through a subcontract under this Agreement acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. Under the direction of the legislative audit committee, City of Wharton or other entity that is the subject of an audit or investigation by the state auditor must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit. This Agreement may be amended unilaterally by Comptroller to comply with any rules and procedures of the state auditor in the implementation and enforcement of Section 2262.154 of the Texas Government Code. City of Wharton shall ensure that this paragraph concerning the authority to audit funds received indirectly by subcontractors or sub-contractors through the City of Wharton and the requirement to cooperate is included in any subcontract it awards. The state auditor shall at any time have access to and the rights to examine, audit, excerpt, and transcribe any pertinent books, documents, working papers, and records of the City of Wharton relating to this Agreement.

D. Monitoring. Comptroller may also carry out monitoring and evaluation activities to ensure City of Wharton's compliance with the programs that are the subject of this Agreement and to make available copies of all financial audits and related management letters of City of Wharton and any subcontractors as required under any applicable federal or state law or guidelines.

VIII. Indemnification

TO THE EXTENT PERMITTED BY THE CONSTITUTION AND THE LAWS OF THE STATE OF TEXAS, CITY OF WHARTON SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS THE STATE OF TEXAS AND COMPTROLLER, AND/OR THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEY FEES, AND EXPENSES ARISING OUT OF, OR RESULTING FROM ANY ACTS OR OMISSIONS OF City of Wharton OR ITS AGENTS, EMPLOYEES, SUBCONTRACTORS, ORDER FULFILLERS, OR SUPPLIERS OF SUBCONTRACTORS IN THE EXECUTION OR PERFORMANCE OF THIS CONTRACT AND ANY PURCHASE ORDERS ISSUED UNDER THIS CONTRACT. THE DEFENSE SHALL BE COORDINATED BY City of Wharton WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND City of Wharton MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL. City of Wharton AND COMPTROLLER AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

IX. Subcontracting

City of Wharton may subcontract or sub-grant for the purposes of this Agreement as specifically authorized by Comptroller pursuant to the terms and subject to compliance with the flow down provisions of Attachment I of this Agreement.

X. Amendments

This Agreement may only be amended upon the written agreement of the parties by executing an amendment to this Agreement; however, Comptroller may unilaterally amend this Agreement as provided in Section XVIII.

XI. Notice

Any notice relating to this Agreement, which is required or permitted to be given under this Agreement by one party to the other party shall be in writing and shall be addressed to the receiving party at the address specified below. The notice shall be deemed to have been given immediately if delivered in person to the recipient's address specified below. It shall be deemed to have been given on the date of certified receipt if placed in the United States mail, postage prepaid, by registered or certified mail with return receipt requested, addressed to the receiving party at the address specified below. Registered or certified mail with return receipt is not required for copies.

Comptroller: Texas Comptroller of Public Accounts
State Energy Conservation Office
111 E. 17th Street
Austin, Texas 78774

City of Wharton: City of Wharton
120 E. Caney
Wharton, Texas 77488

XII. Funding

Comptroller's performance of its obligations under this Agreement is contingent upon and subject to availability of and actual receipt by Comptroller of sufficient and adequate funds from the sources contemplated by this Agreement. This Agreement is subject to immediate cancellation or termination, without penalty to Comptroller, subject to the availability and receipt of these funds. In addition, Comptroller's authority and appropriations are subject to the actions of the Texas Legislature. If Comptroller becomes subject to a legislative change, revocation of statutory authority or lack of funds that would render the services to be provided under this Agreement impossible or unnecessary, Comptroller may terminate this Agreement without penalty to Comptroller or the State of Texas. In the event of a termination or cancellation under this Section, Comptroller shall not be required to give notice and not be liable for damages or losses caused or associated with such termination or cancellation.

XIII. Insurance

City of Wharton has and will maintain in force during the term of this Agreement insurance coverage or an adequate program of self-insurance to cover its indemnification obligations under this Agreement. As a political subdivision of the State of Texas, City of Wharton will address issues of general liability in accordance with the Texas Civil Practice and Remedies Code, Chapter 101 (the Texas Tort Claims Act) and Chapter 102 (Tort Claims Payments by Local Governments). City of Wharton will maintain Workers' Compensation insurance in the amounts required by state and federal law.

XIV. Assignment

City of Wharton shall not transfer or assign any rights or duties under or any interest in this Agreement. City of Wharton shall not delegate its responsibilities or duties under the terms of this Agreement.

XV. Property Rights

For the purposes of this Agreement, the term "Work" is defined as all reports, work papers, work products, materials, approaches, designs, specification, systems, documentation, methodologies, concepts, intellectual property or other property developed, produced or generated in connection with the services provided under this Agreement. City of Wharton owns and will continue to own all right, title and interest and all proprietary rights in and to the Work and any and all documentation or other products and results of the services rendered by City of Wharton, including all trade secret, copyright, patent, trademark, and other proprietary rights.

City of Wharton hereby grants Comptroller a perpetual, royalty-free, nonexclusive, irrevocable, transferable, worldwide license for governmental purposes to use, reproduce, distribute, display, and perform the Work and to prepare derivative works based thereon. Additionally, upon delivery of the Work to Comptroller, and upon full payment to City of Wharton hereunder by Comptroller for such Work, Comptroller shall be deemed to have paid all non-commercial license, support, maintenance, subscription, and other fees of any kind, and City of Wharton understands and agrees to this provision.

In the event that either party intends to use, reproduce, display, or perform such Work for commercial purposes, the parties agree in good faith to negotiate the applicable license.

No later than the first calendar day after the termination or expiration of this Agreement or at Comptroller's request, City of Wharton shall deliver to Comptroller all completed, or partially completed, Work and any and all documentation or other products and results of these services. Failure to timely deliver such Work and any and all documentation or other products and results of services shall be considered a material breach of this Agreement.

In the event of any conflicting provisions between this Section and Attachment H, Attachment H shall control.

Title to and control over equipment or license of any software so purchased for City of Wharton's performance under this Agreement shall remain with City of Wharton so long as it is being used for the purpose for which it was intended under the terms of this Agreement.

XVI. Severability Clause

In the event that any provision of this Agreement is later determined to be invalid, void, or unenforceable, then the remaining provisions of this Agreement shall remain in full force and effect, and shall in no way be affected, impaired, or invalidated.

XVII. Dispute Resolution Process

Chapter 2260 of the Texas Government Code ("Chapter 2260") prescribes dispute resolution processes for certain breach of contract claims applicable to certain contracts for goods and services. As required by Chapter 2260, Comptroller has adopted rules under Chapter 2260, codified at 34 Texas Administrative Code §§1.360 – 1.387, and may adopt revisions to these rules throughout the term of this Agreement, including any extensions. City of Wharton shall comply with such rules.

The dispute resolution process provided for in Chapter 2260 of the Government Code shall be used, as further described herein, by Comptroller and City of Wharton to attempt to resolve any claim for breach of contract made by City of Wharton under this Agreement:

- (A) City of Wharton's claim for breach of this Agreement that the parties cannot resolve in the ordinary course of business shall be submitted to the negotiation process provided in Chapter 2260. To initiate the process, City of Wharton shall submit written notice, as required by Chapter 2260, to the Deputy Comptroller or his or her designee. Said notice shall also be given to all other representatives of Comptroller and City of Wharton otherwise entitled to notice under this Agreement. Compliance by City of Wharton with Chapter 2260 is a condition precedent to the filing of a contested case proceeding under Chapter 2260.
- (B) The contested case process provided in Chapter 2260 is City of Wharton's sole and exclusive process for seeking a remedy for an alleged breach of contract by Comptroller if the parties are unable to resolve their disputes under subparagraph (A) of this Section.
- (C) Compliance with the contested case process provided in Chapter 2260 is a condition precedent to seeking consent to sue from the Legislature under Chapter 107, Civil Practice and Remedies Code.

Neither the execution of this Agreement by Comptroller nor any other conduct of any representative of Comptroller relating to this Agreement shall be considered a waiver of sovereign immunity to suit.

For all other specific breach of contract claims or disputes under this Agreement, the following shall apply:

Should a dispute arise out of this Agreement, Comptroller and City of Wharton shall first attempt to resolve it through direct discussions in a spirit of mutual cooperation. If the parties' attempts to resolve their disagreements through negotiations fail, the dispute will be mediated by a mutually acceptable third party to be chosen by Comptroller and City of Wharton within fifteen (15) days after written notice by one of them demanding mediation under this Section. City of Wharton and Comptroller shall pay all costs of the mediation equally. By mutual agreement, Comptroller and City of Wharton may use a non-binding form of dispute resolution other than mediation. The purpose of this Section is to reasonably ensure that Comptroller and City of Wharton shall in good faith utilize mediation or another non-binding dispute resolution process before pursuing litigation. Comptroller's participation in or the results of any mediation or another non-binding dispute resolution process under this Section or the provisions of this Section shall not be construed as a waiver by Comptroller of: (1) any rights, privileges, defenses, remedies or immunities available to Comptroller as an agency of the State of Texas or otherwise available to Comptroller; (2) Comptroller's termination rights; or (3) other termination provisions or expiration dates of this Agreement.

XVIII. Applicable Law and Conforming Amendments

City of Wharton shall comply with all state and federal laws, regulations, requirements and guidelines applicable to a City of Wharton providing services to the State of Texas, as these laws, regulations, requirements and guidelines currently exist and as they are amended throughout the term of this Agreement. Comptroller reserves the right, in its sole discretion, to unilaterally amend this Agreement prior to award and throughout the term of this Agreement to incorporate any modifications necessary for Comptroller's or City of Wharton's compliance with all applicable state and federal laws, regulations, requirements and guidelines. Other than this provision, this Agreement may only be amended by the written agreement of the parties.

XIX. Additional Provisions

19.1 Time Limits

Time is of the essence in the performance of this Agreement and accordingly all time limits shall be strictly construed and rigidly enforced.

19.2 No Waiver

This Agreement shall not constitute or be construed as a waiver of any of the privileges, rights, defenses, remedies, or immunities available to Comptroller or otherwise available to Comptroller or City of Wharton. The failure to enforce or any delay in the enforcement of any privileges, rights, defenses, remedies, or immunities available to Comptroller or City of Wharton under this Agreement or under applicable law shall not constitute a waiver of such privileges, rights, defenses, remedies, or immunities or be considered as a basis for estoppel. Comptroller or City of Wharton do not waive any privileges, rights, defenses, or immunities available to them by entering into this Agreement or by their conduct prior to or subsequent to entering into this Agreement. **The modification of any privileges, rights, defenses, remedies, or immunities available to Comptroller or City of Wharton must be in writing, must reference this Section, and must be signed by Comptroller and City of Wharton to be effective, and such modification of any privileges, rights, defenses, remedies, or immunities available to Comptroller shall not constitute waiver of any subsequent privileges, rights, defenses, remedies, or immunities under this Agreement or under applicable law.**

19.3 No Liability upon Termination

If this Agreement is terminated for any reason, Comptroller and the State of Texas shall not be liable for any damages, claims, losses, expenses, costs or any other amounts arising from or related to any such termination.

19.4 Limitation on Authority; No Other Obligations

City of Wharton shall have no authority to act for or on behalf of Comptroller or the State of Texas except as expressly provided for in this Agreement; no other authority, power, use, or joint enterprise is granted or implied. City of Wharton may not incur any debts, obligations, expenses or liabilities of any kind on behalf of Comptroller.

19.5 No Other Benefits

City of Wharton shall have no exclusive rights or benefits other than those set forth herein.

19.6 Force Majeure

Except as otherwise provided, neither City of Wharton nor Comptroller shall be liable to the other for any delay in, or failure of performance, of any requirement contained in this Agreement caused by force majeure. The existence of such causes of delay or failure shall extend the period of performance until after the causes of delay or failure have been removed provided the non-performing party exercises all reasonable due diligence to perform. Force majeure is defined as acts of God, war, terrorist attacks, fires, explosions, earthquakes, hurricanes, floods, failure of transportation, or other causes that are beyond the reasonable control of either party and that by exercise of due foresight such party could not reasonably have been expected to avoid, and which, by the exercise of all reasonable due diligence, such party is unable to overcome. Each party must inform the other in writing with proof of receipt within three (3) business days of the existence of such force majeure or otherwise waive this right as a defense.

19.7 Debts or Delinquencies to State

City of Wharton acknowledges and agrees that, to the extent City of Wharton owes any debt or delinquent taxes to the State of Texas, any payments or other amounts City of Wharton is otherwise owed under or related to this Agreement may be applied by the Comptroller of Public Accounts toward any debt or delinquent taxes City of Wharton owes the State of Texas until the debt or delinquent taxes are paid in full. These provisions are effective at any time City of Wharton owes any such debt or delinquency. City of Wharton shall comply with rules adopted by the Comptroller under Sections 403.055, 403.0551, and 2252.903 of the Texas Government Code, and other applicable laws and regulations regarding satisfaction of debts or delinquencies to the State of Texas.

Furthermore, City of Wharton acknowledges and agrees that any obligation to refund or return grant funds based on termination or breach of this Agreement entered into by City of Wharton and Comptroller creates "a debt to the state" for purposes of Section 403.055 of the Texas Government Code. City of Wharton further acknowledges and agrees that the terms of this Agreement are sufficient to create a debt by agreement between the City of Wharton and Comptroller. Comptroller agrees that it shall provide City of Wharton the opportunity to contest the amount due or the existence of a breach through an internal administrative review process which shall be determined by Comptroller. Applicant's failure to return any amount owed upon conclusion of Comptroller's administrative review process shall allow Comptroller to use the warrant-hold process under Section 403.055 of the Texas Government Code as a means of enforcing City of Wharton's compliance with the terms of the Grant Agreement or to recover grant funds required to be returned by City of Wharton under the terms of this Agreement.

If City of Wharton is a "local government entity" as defined under Section 271.151 of the Texas Local Government Code, City of Wharton acknowledges and agrees that this Agreement is a written contract stating the essential terms for providing services to City of Wharton, and therefore, this Agreement is subject to Chapter 271, Subchapter I, of the Local Government Code which waives sovereign immunity for certain breach of contract claims.

19.8 No Conflicts

City of Wharton represents and warrants that City of Wharton has no actual or potential conflicts of interest in providing services to Comptroller under the Contract and that City of Wharton's provision of services under the Contract would not reasonably create an appearance of impropriety. Without limitation on the foregoing, other disclosures required under this Contract, and other prohibited work provisions of this Contract, City of Wharton shall, throughout the term of this Contract, comply with and provide all of the following: provide to Comptroller, upon request, a copy of City of Wharton's most recent audit, if any, together with a full disclosure of any and all internal control weaknesses, if any; disclose and describe in detail City of Wharton's most recent peer review, if any, stating the date of the review and irregularities, if any, and concluding comments; disclose and describe in detail any emerging irregularities, if any, that could materially affect Comptroller's interests; and disclose and describe in detail how City of Wharton examines whether City of Wharton's outside auditors provide consulting or other services to City of Wharton or City of Wharton's clients or to Comptroller.

19.9 Comptroller's Anti-Fraud Policy

City of Wharton represents and warrants that it has read and understood and shall comply with Comptroller's Anti-Fraud Policy located on Comptroller's website at <https://comptroller.texas.gov/about/policies/ethics.php>, as such Policy currently reads and as it is amended throughout the term of this Agreement.

19.10 Texas Public Information Act; Confidential Information

Each party is responsible for complying with the provisions of Chapter 552, Texas Government Code (Texas Public Information Act) and the Attorney General Opinions issued under that statute. Comptroller and City of Wharton expect that all information exchanged between them will be public information. In the event confidential information is exchanged, Comptroller and City of Wharton shall comply with all applicable state and federal laws and regulations regarding confidentiality, privacy, and security of information. Responses to requests for confidential information shall be handled in accordance with the provisions of the Texas Public Information Act.

19.11 Patent, Trademark, Copyright and Other Infringement Claims

City of Wharton shall defend and indemnify Comptroller and the State of Texas against claims of patent, trademark, copyright, trade secret or other proprietary rights, violations or infringements arising from Comptroller's or City of Wharton's use of or acquisition of any services or other items provided to Comptroller by City of Wharton or otherwise to which Comptroller has access as a result of City of Wharton's performance under this Agreement, provided that Comptroller shall notify City of Wharton of any such claim within a reasonable time of Comptroller's receiving notice of any such claim. If City of Wharton is notified of any claim subject to this Section, City of Wharton shall notify Comptroller of such claim within five (5) working days of such notice. If Comptroller determines that a conflict exists between its interests and those of City of Wharton or if Comptroller is required by applicable law to select separate counsel, Comptroller shall be permitted to select separate counsel and the reasonable costs of such Comptroller's counsel shall be paid by City of Wharton. City of Wharton shall make no settlement of any such claim without Comptroller's prior written approval. City of Wharton shall reimburse Comptroller and the State of Texas for any claims, damages, losses, costs, expenses, judgments or any other amounts, including, but not limited to, attorneys' fees and court costs, arising from any such claim. City of Wharton represents that it has determined what licenses, patents and permits are required under this Agreement and has acquired or will acquire all such licenses, patents and permits prior to commencement of services under this Agreement.

19.12 DTPA; Unfair Business Practices

City of Wharton represents and warrants that it has not been the subject of a Deceptive Trade Practices Act (DTPA) or any unfair business practice administrative hearing or court suit and that City of Wharton has not been found to be guilty of such practices in such proceedings. City of Wharton certifies that it has no officers who have served as officers of other entities who have been the subject of a DTPA claim or any unfair business administrative hearing or

court suit and that such officers have not been found to be guilty of such practices in such proceedings.

19.13 Immigration

City of Wharton represents and warrants that it shall comply with the requirements of the Immigration Reform and Control Act of 1986, the Immigration Act of 1990, and the Illegal Reform and Immigrant Responsibility Act of 1996 regarding employment verification and retention of verification forms for any individuals hired, who will perform any labor or services under this Agreement. City of Wharton also represents and warrants that it shall comply with the requirements of the Immigration Act of 1990 enacted on November 29, 1990, regarding creation of the lottery system for granting visas, and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 enacted on September 30, 1996 which created three year, ten year and permanent bars to entrance into the United States.

19.14 Antitrust

Pursuant to 15 U.S.C. Sec. 1, et seq. and Tex. Bus. & Comm. Code Sec. 15.01, et seq., City of Wharton represents and warrants that neither City of Wharton nor any firm, corporation, partnership, or institution represented by City of Wharton, nor anyone acting for such firm, corporation or institution has violated Texas antitrust laws or federal antitrust laws, nor communicated directly or indirectly the proposal to any competitor or any other person engaged in such line of business.

19.15 Texas Family Code

Under Section 231.006, Texas Family Code (relating to child support), City of Wharton certifies that the individual or business entity named in this Agreement is eligible to receive payments under this Agreement and acknowledges that this Agreement may be terminated and payment may be withheld if this certification is inaccurate.

19.16 Criminal Conviction Certification

City of Wharton certifies that neither City of Wharton or any of its employees, agents, or representative, including any subcontractors and employees, agents, or representative of such subcontractors, to be assigned to the services hereunder, has been convicted of a felony criminal offense, or that if such a conviction has occurred or occurs during the term of this Agreement, City of Wharton will immediately fully advise Comptroller as to the facts and circumstances.

19.17 Financial Interests; Gifts

City of Wharton represents and warrants that neither City of Wharton nor any person or entity which will participate financially in this Agreement has received compensation from Comptroller for participation in preparation of specifications for this Agreement. In addition, under Section 2155.004, Texas Government Code, City of Wharton certifies that it is not ineligible to receive the specified contract and acknowledges that this Agreement may be terminated and payment withheld if this certification is inaccurate. City of Wharton represents and warrants that it has not given, offered to give, and does not intend to give at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor or service to any public servant or employee in connection with this Agreement. City of Wharton certifies that it is in compliance with Section 669.003, Texas Government Code, relating to contracting with executive head of a state agency.

19.18 Buy Texas

City of Wharton represents and warrants that, in accordance with Section 2155.4441, Texas Government Code, it shall purchase products and materials produced in Texas when they are available at a comparable price and in a comparable period of time.

19.19 False Statements; Breach of Representations

By signature to this Agreement, City of Wharton makes all the representations, warranties, covenants, and certifications included in this Agreement. Notwithstanding any provision of this Agreement to the contrary, if City of Wharton signs this Agreement with a false statement or it is subsequently determined that City of Wharton has violated any of the representations, warranties, covenants or certifications included in this Agreement, City of Wharton shall be in default under this Agreement and Comptroller may terminate or void this Agreement for cause and pursue other remedies available to Comptroller under this Agreement and applicable law.

19.20 Prohibited Use of Appropriated or Other Funds Under Control of State Agency; Lobbying

City of Wharton represents and warrants that Comptroller's payment to City of Wharton and City of Wharton's receipt of appropriated or other funds under this Agreement are not prohibited by Sections 556.005, 556.0055, or 556.008, Texas Government Code.

19.21 Certification Concerning Hurricane Relief

Sections 2155.006 and 2261.053 of the Texas Government Code, prohibit state agencies from awarding a contract to any person who, in the past five years, has been convicted of violating a federal law or assessed a penalty in connection with a contract involving relief for Hurricane Rita, Hurricane Katrina, or any other disaster, as defined by Section 418.004 of the Texas Government Code, occurring after September 24, 2005. Under Section 2155.006 of the Texas Government Code, City of Wharton certifies that the individual or business entity named in this Agreement is not ineligible to receive the Agreement and acknowledges that the Agreement may be terminated and payment withheld if this certifications inaccurate.

19.22 Debarred Vendors List

City of Wharton represents and warrants that the offering entity and its principals are eligible to participate in this transaction and have not been subjected to suspension, debarment, or similar ineligibility determined by any federal, state, or local governmental entity and that City of Wharton is in compliance with the State of Texas statutes and rules relating to procurement and that City of Wharton is not listed on the federal government's terrorism watch list as described in Executive Order 13224. Entities ineligible for federal procurement are listed at <http://www.sam.gov>.

19.23 Drug Free Workplace

City of Wharton represents and warrants that it shall comply with the applicable provisions of the Drug-Free Work Place Act of 1988 and maintain a drug-free work environment.

19.24 No Boycott-State of Israel

Pursuant to Section 2270.002 of the Texas Government Code, City of Wharton does not boycott Israel and will not boycott Israel during the term of the Contract.

19.25 Human Trafficking Prohibition

Under Section 2155.0061 of the Texas Government Code, City of Wharton certifies that the individual or business entity named in this Agreement is not ineligible to receive the specified contract and acknowledges that this Agreement may be terminated and payment withheld if this certification is inaccurate.

19.26 Foreign Terrorist Organizations

City of Wharton represents and warrants that it is not engaged in business with Iran, Sudan, or a foreign terrorist organization, as prohibited by Section 2252.152 of the Texas Government Code.

19.27 Energy Company Boycotts

City of Wharton represents and warrants that: (1) it does not, and will not for the duration of this Agreement, boycott energy companies or (2) the verification required by Section 2274.002 of the Texas Government Code does not apply to this Agreement. If circumstances relevant to this provision change during the term this Agreement, City of Wharton shall promptly notify CPA.

19.28 Firearm Entities and Trade Associations Discrimination

City of Wharton verifies that: (1) it does not, and will not for the duration of this Agreement, have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association or (2) the verification required by Section 2274.002 of the Texas Government Code does not apply to this Agreement. If circumstances relevant to this provision change during the term of this Agreement, City of Wharton shall promptly notify CPA.

19.29 COVID-19 Vaccine Passport Prohibition

Under Section 161.0085 of the Texas Health and Safety Code, City of Wharton certifies that the individual or business entity named in this Agreement is not ineligible to receive this Agreement.

XX. Merger

This Agreement, and its accompanying attachments, contain the entire agreement between the parties relating to the rights granted and the obligations assumed in it. Any oral representations or modifications concerning this Agreement shall be of no force or effect unless contained in a subsequent writing, signed by both parties.

XXI. Signatories

The undersigned signatories represent and warrant that they have full authority to enter into this Agreement on behalf of the respective parties. This Agreement may be executed in one or more counterparts, each of which is an original, and all of which constitute only one agreement between the parties.

Texas Comptroller of Public Accounts

City of Wharton

By: _____

By: _____

Lisa Craven
Deputy Comptroller

Joseph R. Pace
City Manager

Date: _____

Date: _____

ATTACHMENT A

DELIVERABLES STATEMENT

A. Deliverables

Prior to the commencement of any activities or procurements, the City of Wharton shall request from SECO an ASHRAE Level II audit of the proposed energy efficiency retrofits described in Section 2: Project Description of the RFA No. EECBG-IJA1-2024 approved application. The City of Wharton shall provide to the energy auditor 12 months of utility bills prior to audit commencement. The audit purpose is to determine projected energy and demand savings for the proposed retrofits and to validate Build America Buy America material compliance.

Upon completion of the ASHRAE Level II audit, the City of Wharton shall submit Build America Buy America material compliance certifications to SECO for approval prior to procuring equipment and materials. When the SECO Contract Manager approves the compliance certifications, the City of Wharton may proceed with energy efficiency retrofit activities.

City of Wharton shall provide labor and materials to install the energy efficiency retrofits described in Section 2: Project Description of the RFA No. EECBG-IJA1-2024 application and otherwise required by this Agreement. The labor and materials shall include, but are not limited to, the furnishing of all personnel and the procurement of all equipment, supplies, and other items necessary to install the energy efficiency retrofits in compliance with this Agreement. City of Wharton shall review and implement Comptroller recommendations, as Comptroller adopts them from time to time, so that the deliverables may be expeditiously and satisfactorily completed. City of Wharton shall meet with Comptroller at such times as Comptroller may reasonably request to discuss the progress of deliverables and any other matters that may arise in regard to this Agreement.

B. Standards of Performance

1. Furnish itemized list of all proposed equipment (type and quantity) with detailed cut sheets/specifications, and efficiencies for each piece of equipment and system prior to ordering equipment. The itemized list must demonstrate compliance with Build America Buy America (BABA) requirements and the Contract Manager must approve the BABA equipment before it is ordered.
1. Standard Warranty: All labor and materials for one (1) year from date of substantial completion. All new fixtures shall have a five-year warranty.
2. The specification/requirements for construction and installation of the retrofits replacement systems must meet or exceed equipment and system efficiency standards established in the 2018 IECC or later versions as may be adopted by any local authority having jurisdiction over the project.
3. The proposed retrofits and any impacts on existing building systems must comply with applicable building codes such as the National Electrical Code ("NEC"), and the National Fire Protection Association (NFPA).
4. Light levels: City of Wharton must conduct pre-retrofit surveys of existing fixture light levels, wattage, and reflector distribution. Post retrofit foot-candles (FC) must meet or exceed existing FC levels and be in compliance with IES standards for the application. Installation shall comply with City's outdoor lighting ordinance(s). Proposed retrofits shall comply with dark-sky ordinance(s) as applicable.
5. During the retrofit, the function and operation of all other existing control systems (timeclock, Building Automation System (BAS), and/or photocell) shall be preserved.
6. New energy efficiency retrofits equipment shall be programmed and tested with the current operating schedules.
7. All energy efficiency retrofits equipment proposed shall be new, manufactured, rated, and certified for the use proposed by the installer. Installations or combinations of equipment proposed under this contract shall at no time violate, invalidate, or disallow any rating or certification such as Underwriter's Laboratories (UL), etc.

8. Commissioning of energy efficiency retrofits, and the associated retrofit controls/systems shall be required.
9. A licensed trade specialist licensed by the Texas Department of Licensing and Regulation must:
 - Provide individual name and license number for each trade specialist who supervised the work; and
 - Certify that energy efficiency retrofits and fixtures were installed in accordance with manufacturer's recommendations, and that the energy efficiency retrofits and fixtures meet applicable codes for the application.
10. Applicant must certify the following:
 - a. Proper installation in accordance with manufacturer's recommendations;
 - b. Provide a letter stating proper disposal of existing equipment and any hazardous material waste pursuant to Texas Administrative Code, Chapter 335; and
 - c. No conflicts of interest exist with the Applicant.

C. Davis Bacon Training

Prior to commencement of retrofit activities, the City of Wharton and its vendor, if applicable, shall attend LCPtracker contractor training sessions as set forth in Attachment Q and obtain access to LCPtracker for weekly certified payroll reporting for all contractors and subcontractors.

D. Reimbursement Requests and Reporting

1. Reimbursement Requests. City of Wharton shall submit a minimum of two reimbursement requests with required support documentation. Reimbursement requests shall be through the SECO contract portal.
 - Monthly invoices should itemize the total labor, materials, and equipment of the installation project including electrical control equipment. All installations must comply with the current codes and original manufacturers product specifications.
 - Submit with each reimbursement request, a:
 - Texas Master/ Journeyman Electrician Name and License number who supervised the work;
 - Texas Master/ Journeyman Electrician certification that the replaced LED lighting systems and control equipment was installed in accordance with current codes and manufacturer's recommendations.
 - Final inspection reports and close out warranty information, spec sheets, and ongoing maintenance procedures for all LED equipment installed.
2. Monthly Reports. The report shall include, at a minimum and as applicable, the following information: Building(s)/areas retrofitted, retrofit activities; and total square footage of retrofitted areas. Issues or concerns should also be included in the Monthly Report. Report submission shall be through the SECO contract portal each month no later than the 10th day of the following month.
3. Quarterly Reports. Due every 3 months (based on the state fiscal year) no later than the 10th day of the month following the end of the quarter. The report shall include, at a minimum a recap of the monthly report activities. Reports shall be submitted electronically as a Microsoft Word document through the SECO contract portal in addition to completing the online report.
4. Final Report. Due 30 days after the completion of the project. At project completion, provide building name, areas, and physical address and location(s) of all new replaced equipment and controls and include the completed follow up inspection reporting required by SECO. The report shall also include, at a minimum and as applicable, a summary of all monthly reporting. The report shall be submitted electronically as a Microsoft Word document through the SECO contract portal in addition to completing the online report.

ATTACHMENT B**BUDGET**

The following Budget includes all costs for performing the Municipally Owned Building Energy Efficiency Retrofits as described in the contract. Comptroller will not prepay any amounts. All costs in this Attachment B are not-to-exceed total costs.

Personnel¹	\$ 0.00
Subcontract	\$ 250,000.00
Equipment	\$ 0.00
Supplies and Materials	\$ 0.00
TOTAL	\$ 250,000.00

¹ PROJECT MANAGER NAME, shall be Project Director for this project and shall be responsible for the overall supervision and conduct of the project on behalf of City of Wharton. Any Change of Project Director shall be subject to the prior written approval of Comptroller.

ATTACHMENT C-1

DOE F 1600.5
(06-94)
All Other Editions Are Obsolete

OMB Control No.
1910-0400

U.S. DEPARTMENT OF ENERGY
Assurance of Compliance
Nondiscrimination in State Assisted Programs
OMB Burden Disclosure Statement

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Office of Information Resources Management Policy, Plans, and Oversight, Records Management Division, HR-422-GTN, Paperwork Reduction Project (1910-0400), U.S. Department of Energy, 1000 Independence Avenue, S.W., Washington, DC 20585; and to the Office of Management and Budget (OMB), Paperwork Reduction Project (1910-0400), Washington, DC 20503.

City of Wharton (Hereinafter called the "Applicant") HEREBY AGREES to comply with Title VI of the Civil Rights Act of 1964 (Pub. L. 88-352), Section 16 of the Federal Energy Administration Act of 1974 (Pub. L. 93-275), Section 401 of the Energy Reorganization Act of 1974 (Pub. L. 93-438), Title IX of the Education Amendments of 1972, as amended (Pub. L. 92-318, Pub. L. 93-568, and Pub. L. 94-482), Section 504 of the Rehabilitation Act of 1973 (Pub. L. 93-112), the Age Discrimination Act of 1975 (Pub. L. 94-135), Title VIII of the Civil Rights Act of 1968 (Pub. L. 90-284), the Department of Energy Organization Act of 1977 (Pub. L. 95-91), the Energy Conservation and Production Act of 1976, as amended, (Pub. L. 94-385) and Title 10 Code of Federal Regulations, Part 1040. In accordance with the above laws and regulations issued pursuant thereto, the Applicant agrees to assure that no person in the United States shall, on the ground of race, color, national origin, sex, age, or disability, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity in which the Applicant receives Federal assistance from the Department of Energy.

Applicability and Period of Obligation

In the case of any service, financial aid, covered employment, equipment, property, or structure provided, leased, or improved with Federal assistance extended to the Applicant by the Department of Energy, this assurance obligates the Applicant for the period during which Federal assistance is extended. In the case of any transfer of such service, financial aid, equipment, property, or structure, this assurance obligates the transferee for the period during which Federal assistance is extended. If any personal property is so provided, this assurance obligates the Applicant for the period during which it retains ownership or possession of the property. In all other cases, this assurance obligates the Applicant for the period during which the Federal assistance is extended to the Applicant by the Department of Energy.

Employment Practices

Where a primary objective of the Federal assistance is to provide employment or where the Applicant's employment practices affect the delivery of services in programs or activities resulting from Federal assistance extended by the Department of Energy, the Applicant agrees not to discriminate on the ground of race, color, national origin, sex, age or disability, in its employment practices. Such employment practices may include, but are not limited to, recruitment, advertising, hiring, layoff or termination, promotion, demotion, transfer, rates of pay, training and participation in upward mobility programs, or other forms of compensation and use of facilities.

Subrecipient Assurance

The Applicant shall require any individual, organization, or other entity with which it subcontracts, subgrants, or subleases for the purpose of providing any service, financial aid, equipment, property, or structure to comply with laws and regulations cited above. To this end, the subrecipient shall be required to sign a written assurance form; however, the obligation of both recipient and subrecipient to ensure compliance is not relieved by the collection or submission of written assurance forms.

Data Collection and Access to Records

The Applicant agrees to compile and maintain information pertaining to programs or activities developed as a result of the Applicant's receipt of Federal assistance from the Department of Energy. Such information shall include, but is not limited to the following: (1) the manner in which services are or will be provided and related data necessary for determining whether any persons are or will be denied such services on the basis of prohibited discrimination; (2) the population eligible to be served by race, color, national origin, sex, age and disability; (3) data regarding covered employment, including use or planned use of bilingual public contact employees serving beneficiaries of the program where necessary to permit effective participation by beneficiaries unable to speak or understand English; (4) the location of existing or proposed facilities connected with the program and related

information adequate for determining whether the location has or will have the effect of unnecessarily denying access to any person on the basis of prohibited discrimination; (5) the present or proposed membership by race, color, national origin, sex, and disability, in any planning or advisory body which is an integral part of the program; and (6) any additional written data determined by the Department of Energy to be relevant to the obligation to assure compliance by recipients with laws cited in the first paragraph of this assurance.

The Applicant agrees to submit requested data to the Department of Energy regarding programs and activities developed by the Applicant from the use of Federal assistance funds extended by the Department of Energy. Facilities of the Applicant (including the physical plants, buildings, or other structures) and all records, books, accounts, and other sources of information pertinent to the Applicant's compliance with the civil rights laws shall be made available for inspection during normal business hours on request of an officer or employee of the Department of Energy specifically authorized to make such inspections. Instructions in this regard will be provided by the Director, Office of Civil Rights, U. S. Department of Energy.

This assurance is given in consideration of and for the purpose of obtaining any and all Federal grants, loans, contracts (excluding procurement contracts), property, discounts or other Federal assistance extended after the date hereto, to the Applicants by the Department of Energy, including installment payments on account after such date of application for Federal assistance which are approved before such date. The Applicant recognizes and agrees that such Federal assistance will be extended in reliance upon the representations and agreements made in this assurance and that the United State shall have the right to seek judicial enforcement of this assurance. This assurance is binding on the Applicant, the successors, transferees, and assignees, as well as the person(s) whose signature appears below and who are authorized to sign this assurance on behalf of the Applicant.

Applicant Certification

The Applicant certifies that it has complied, or that, within 90 days of the date of the grant, it will comply with all applicable requirements of 10 C.F.R. § 1040.5 (a copy will be furnished to the Applicant upon written request to DOE.)

Designated Responsible Employee

Name and Title (Printed or Typed)

Telephone Number

Signature

Date

City of Wharton

979-532-2491

Name of Organization

Telephone Number

120 E. Caney, Wharton, Texas 77488

Address

Authorized Official:

Joseph R. Pace, City Manager

979-532-2491

Name and Title (Printed or Typed)

Telephone Number

Signature

Date

ATTACHMENT C-2

DOE F 1600.5
(06-94)
All Other Editions Are Obsolete

OMB Control No.
1910-0400

U.S. DEPARTMENT OF ENERGY
Assurance of Compliance
Nondiscrimination in State Assisted Programs

OMB Burden Disclosure Statement

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(Enter name of Recipient's Subcontractor) _____ (Hereinafter called the "Applicant") HEREBY AGREES to comply with Title VI of the Civil Rights Act of 1964 (Pub. L. 88-352), Section 16 of the Federal Energy Administration Act of 1974 (Pub. L. 93-275), Section 401 of the Energy Reorganization Act of 1974 (Pub. L. 93-438), Title IX of the Education Amendments of 1972, as amended (Pub. L. 92-318, Pub. L. 93-568, and Pub. L. 94-482), Section 504 of the Rehabilitation Act of 1973 (Pub. L. 93-112), the Age Discrimination Act of 1975 (Pub. L. 94-135), Title VIII of the Civil Rights Act of 1968 (Pub. L. 90-284), the Department of Energy Organization Act of 1977 (Pub. L. 95-91), the Energy Conservation and Production Act of 1976, as amended, (Pub. L. 94-385) and Title 10, Code of Federal Regulations, Part 1040. In accordance with the above laws and regulations issued pursuant thereto, the Applicant agrees to assure that no person in the United States shall, on the ground of race, color, national origin, sex, age, or disability, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity in which the Applicant receives Federal assistance from the Department of Energy.

Applicability and Period of Obligation

In the case of any service, financial aid, covered employment, equipment, property, or structure provided, leased, or improved with Federal assistance extended to the Applicant by the Department of Energy, this assurance obligates the Applicant for the period during which Federal assistance is extended. In the case of any transfer of such service, financial aid, equipment, property, or structure, this assurance obligates the transferee for the period during which Federal assistance is extended. If any personal property is so provided, this assurance obligates the Applicant for the period during which it retains ownership or possession of the property. In all other cases, this assurance obligates the Applicant for the period during which the Federal assistance is extended to the Applicant by the Department of Energy.

Employment Practices

Where a primary objective of the Federal assistance is to provide employment or where the Applicant's employment practices affect the delivery of services in programs or activities resulting from Federal assistance extended by the Department of Energy, the Applicant agrees not to discriminate on the ground of race, color, national origin, sex, age, or disability, in its employment practices. Such employment practices may include, but are not limited to, recruitment, advertising, hiring, layoff or termination, promotion, demotion, transfer, rates of pay, training and participation in upward mobility programs, or other forms of compensation and use of facilities.

Subrecipient Assurance

The Applicant shall require any individual, organization, or other entity with which it subcontracts, subgrants, or subleases for the purpose of providing any service, financial aid, equipment, property, or structure to comply with laws and regulations cited above. To this end, the subrecipient shall be required to sign a written assurance form; however, the obligation of both recipient and subrecipient to ensure compliance is not relieved by the collection or submission of written assurance forms.

Data Collection and Access to Records

The Applicant agrees to compile and maintain information pertaining to programs or activities developed as a result of the Applicant's receipt of Federal assistance from the Department of Energy. Such information shall include, but is not limited to the following: (1) the manner in which services are or will be provided and related data necessary for determining whether any persons are or will be denied such services on the basis of prohibited discrimination; (2) the population eligible to be served by race, color,

national origin, sex, age and disability; (3) data regarding covered employment, including use or planned use of bilingual public contact employees serving beneficiaries of the program where necessary to permit effective participation by beneficiaries unable to speak or understand English; (4) the location of existing or proposed facilities connected with the program and related information adequate for determining whether the location has or will have the effect of unnecessarily denying access to any person on the basis of prohibited discrimination; (5) the present or proposed membership by race, color, national origin, sex, age, and disability, in any planning or advisory body which is an integral part of the program; and (6) any additional written data determined by the Department of Energy to be relevant to the obligation to assure compliance by recipients with laws cited in the first paragraph of this assurance.

The Applicant agrees to submit requested data to the Department of Energy regarding programs and activities developed by the Applicant from the use of Federal assistance funds extended by the Department of Energy. Facilities of the Applicant (including the physical plants, buildings, or other structures) and all records, books, accounts, and other sources of information pertinent to the Applicant's compliance with the civil rights laws shall be made available for inspection during normal business hours on request of an officer or employee of the Department of Energy specifically authorized to make such inspections. Instructions in this regard will be provided by the Director, Office of Civil Rights, U. S. Department of Energy.

This assurance is given in consideration of and for the purpose of obtaining any and all Federal grants, loans, contracts (excluding procurement contracts), property, discounts or other Federal assistance extended after the date hereto, to the Applicants by the Department of Energy, including installment payments on account after such date of application for Federal assistance which are approved before such date. The Applicant recognizes and agrees that such Federal assistance will be extended in reliance upon the representations and agreements made in this assurance and that the United State shall have the right to seek judicial enforcement of this assurance. This assurance is binding on the Applicant, the successors, transferees, and assignees, as well as the person(s) whose signatures appear below and who are authorized to sign this assurance on behalf of the Applicant.

Applicant Certification

The Applicant certifies that it has complied, or that, within 90 days of the date of the grant, it will comply with all applicable requirements of 10 C.F.R. § 1040.5 (a copy will be furnished to the Applicant upon written request to DOE.)

Designated Responsible Employee of Subcontractor

Name and Title (Printed or Typed)

Telephone Number

Signature

Date

Subcontractor:

Name of Organization

Telephone Number

Address

Authorized Official of Subcontractor:

Name and Title (Printed or Typed)

Telephone Number

Signature

Date

ATTACHMENT D
Certification Regarding Debarment, Suspension, Ineligibility,
and Voluntary Exclusion-Lower Tier Covered Transactions

Instructions for Certification

1. The prospective lower tier participant is required to sign the attached certification.
 2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
 3. The prospective lower tier participant shall provide immediate written notice to the person to whom this application is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
 4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principle," "application," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the person to which this application is submitted for assistance in obtaining a copy of those regulations.
 5. The prospective lower tier participant agrees by submitting this application that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
 6. The prospective lower tier participant further agrees by submitting this application that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all solicitations for lower tier covered transactions.
 7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Non-procurement List.
 8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
 9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
- (1) The prospective lower tier participant certifies, by submission of this application, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
- (2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this application.

City of Wharton
 Organization Name

Joseph R. Pace, City Manager
 Name and Title of Authorized Representative

 Signature

 Date

ATTACHMENT E

CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Non-procurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Energy determines to award the covered transaction, grant, or cooperative agreement.

1. LOBBYING

The undersigned certifies, to the best of his or her knowledge and belief, that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- (3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31,

U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

- (1) The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:
 - (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
 - (b) Have not within a three-year period receding this application/proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
 - (c) Are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and
 - (d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.
- (2) Where the prospective primary participant is unable to certify to any of the statements in this

certification, such prospective participant shall attach an explanation to this application/proposal.

3. DRUG-FREE WORKPLACE

This certification is required by the Drug-Free Workplace Act of 1988 (Pub. L. 100-690, Title V, Subtitle D) and is implemented through additions to the Debarment and Suspension regulations, published in the Federal Register on January 31, 1989, and May 25, 1990.

ALTERNATE 1 (SUB-RECIPIENTS OTHER THAN INDIVIDUALS)

(1) The Sub-recipient certifies that it will or will continue to provide a drug-free workplace by:

- (a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the Sub-recipient's workplace and specifying the actions that will be taken against employees for violation of such prohibition;
- (b) Establishing an ongoing drug-free awareness program to inform employees about:
 - (1) The dangers of drug abuse in the workplace;
 - (2) The Sub-recipient's policy of maintaining a drug-free workplace;
 - (3) Any available drug counseling, rehabilitation, and employee assistance programs; and
 - (4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;
- (c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);
- (d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:
 - (1) Abide by the terms of the statement; and
 - (2) Notify the employer in writing, of his or her conviction for a violation of criminal drug statute occurring in the work-place

not later than five calendar days after such conviction;

- (e) Notifying the agency, in writing, within ten calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to energy grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;
 - (f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:
 - (1) Taking appropriate actions against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act 9f 1973, as amended; or
 - (2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State or local health, law enforcement, or other appropriate agency;
 - (g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).
- (2) The Sub-recipient may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance:

(Street address, city, county, state, zip code)

- ☐ Check if there are workplaces on file that are not identified here.

ALTERNATE II (SUB-RECIPIENTS WHO ARE INDIVIDUALS)

- (1) The Sub-recipient certifies that, as a condition of the grant, he or she will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substances in conducting any activity with the grant.
- (2) If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, he or she will report the conviction, in writing, within 10 calendar days of the conviction, to every grant officer or other designee, unless the Federal agency designates a central point for the receipt of such notices. When notice is made to such a central point, it shall include the identification number(s) of each affected grant.

The undersigned certifies, to the best of his or her knowledge and belief, that: it IS NOT an organization described in section 501 (c)(4) of the Internal Revenue Code of 1986; OR that it IS an organization described in section 501 (c)(4) of the Internal Revenue Code of 1986, which, after December 31, 1995, HAS NOT engaged in any lobbying activities as defined in the Lobbying Disclosure Act of 1995, as amended.

4. LOBBYING DISCLOSURE ACT OF 1995, SIMPSON-CRAIG AMENDMENT

Applicant organization which are described in section 501 (c)(4) of the Internal Revenue Code of 1986 and engage in lobbying activities after December 31, 1995, shall not be eligible for the receipt of Federal funds constituting an award, grant, or loan. Section 501(c)(4) of the Internal Revenue Code of 1986 covers:

Civic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare, or local associations of employees, the membership of which is limited to the employees of a designated persons or person in a particular municipality, and the net earnings of which are devoted exclusively to charitable, educational, or recreational purposes.

As set forth in the Lobbying Disclosure Act of 1995 (Public Law 104-65, December 19, 1995), as amended ["Simpson-Craig Amendment," see Section 129 of The Balanced Budget Down payment Act, I (Public Law 104-99, January 26, 1996)], lobbying activities is defined broadly. (See section 3 of the Act.)

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

City of Wharton
Name of Applicant

City of Wharton EECBG Retrofits
Pre/Award Number and/or Project Name

Joseph R. Pace, City Manager
Printed Name and Title of Authorized Representative

Signature

Date

ATTACHMENT F

DISCLOSURE OF LOBBYING ACTIVITIES

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352

1. Type of Federal Action: _____ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	2. Status of Federal Action: _____ a. bid/offer/application b. initial award c. post award	3. Report Type: _____ a. initial filing b. material change For Material Change Only: year _____ quarter _____ date of last report _____
4. Name and Address of Reporting Entity: Name Address _____ Prime _____ Subawardee Tier, if known:		5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:
6. Federal Department/Agency:	7. Federal Program Name/Description CFDA Number, if applicable:	
8. Federal Action Number, If known:	9. Award Amount, if known:	
10.a. Name and Address of Lobbying Entity: (if individual, last name, first name, MI): (attach Continuation Sheet(s) SF-LLL-A, if necessary)	10.b. Individual Performing Services (including address if different from No. 10A) (last name, first name, MI):	
11. Amount of Payment (check all that apply): \$ _____ actual _____ Planned	12. Form of Payment (check all that apply): a. cash b. in-kind; specify: nature _____ value _____	
13. Type of Payment (check all that apply): _____ a. retainer _____ c. commission _____ e. deferred _____ b. one-time fee _____ d. contingent fee _____ f. other; specify _____		
14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment indicated in Item 11:		
15. Continuation Sheet(s) SF-LLL-A attached: _____ Yes _____ No		
16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annual and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure		
Authorized Representative: <u>Joseph R. Pace</u> Title: <u>City Manager</u> Signature: _____ Telephone: <u>979-532-2491</u> Date: _____		

ATTACHMENT G

ASSURANCES – NON-CONSTRUCTION PROGRAMS
OMB Approval No. 0348-0040

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant, I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.
2. Will give the awarding agency, Comptroller, the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.
7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction sub-agreements.
10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93- 234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is \$10,000 or more.
11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in flood plains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).
12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.
13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469 a-1 et seq.)
14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.
15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.
16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.
17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996 and OMB Circular No. A-133, "Audits of States, Local Governments, and Non-Profit Organizations."
18. SAM Registration. City of Wharton and their first-tier Subrecipients must register and maintain "active registration" status in the System for Award Management (<https://sam.gov/content/home>) database at all times during which they have active SECO awards. The registration process includes obtaining a Unique Entity Identifier (UEI). While the UEI does not expire, registrations must be updated annually and remain in "active registration" status for the award duration. Recipients must ensure that all potential subrecipients do not enter into a contractual relationship with the recipient unless the subrecipient is in "active registration" status and has an UEI number in the legally prescribed manner."
19. Compliance with Davis-Bacon Act- City of Wharton must ensure bids, contracts, and subcontracts contain the applicable wage determination and the Davis-Bacon labor standards clauses found in 29 CFR § 5.5 (Code of Federal Regulations), titled Contract Provisions and Related Matters. The labor standards describe contractor responsibilities and provide remedies for noncompliance. A wage determination (WD) is a set of wages, fringe benefits, and work rules that the United States Department of Labor has ruled to be prevailing for a given labor category in a given locality. Note that if federal and state wage rates apply, contracts must contain both wage decisions/contract standards and employers must pay the higher of the two rates. At the project kick-off meeting, the City of Wharton must provide the prevailing WD information (www.sam.gov) of the project location to SECO. During the project

construction period, City of Wharton must provide certified payrolls for all labor on the site. The certified payrolls and all data shall be created using form WH-347 or equivalent. No submitted hand-written forms will be accepted.

20. Will comply with the requirements of the Buy America, Build America Act.
21. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

Signature of Authorized Certifying Official

City Manager

Title

City of Wharton

Applicant Organization

Date Submitted

ATTACHMENT H Intellectual Property Provisions

AUTHORIZATION AND CONSENT – ALTERNATE I (48 CFR 52.227-1)

(a) The Government authorizes and consents to all use and manufacture of any invention described in and covered by a United States patent in the performance of this contract or any subcontract at any tier.

(1) Embodied in the structure or composition of any article the delivery of which is accepted by the Government under this contract; or

(2) Used in machinery, tools, or methods whose use necessarily results from compliance by the Contractor or a subcontractor with (i) specifications or written provisions forming a part of this contract or (ii) specific written instructions given by the Contracting Officer directing the manner of performance. the entire liability to the Government for infringement of a United States patent shall be determined solely by the provisions of the indemnity clause, if any, included in this contract or any subcontract hereunder (including any lower-tier subcontract), and the Government assumes liability for all other infringement to the extent of the authorization and consent hereinabove granted.

(b) The Contractor shall include the substance of this clause, including this paragraph (b), in all subcontracts that are expected to exceed the simplified acquisition threshold, as defined in Federal Acquisition Regulation (FAR) 2.101 on the date of subcontract award. However, omission of this clause from any subcontract, including those at or below the simplified acquisition threshold, as defined in FAR 2.101 on the date of subcontract award, does not affect this authorization and consent.

NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT (48 CFR 52.227-2)

The provisions of this clause shall be applicable only if the amount of this grant exceeds \$250.

- (a) The Contractor shall report to the Contracting Officer, promptly and in reasonable written detail, each notice of claim of patent or copyright infringement based on the performance of this grant of which the Contractor has knowledge.
- (b) In the event of any claim or suit against the Government on account of any alleged patent or copyright infringement arising out of the performance of this grant or out of the use of any supplies furnished or work or services performed hereunder, the Contractor shall furnish to the Government, when requested by the Contracting Officer, all evidence and information in possession of the Contractor pertaining to such suit or claim. Such evidence and information shall be furnished at the expense of the Government except where the Contractor has agreed to indemnify the Government.
- (c) This clause shall be included in all contracts and subgrants under this grant.

REPORTING OF ROYALTIES (48 CFR 52.227-6)

If this grant is in an amount which exceeds \$250 and if any royalty payments are directly involved in the grant or are reflected in the grant price to the Government, the Contractor agrees to report in writing to the Patent Counsel (with notification by Patent Counsel to the Contracting Officer) during the performance of this grant and prior to its completion of final settlement the amount of any royalties or other payments paid or to be paid by it directly to others in connection with the performance of this grant together with the names and addresses of licensors to whom such payments are made and either the patent numbers involved or such other information as will permit the identification of the patents or other basis on which the royalties are to be paid. The approval of DOE of any individual payments or royalties shall not stop the Government at any time from contesting the enforceability, validity or scope of, or title to, any patent under which a royalty or payments are made.

RIGHTS IN TECHNICAL - GENERAL – ALTERNATE IV (48 CFR 52.227-14)

(a) Definitions. As used in this clause -

Computer database or database means a collection of recorded information in a form capable of, and for the purpose of, being stored in, processed, and operated on by a computer. The term does not include computer software.

Computer software - (1) Means (i) Computer programs that comprise a series of instructions, rules, routines, or statements, regardless of the media in which recorded, that allow or cause a computer to perform a specific operation or series of operations; and

(ii) Recorded information comprising source code listings, design details, algorithms, processes, flow charts, formulas, and related material that would enable the computer program to be produced, created, or compiled.

(2) Does not include computer databases or computer software documentation.

Computer software documentation means owner's manuals, user's manuals, installation instructions, operating instructions, and other similar items, regardless of storage medium, that explain the capabilities of the computer software or provide instructions for using the software.

Data means recorded information, regardless of form or the media on which it may be recorded. The term includes technical data and computer software. The term does not include information incidental to contract administration, such as financial, administrative, cost or pricing, or management information.

Form, fit, and function data means data relating to items, components, or processes that are sufficient to enable physical and functional interchangeability, and data identifying source, size, configuration, mating and attachment characteristics, functional characteristics, and performance requirements. For computer software it means data identifying source, functional characteristics, and performance requirements but specifically excludes the source code, algorithms, processes, formulas, and flow charts of the software.

Limited rights means the rights of the Government in limited rights data as set forth in the Limited Rights Notice of paragraph (g)(3) if included in this clause.

Limited rights data means data, other than computer software, that embody trade secrets or are commercial or financial and confidential or privileged, to the extent that such data pertain to items, components, or processes developed at private expense, including minor modifications.

Restricted computer software means computer software developed at private expense and that is a trade secret, is commercial or financial and confidential or privileged, or is copyrighted computer software, including minor modifications of the computer software.

Restricted rights, as used in this clause, means the rights of the Government in restricted computer software, as set forth in a Restricted Rights Notice of paragraph (g) if included in this clause, or as otherwise may be provided in a collateral agreement incorporated in and made part of this contract, including minor modifications of such computer software.

Technical data, means recorded information (regardless of the form or method of the recording) of a scientific or technical nature (including computer databases and computer software documentation). This term does not include computer software or financial, administrative, cost or pricing, or management data or other information incidental to contract administration. The term includes recorded information of a scientific or technical nature that is included in computer databases. (See 41 U.S.C. 116).

Unlimited rights means the rights of the Government to use, disclose, reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, in any manner and for any purpose, and to have or permit others to do so.

(b) Allocation of rights.

(1) Except as provided in paragraph (c) of this clause, the Government shall have unlimited rights in -

(i) Data first produced in the performance of this contract;

(ii) Form, fit, and function data delivered under this contract;

(iii) Data delivered under this contract (except for restricted computer software) that constitute manuals or instructional and training material for installation, operation, or routine maintenance and repair of items, components, or processes delivered or furnished for use under this contract; and

(iv) All other data delivered under this contract unless provided otherwise for limited rights data or restricted computer software in accordance with paragraph (g) of this clause.

(2) The Contractor shall have the right to -

- (i) Assert copyright in data first produced in the performance of this contract to the extent provided in paragraph (c)(1) of this clause;
- (ii) Use, release to others, reproduce, distribute, or publish any data first produced or specifically used by the Contractor in the performance of this contract, unless provided otherwise in paragraph (d) of this clause;
- (iii) Substantiate the use of, add, or correct limited rights, restricted rights, or copyright notices and to take other appropriate action, in accordance with paragraphs (e) and (f) of this clause; and
- (iv) Protect from unauthorized disclosure and use those data that are limited rights data or restricted computer software to the extent provided in paragraph (g) of this clause.

(c) Copyright -

(1) Data first produced in the performance of the contract. Except as otherwise specifically provided in this contract, the Contractor may assert copyright in any data first produced in the performance of this contract. When asserting copyright, the Contractor shall affix the applicable copyright notice of 17 U.S.C. 401 or 402, and an acknowledgment of Government sponsorship (including contract number), to the data when such data are delivered to the Government, as well as when the data are published or deposited for registration as a published work in the U.S. Copyright Office. For data other than computer software, the Contractor grants to the Government, and others acting on its behalf, a paid-up, nonexclusive, irrevocable, worldwide license for all such data to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, by or on behalf of the Government. For computer software, the Contractor grants to the Government and others acting on its behalf, a paid-up, nonexclusive, irrevocable, worldwide license for all such computer software to reproduce, prepare derivative works, and perform publicly and display publicly (but not to distribute copies to the public), by or on behalf of the Government.

(ii) When authorized to assert copyright to the data, the Contractor shall affix the applicable copyright notices of 17 U.S.C. 401 or 402, and an acknowledgment of Government sponsorship (including contract number).

(iii) For data other than computer software, the Contractor grants to the Government, and others acting on its behalf, a paid-up, nonexclusive, irrevocable, worldwide license in such copyrighted data to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly by or on behalf of the Government. For computer software, the Contractor grants to the Government, and others acting on its behalf, a paid-up, nonexclusive, irrevocable, worldwide license in such copyrighted computer software to reproduce, prepare derivative works, and perform publicly and display publicly (but not to distribute copies to the public) by or on behalf of the Government.

(2) Data not first produced in the performance of this contract. The Contractor shall not, without the prior written permission of the Contracting Officer, incorporate in data delivered under this contract any data not first produced in the performance of this contract unless the Contractor -

(i) Identifies the data; and

(ii) Grants to the Government, or acquires on its behalf, a license of the same scope as set forth in paragraph (c)(1) of this clause or, if such data are restricted computer software, the Government shall acquire a copyright license as set forth in paragraph (g)(4) of this clause (if included in this contract) or as otherwise provided in a collateral agreement incorporated in or made part of this contract.

(3) Removal of copyright notices. The Government will not remove any authorized copyright notices placed on data pursuant to this paragraph (c), and will include such notices on all reproductions of the data.

(d) Release, publication, and use of data. The Contractor shall have the right to use, release to others, reproduce, distribute, or publish any data first produced or specifically used by the Contractor in the performance of this contract, except -

(1) As prohibited by Federal law or regulation (e.g., export control or national security laws or regulations);

(2) As expressly set forth in this contract; or

(3) If the Contractor receives or is given access to data necessary for the performance of this contract that contain restrictive markings, the Contractor shall treat the data in accordance with such markings unless specifically authorized otherwise in writing by the Contracting Officer.

(e) Unauthorized marking of data.

(1) Notwithstanding any other provisions of this contract concerning inspection or acceptance, if any data delivered under this contract are marked with the notices specified in paragraph (g)(3) or (g)(4) if included in this clause, and use of the notices is not authorized by this clause, or if the data bears any other restrictive or limiting markings not authorized by this contract, the Contracting Officer may at any time either return the data to the Contractor, or cancel or ignore the markings. However, pursuant to 41 U.S.C. 4703, the following procedures shall apply prior to canceling or ignoring the markings.

(i) The Contracting Officer will make written inquiry to the Contractor affording the Contractor 60 days from receipt of the inquiry to provide written justification to substantiate the propriety of the markings;

(ii) If the Contractor fails to respond or fails to provide written justification to substantiate the propriety of the markings within the 60-day period (or a longer time approved in writing by the Contracting Officer for good cause shown), the Government shall have the right to cancel or ignore the markings at any time after said period and the data will no longer be made subject to any disclosure prohibitions.

(iii) If the Contractor provides written justification to substantiate the propriety of the markings within the period set in paragraph (e)(1)(i) of this clause, the Contracting Officer will consider such written justification and determine whether or not the markings are to be cancelled or ignored. If the Contracting Officer determines that the markings are authorized, the Contractor will be so notified in writing. If the Contracting Officer determines, with concurrence of the head of the contracting activity, that the markings are not authorized, the Contracting Officer will furnish the Contractor a written determination, which determination will become the final agency decision regarding the appropriateness of the markings unless the Contractor files suit in a court of competent jurisdiction within 90 days of receipt of the Contracting Officer's decision. The Government will continue to abide by the markings under this paragraph (e)(1)(iii) until final resolution of the matter either by the Contracting Officer's determination becoming final (in which instance the Government will thereafter have the right to cancel or ignore the markings at any time and the data will no longer be made subject to any disclosure prohibitions), or by final disposition of the matter by court decision if suit is filed.

(2) The time limits in the procedures set forth in paragraph (e)(1) of this clause may be modified in accordance with agency regulations implementing the Freedom of Information Act (5 U.S.C. 552) if necessary to respond to a request thereunder.

(3) Except to the extent the Government's action occurs as the result of final disposition of the matter by a court of competent jurisdiction, the Contractor is not precluded by paragraph (e) of the clause from bringing a claim, in accordance with the Disputes clause of this contract, that may arise as the result of the Government removing or ignoring authorized markings on data delivered under this contract.

(f) Omitted or incorrect markings.

(1) Data delivered to the Government without any restrictive markings shall be deemed to have been furnished with unlimited rights. The Government is not liable for the disclosure, use, or reproduction of such data.

(2) If the unmarked data has not been disclosed without restriction outside the Government, the Contractor may request, within 6 months (or a longer time approved by the Contracting Officer in writing for good cause shown) after delivery of the data, permission to have authorized notices placed on the data at the Contractor's expense. The Contracting Officer may agree to do so if the Contractor -

- (i) Identifies the data to which the omitted notice is to be applied;
- (ii) Demonstrates that the omission of the notice was inadvertent;
- (iii) Establishes that the proposed notice is authorized; and
- (iv) Acknowledges that the Government has no liability for the disclosure, use, or reproduction of any data made prior to the addition of the notice or resulting from the omission of the notice.

(3) If data has been marked with an incorrect notice, the Contracting Officer may -

- (i) Permit correction of the notice at the Contractor's expense if the Contractor identifies the data and demonstrates that the correct notice is authorized; or
- (ii) Correct any incorrect notices.

(g) Protection of limited rights data and restricted computer software.

(1) The Contractor may withhold from delivery qualifying limited rights data or restricted computer software that are not data identified in paragraphs (b)(1)(i), (ii), and (iii) of this clause. As a condition to this withholding, the Contractor shall -

- (i) Identify the data being withheld; and
- (ii) Furnish form, fit, and function data instead.

(2) Limited rights data that are formatted as a computer database for delivery to the Government shall be treated as limited rights data and not restricted computer software.

(3) [Reserved]

(h) Subcontracting. The Contractor shall obtain from its subcontractors all data and rights therein necessary to fulfill the Contractor's obligations to the Government under this contract. If a subcontractor refuses to accept terms affording the Government those rights, the Contractor shall promptly notify the Contracting

Officer of the refusal and shall not proceed with the subcontract award without authorization in writing from the Contracting Officer.

(i) Relationship to patents or other rights. Nothing contained in this clause shall imply a license to the Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Government.

RIGHTS TO PROPOSAL DATA (TECHNICAL) (48 CFR 52.227-23)

It is agreed that as a condition of award of this grant or modification and notwithstanding the conditions of any notice appearing on the proposal(s), the Government shall have the right to use, duplicate, and disclose and have others to do so for any purpose whatsoever, the technical data contained in the proposal(s) upon which the grant or modification is based.

City of Wharton
Organization Name

Joseph R. Pace, City Manager
Name and Title of Authorized Representative

Signature

Date

ATTACHMENT I

SUBCONTRACTING PROVISIONS; MANDATORY FLOWDOWN PROVISION

City of Wharton, if subcontracting any of its performance hereunder, shall legally bind subcontractors to perform and make such Subcontractors subject to all the duties, requirements, and obligations of City of Wharton under this Agreement. City of Wharton shall be jointly and severally liable for all performances under this Agreement, including, but not limited to, the performance of its Subcontractors to the extent permitted under the Constitution and laws of the State of Texas.

City of Wharton represents and warrants that it has obtained all necessary permits, licenses, easements, waivers and permissions of whatsoever kind required for its performance and the performance of its Subcontractors under this Agreement. In no event shall any provision of this Attachment I, including, but not limited to, the requirement that City of Wharton obtain the prior approval of Comptroller on City of Wharton's proposed subcontracts, be construed as relieving City of Wharton of the responsibility for ensuring that all services rendered under any subcontracts comply with all the terms and provisions of this Agreement as if they were rendered by City of Wharton. City of Wharton shall, upon request, furnish Comptroller with copies of all proposed subcontracts and all proposed amendments, assignments, cancellations or terminations of said subcontracts no later than thirty (30) days prior to the proposed effective date of such contracts, amendments, assignments, cancellations or terminations; provided, however, that this thirty (30) day period may be shortened by written agreement of the parties. Upon request from Comptroller, City of Wharton shall provide any and all documentation deemed necessary by Comptroller to evidence Subcontractors compliance with all terms, conditions and performance pertaining to the Agreement and all applicable law.

As the duly authorized representative of the City of Wharton, I hereby certify that City of Wharton and subcontractor will comply with the above requirements.

City of Wharton:

By: _____

Name: Joseph R. Pace, City Manager

Date: _____

ATTACHMENT J EXECUTION OF APPLICATION

1. By signature hereon, Applicant represents and warrants that the provisions in this Execution of Application apply to Applicant and all of Applicant's principals, officers, directors, shareholders, partners, owners, agents, employees, subcontractors, independent contractors, and any other representatives who may provide services under, who have a financial interest in, or otherwise are interested in this RFA or any contract resulting from it.
2. By signature hereon, Applicant represents and warrants its intent to purchase the subject items at the prices quoted in its Application.
3. By signature hereon, Applicant represents and warrants that it has read and understood and shall comply with Comptroller's Anti-Fraud Policy, located on Comptroller's website at <https://comptroller.texas.gov/about/policies/ethics.php> as such Policy currently reads and as it is amended throughout the term of any resulting contract.
4. By signature hereon, Applicant represents and warrants that its prices include all costs of Applicant in providing the requested items that meet all specifications of this RFA and that its prices will remain firm for acceptance for a minimum of one hundred twenty (120) days from deadline for submission of Application.
5. By signature hereon, Applicant represents and warrants that each employee, including "replacement employees", will possess the qualifications, education, training, experience and certifications necessary to perform the services in the manner required by this RFA.
6. By signature hereon, Applicant represents and warrants that it has no actual or potential conflicts of interest in providing the requested items to Comptroller under the RFA and any resulting contract, if any, and that Applicant's provision of the requested items under the RFA and any resulting contract, if any, would not reasonably create an appearance of impropriety.
7. By signature hereon, pursuant to Section 2155.003 of the Texas Government Code, Applicant represents and warrants that it has not given, nor intends to give at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor or service to a public servant in connection with the submitted Application.
8. By signature hereon, Applicant represents and warrants that it is not currently delinquent in the payment of any franchise taxes owed the State of Texas under Chapter 171 of the Texas Tax Code.
9. By signature hereon, Applicant hereby represents and warrants that, pursuant to 15 U.S.C. Sec. 1, *et seq.* and Tex. Bus. & Comm. Code Sec. 15.01, *et seq.*, neither Applicant nor the firm, corporation, partnership, or institution represented by Applicant, nor anyone acting for such a firm, corporation or institution has violated the antitrust laws of this state, federal antitrust laws or communicated directly or indirectly the Application made to any competitor or any other person engaged in such line of business.
10. By signature hereon, Applicant represents and warrants that all statements and information prepared and submitted in response to this RFA are current, complete, and accurate.
11. By signature hereon, Applicant represents and warrants that the individual signing this document and the documents made part of this RFA and Application is authorized to sign such documents on behalf

of the company and to bind the company under any contract which may result from the submission of this Application.

12. By signature hereon, Applicant represents and warrants that if a Texas address is shown as the address of Applicant, Applicant qualifies as a Texas Bidder as defined by 34 Texas Administrative Code §20.32(68).
13. Check below if preference claimed under 34 Texas Administrative Code §20.38:
- ☐ Goods produced or offered by a Texas bidder that is owned by a Texas resident service-disabled veteran
 - ☐ Goods produced in Texas or offered by a Texas bidder that is not owned by a Texas resident service-disabled veteran
 - ☐ Agricultural products grown in Texas
 - ☐ Agricultural products offered by a Texas bidder
 - ☐ Services offered by a Texas bidder that is owned by a Texas resident service-disabled veteran
 - ☐ Services offered by a Texas bidder that is not owned by a Texas resident service disabled veteran
 - ☐ Texas Vegetation Native to the Region
 - ☐ USA produced supplies, materials or equipment
 - ☐ Products of persons with mental or physical disabilities
 - ☐ Products made of recycled, remanufactured, or environmentally sensitive materials including recycled steel
 - ☐ Energy Efficient Products
 - ☐ Rubberized asphalt paving material
 - ☐ Recycled motor oil and lubricants
 - ☐ Products produced at facilities located on formerly contaminated property
 - ☐ Products and services from economically depressed or blighted areas
 - ☐ Vendors that meet or exceed air quality standards
 - ☐ Recycled or Reused Computer Equipment of Other Manufacturers
 - ☐ Foods of Higher Nutritional Value
 - ☐ Commercial production company or advertising agency located in Texas
14. By signature hereon, under Section 231.006, Texas Family Code, regarding child support, Applicant certifies that the individual or business named in the Application is not ineligible to receive the specified payment and acknowledges that the contract may be terminated and payment may be withheld if this certification is inaccurate. Furthermore, any Applicant subject to Section 231.006 of the Texas Family Code must include names and Social Security numbers of each person with at least 25% ownership of the business entity submitting the Application. This information must be provided prior to award. Enter the Name and Social Security Number for each person below:

Name: _____	SSN: _____
Name: _____	SSN: _____
Name: _____	SSN: _____

FEDERAL PRIVACY ACT NOTICE: This notice is given pursuant to the Federal Privacy Act. Disclosure of your Social Security Number (SSN) is required under Section 231.006(c) and Section 231.302(c)(2), Texas Family Code. The SSN will be used to identify persons that may owe child support. The SSN will be kept confidential to the fullest extent allowed under Section 231.302(e), Texas Family Code.

15. By signature hereon, Applicant represents and warrants that no relationship, whether by relative, business associate, capital funding contract or by any other such kinship exists between Applicant and an employee of any Comptroller component, and Applicant has not been an employee of any

Comptroller component within the immediate twelve (12) months prior to Applicant's Application. By signature hereon, Applicant certifies that it is in compliance with Section 669.003 of the Texas Government Code, relating to contracting with executive head of a state agency. Enter the name of any current or former executive head of a Texas State Agency that is currently employed by Applicant below:

Name of Former Executive: _____
 Name of State Agency: _____
 Date of Separation from State Agency: _____
 Position with Applicant: _____
 Date of Employment with Applicant: _____

All such disclosures will be subject to administrative review and approval prior to Comptroller entering into any contract with Applicant. Applicant acknowledges that any contract resulting from this RFA may be terminated at any time, and payments withheld, if this information is false.

16. By signature hereon, pursuant to Section 2155.004(a) of the Texas Government Code, Applicant represents and warrants that neither it nor any person or entity which will participate financially in any contract resulting from this RFA has received compensation for participation in the preparation of specifications for this RFA. Further, under Section 2155.005(b) of the Texas Government Code, Applicant certifies that the individual or business entity named in this Application or any contract resulting from this RFA is not ineligible to receive the specified contract and acknowledges that the contract may be terminated and payment withheld if this certification is inaccurate.
17. By signature hereon, Applicant represents and warrants that all articles and services quoted in response to this RFA meet or exceed the safety standards established and promulgated under the *Federal Occupational Safety and Health Law* and its regulations in effect or proposed as of the date of this solicitation.
18. By signature hereon, Applicant represents and warrants its compliance with all federal laws and regulations pertaining to Equal Employment Opportunities and Affirmative Action.
19. By signature hereon, Applicant represents and warrants its compliance with the requirements of the Americans With Disabilities Act (ADA). Applicant further represents and warrants that it will comply with all applicable Texas Accessibility requirements.
20. By signature hereon, in accordance with Section 2155.4441 of the Texas Government Code, Applicant agrees that during the performance of a contract for services it shall purchase products and materials produced in Texas when they are available at a price and time comparable to products and materials produced outside this state.
21. By signature hereon, Applicant represents and warrants that Comptroller's payments to Applicant and Applicant's receipt of appropriated or other funds under any contract resulting from this RFA are not prohibited by Sections 556.005, 556.0055, or 556.008 of the Texas Government Code.
22. By signature hereon, Applicant represents and warrants that the offering entity and its principals are eligible to participate in this transaction and have not been subjected to suspension, debarment, or similar ineligibility determined by any federal, state, or local governmental entity and that Applicant is in compliance with the State of Texas statutes and rules relating to procurement and that Applicant is not listed on the federal government's terrorism watch list as described in Executive Order 13224. Entities ineligible for federal procurement are listed at <http://www.sam.gov>.

23. Sections 2155.006(b) and 2261.053 of the Texas Government Code, prohibit state agencies from awarding a contract to any person who, in the past five (5) years has been convicted of violating a federal law or assessed a penalty in connection with a contract involving relief for Hurricane Rita, Hurricane Katrina, or any other disaster, as defined by Section 418.004 of the Texas Government Code, occurring after September 24, 2005. By signature hereon, the Applicant represents and warrants, in accordance with Section 2155.006 of the Texas Government Code, that the individual or business entity named in its Application is not ineligible to receive the Agreement and acknowledges that the Agreement may be terminated and payment withheld if this certification is inaccurate.
24. By signature hereon, Applicant represents and warrants that it is not aware of and has received no notice of any court or governmental agency actions, proceedings or investigations, etc., pending or threatened against Applicant or any of the individuals or entities included in Part 1 of this document within the five (5) calendar years immediately preceding the submission of Applicant's Application in response to this RFA that would or could impair Applicant's performance under any agreement resulting from this RFA, relate to the solicited or similar goods or services, or otherwise be relevant to the agency's consideration of Applicant's Application. If Applicant is unable to make the preceding representation and warranty, then Applicant instead represents and warrants that it has included as a detailed attachment in its Application a complete disclosure of any such court or governmental agency actions, proceedings, or investigations, etc. that would or could impair Applicant's performance under any agreement resulting from this RFA, relate to the solicited or similar goods or services, or otherwise be relevant to Comptroller's consideration of Applicant's Application. In addition, Applicant represents and warrants that it shall notify Comptroller in writing within five (5) business days of any changes to the representations or warranties in this clause and understands that failure to so timely update Comptroller shall constitute breach of contract and may result in immediate termination of the Agreement.
25. By signature hereon, Applicant represents and warrants that it has read and agrees to all terms and conditions of this RFA.

Authorized signatory on behalf of Applicant must complete and sign the following:

_____ Authorized Signature	_____ Date Signed
_____ Joseph R. Pace, City Manager Printed Name and Title of Authorized Signatory	_____ 979-532-2491 Phone Number
_____ City of Wharton Applicant Name	_____ Fax Number
_____ 74-6002557 Federal Employer Identification Number	_____ jpace@cityofwharton.com E-Mail Address
_____ 120 E. Caney Physical Street Address	_____ Wharton, Texas 77488 City, State, Zip Code
_____ Mailing Address, if different	_____ City, State, Zip Code
_____ 070137716 DUNS	

ATTACHMENT K

NONDISCLOSURE AGREEMENT

In consideration of the Texas Comptroller of Public Accounts ("Comptroller"), considering an application/proposal from or meeting with City of Wharton ("Contractor") regarding proposed services and because of the sensitivity of certain information which may be provided to Contractor, both parties agree that all information regarding Comptroller, or gathered, produced, collected or derived from or related to these services or provided to Contractor as a result of these services ("Confidential Information") must remain confidential subject to release only upon prior written approval of Comptroller, and more specifically agree as follows:

1. The Confidential Information may be used by Contractor only to assist Contractor in connection with its engagement with Comptroller.
2. Contractor shall not, at any time, use the Confidential Information in any fashion, form, or manner except in its capacity as contractor to Comptroller.
3. Contractor agrees to maintain the confidentiality of any and all Confidential Information related to the Agreement in the same manner that it protects the confidentiality of its own proprietary information of like kind.
4. The Confidential Information may not be copied, reproduced, disclosed or distributed without Comptroller's prior written consent.
5. All Confidential Information made available to Contractor, including copies thereof, must be returned to Comptroller upon the first to occur of: (a) termination or expiration of the Agreement or (b) request by Comptroller.
6. The foregoing must not prohibit or limit Contractor's use of the information (including, but not limited to, ideas, concepts, know-how, techniques and methodologies) (a) previously known to it, (b) independently developed by it, (c) acquired by it from a third party, or (d) which is or becomes part of the public domain through no breach by Contractor of this agreement.
7. This Nondisclosure Agreement shall become effective as of the date Confidential Information is first made available to Contractor and shall survive any contract resulting from the RFA and be a continuing requirement.
8. The breach of this Nondisclosure Agreement by Contractor shall entitle Comptroller to immediately terminate this Agreement upon written notice to Contractor for such breach. The parties acknowledge that the measure of damages in the event of a breach of this Nondisclosure Agreement may be difficult or impossible to calculate, depending on the nature of the breach. Regardless of whether Comptroller elects to terminate the Agreement upon the breach hereof, Comptroller may require Contractor to pay to Comptroller the sum of \$5,000 for each breach as liquidated damages. This amount is not intended to be in the nature of a penalty, but is intended to be a reasonable estimate of the amount of damages to Comptroller in the event of a breach hereof by Contractor of this Nondisclosure Agreement. Comptroller does not waive any right to seek additional relief, either equitable or otherwise, concerning any breach of this Nondisclosure Agreement.

City of Wharton
Contractor Name

Joseph R. Pace, City Manager
Name and Title of Authorized Representative

Signature

Date

ATTACHMENT L**Comptroller's RFA**

Comptroller's RFA No. EECBG-IIJA1-2024, issued June 28, 2024, and Comptroller's Official Responses to Questions from Potential Applicants issued July 12, 2024 (collectively "RFA"), are incorporated by reference for all purposes into this Agreement as Attachment A of this Agreement. In the event of a conflict between Comptroller's RFA and a RFA Addendum, the RFA Addendum shall control.

ATTACHMENT M

City of Wharton's Application

City of Wharton's Application dated July 25, 2024, is incorporated by reference for all purposes into this Agreement as Attachment M of this Agreement.

ATTACHMENT N- BUILD AMERICA, BUY AMERICA CERTIFICATION

Project Number: CM24103

Project Title: City of Wharton EECBG Retrofits

As required by Section 70914 of the Bipartisan Infrastructure Law (also known as the Infrastructure Investment and Jobs Act), P.L. 117-58, on or after May 14, 2022, none of the funds under a federal award that are part of Federal financial assistance program for infrastructure (see definition below) may be obligated for a project (see definition below) unless all of the iron, steel, manufactured products, and construction materials (see definition below) used in the project are produced in the United States, unless subject to an approved waiver. The requirements of this section must be included in all subawards, including all contracts and purchase orders for work or products under this program.

Recipients of an award of Federal financial assistance are hereby notified that none of the funds provided under this award may be used for a project for infrastructure unless:

1. all iron and steel used in the project are produced in the United States--this means all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States;
2. all manufactured products used in the project are produced in the United States —this means the manufactured product was manufactured in the United States; and the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product, unless another standard for determining the minimum amount of domestic content of the manufactured product has been established under applicable law or regulation; and
3. all construction materials are manufactured in the United States—this means that all manufacturing processes for the construction material occurred in the United States.

The Build America, Buy America (BABA) preference only applies to articles, materials, and supplies that are consumed in, incorporated into, or affixed to an infrastructure project. As such, it does not apply to tools, equipment, and supplies, such as temporary scaffolding, brought to the construction site and removed at or before the completion of the infrastructure project. Nor does a Buy America preference apply to equipment and furnishings, such as movable chairs, desks, and portable computer equipment that are used at or within the finished infrastructure project, but are not an integral part of the structure or permanently affixed to the infrastructure project. Applicants must provide itemized list of products used in project to SECO prior to ordering materials to ensure BABA compliance.

Definitions

“Infrastructure” includes, at a minimum, the structures, facilities, and equipment for, in the United States, roads, highways, and bridges; public transportation; dams, ports; harbors, and other maritime facilities; intercity passenger and freight railroads; freight and intermodal facilities; airports; water systems, including drinking water and wastewater systems; electrical transmission facilities and systems; utilities; broadband infrastructure; and buildings and real property. Infrastructure includes facilities that generate, transport, and distribute energy.

- “Construction materials” includes an article, material, or supply that is or consists primarily of: non-ferrous metals;
- plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables);
- glass (including optic glass);
- lumber; or
- drywall.

“Construction Materials” does not include cement and cementitious materials, aggregates such as stone, sand, or gravel, or aggregate binding agents or additives.

“Domestic content procurement preference” means all iron and steel used in the project are produced in the United States; the manufactured products used in the project are produced in the United States; or the construction materials used in the project are produced in the United States.

“Project” means the construction, alteration, maintenance, or repair of infrastructure in the United States

Build America, Buy America Waiver Requests:

Where applicable, Recipients may apply for, and the Department of Energy (DOE) may grant a waiver from these requirements. Waivers are granted solely at the discretion of DOE following review (<https://www.energy.gov/management/doe-buy-america-requirement-waiver-requests>). As of 6/25/2024, the only waiver opportunity available is a Nonavailability waiver.

Recipients must notify SECO of their interest in submitting a waiver prior to project commencement. Waiver requests may take up to 90 days to process.

The undersigned Proposer hereby certifies on behalf of itself and all contractors (at all tiers) that it will meet Build America, Buy America requirements in Section 70914 of the Bipartisan Infrastructure Law

P.L. 117-58, using one of the following provisions (*Proposer must select the applicable provision*):

_____The infrastructure project/product contains no steel or iron products, manufactured products or construction materials manufactured outside the United States per Section 70914 of the Bipartisan Infrastructure Law, P.L. 117-58. If there is ANY foreign steel or iron, manufactured products or construction materials in your infrastructure project/product you may not check this box.

_____The project/product has foreign steel or iron, manufactured products, or construction materials; a Build America, Buy America waiver is required. The Contracting Entity may, but is not obligated to, seek a waiver of Build America, Buy America requirements if grounds for the waiver exist. However, Proposer certifies that it will comply with the applicable Build America, Buy America requirements if a waiver of those requirements is not available or not pursued by the Contracting Entity. The waiver process can take time and the project may not move forward until a waiver is completed.

A false certification is a criminal act in violation of 18 USC 1001. Should this Agreement be investigated, Proposer has the burden of proof to establish that it is in compliance.

Proposer: _____

Signature of Authorized Official: _____

Name of Authorized Official: Joseph R. Pace

Title: City Manager

Date: _____

ATTACHMENT O CERTIFICATION REGARDING DAVIS-BACON ACT

As the duly authorized representative of the Contractor, I certify that the Contractor will comply with the applicable requirements of the Davis-Bacon Act (41 U.S.C. 3141 et seq.), including but not limited to:

- Obtain wage determination (“WD”) and monitor it through contract award.
- Ensure all bid, contract, and subcontract documents and sole source contracts contain the WD and Davis-Bacon labor standards clauses (prime contractor and sub-contractors).
- For prime contracts over \$100,000, comply with Contract Work Hours and Safety Standards Act (CWHSSA).
- Ensure no contracts are awarded to ineligible contractors.
- Ensure the Davis-Bacon poster and wage determination are posted at work site.
- Collect and submit certified payroll reports and statements of Davis-Bacon compliance for the contractor personnel and for all sub-contractors weekly.
- Designate personnel to submit certified contractor and sub-contractor payrolls via LCPTracker hosted by the United States Department of Energy (<https://prod-cdn.lcptracker.net/login/login>)
- Spot-check payroll reports/related records and update payrolls in the event that they are rejected in LCPTracker.
- Conduct and save confidential, onsite interviews using Standard Form 1445, Labor Standards Interview.
- Periodically review use of apprentices and trainees.
- Report all alleged Davis-Bacon violations within a week of the violation.
- Maintain full documentation of payrolls, certifications, interview forms, etc., for 3 years after project completion in the event the Office of Inspector General examines the project.

Wage Determination (WD)

Prior to issuing a request for bids or proposals, the Contractor must obtain the WD for the project area by accessing Wage Determinations at [SAM.gov/content/wage-determinations](https://sam.gov/content/wage-determinations), then Public Building or Works or Service Contracts option, the state and county where the work will be performed, and the DBA construction type. Make sure the checked Status box is active. The Contractor must include the generated WD document in all bid specifications and resulting contracts. If you are unsure about the funding source, a project can be bid with alternates—one including federal wage rates and one without. (Note: SAM.gov replaced WDOL.gov)

DBA construction types

The construction types are building, residential, highway, and heavy. The “building” type is for sheltered enclosures, especially with windows, doors, and roofs, that will be occupied at times. Municipalities, county governments, public higher education institutions, and school districts should ask their consulting engineer what type to use if they are unsure. A contract can contain more than one construction type. If over 80% of the project cost falls into one construction type, the municipalities, county governments, public higher education institutions, and school districts can use that type for the WD; this may be a benefit or a detriment depending on the project. Contact your Construction Management Team (CMT) with questions.

Monitor the WD

Once the bids have been opened, the wage determination is valid for 90 days. During the bid advertisement period, municipalities, county governments, public higher education institutions, and school districts or their consulting engineers must monitor SAM.gov to ensure DOL has not changed the WD. If the WD changes more than 10 days before bid opening, the bid specifications must be amended with the new WD. If contract award is more than 90 days after bid opening, the WD must be updated. The Davis-Bacon wage

determination included in the contract at the time of contract award stays in effect for the duration of the project.

Request additional classifications

If the WD is missing a wage rate needed for a specific work/job classification, construction type, and/or project location, contact your CMT for guidance on requesting a conformance using the Request for Authorization of Additional Classification and Rate Standard Form 1444. The municipalities, county governments, public higher education institutions, and school districts should incorporate the final conformance rate into the bid specifications and construction contracts, and copies of the conformance letter should be kept on file.

Ineligible Contractors

Municipalities, county governments, public higher education institutions, and school districts cannot knowingly award a construction project to a contractor who has been debarred or suspended by the Federal government. During the bid evaluation period, municipalities, county governments, public higher education institutions, and school districts must look up all bidders at SAM.gov/content/exclusions to determine if they are ineligible contractors. Municipalities should make a note of verification in the contract file. Contractors are responsible for verifying the eligibility of sub-contractors. (Note: SAM.gov replaced Excluded Parties List System (EPLS))

Payroll Reports

Municipalities, county governments, public higher education institutions, and school districts must collect certified payroll reports and compliance statements from the prime contractor and sub-contractors weekly, in a timely manner, for every week of contract work and keep them on file for at least three years after project completion. Contractors are responsible for setting up accounts for sub-contractors in LCPTracker and for preparing and submitting payroll reports for its own employees and all sub-contractor employees in LCPTracker. Contractors must attend virtual LCPTracker training sessions offered by DOE set forth in Attachment R. Per 29 CFR 5.5(a)(3)(ii), payroll reports do **not** include full social security numbers and home addresses. A weekly payroll statement must provide the following information:

- Name of contractor or sub-contractor (indicate which)
- Project and location
- Project or contract number
- Name of employee
- Employee identification number (e.g., last four digits of social security number – Do not use full SSN)
- Work/Job classification
- Hourly rate of pay (straight and overtime)
- Daily and weekly number of hours worked
- Deductions made
- Actual wages paid

Along with each payroll report, the contractor (or payment supervisor) must submit to the Contractor a signed statement of Davis-Bacon compliance, such as the one on the back of Payroll Form WH-347.

Review Payroll Reports

To verify that contractors and sub-contractors are paying appropriate wage rates and fringe benefits, municipalities, county governments, public higher education, and school districts must spot-check a representative sample of weekly payroll reports for accuracy at least twice for each contractor and sub-

contractor during the project—a minimum of once within 2 weeks of initial payroll and once within 2 weeks of final payroll.

Note: The check boxes on page 1 of the Request for Disbursement Form 8700-215 replaced the DBRA Payroll Certification page. The check boxes serve the purpose of assurance from the Contractor to CMT certifying that Davis-Bacon has been satisfied for each week employees are paid.

Interview Employees

Municipalities, county governments, public higher education, and school districts should periodically conduct and retain confidential, onsite interviews with a sampling of the contractor and sub-contractors' employees to determine whether laborers, mechanics, apprentices, and trainees are being paid in accordance with Davis-Bacon requirements—a minimum of once within 2 weeks of initial payroll and once within 2 weeks of final payroll is suggested. The Labor Standards Interview Standard Form 1445 must be completed with every interview and kept on file for at least three years after project completion.

Verify Apprentice and Trainee Registrations

While municipalities, county governments, public higher education institutions, and school districts (or their designated representatives) are onsite conducting Davis-Bacon interviews, they should take the opportunity to review the apprentice and trainee registrations and certifications that the contractor should be able to easily provide upon request. Municipalities, county governments, public higher education institutions, and school districts can use the relevant documents to confirm that the number of apprentices does not exceed the ratio to journeymen allowed by the apprenticeship program plan.

Report Violations

Additional interviews may be completed at the Municipalities, county governments, public higher education institutions, and school districts discretion and are required in the case of questionable payroll reports or employee complaints. Report alleged violations to the EPA Davis-Bacon Coordinator listed in the assistance agreement and to the DOL WHD District Office.

Violations include:

- Misclassification of laborers and mechanics.
- Failure to pay full prevailing wage, including fringe benefits, for all hours worked (including overtime hours).
- Inadequate recordkeeping, such as not counting all hours worked by an individual in two or more classifications during a day.
- Failure to maintain a copy of bona fide apprenticeship program and individual registration documents for apprentices.
- Failure to submit certified weekly payrolls.
- Failure to post the Davis-Bacon poster and applicable wage determination.

Final Closeout

When the construction activities have reached 95% disbursement of the project amount, CMT will send a final closeout letter to the municipality, county governments, public higher education, or school district, including a Wage Rate Compliance Certification. The municipality, county governments, public higher education, or school district must prepare the certification on letterhead and submit it to SECO prior to receiving the final fund disbursement.

APPLICABILITY OF DAVIS BACON

Site of work

Davis-Bacon applies only to laborers and mechanics employed “directly upon the site of the work.” The site of work is the physical place or places where the construction is called for in the contract or will remain after work has been completed, and any other site where a significant portion of the building or work is construction, provided that such site is established specifically for the contract. It may also include job headquarters, tool yards, batch plants, borrow pits, etc., provided the properties are located adjacent or virtually adjacent to the “site of work” and dedicated exclusively or nearly so to the performance of the contract or project.

Laborers and mechanics

Laborers and mechanics are employees who work with their hands, have manual or physical duties, or are in specific trades. They include carpenters, plumbers, sheet metal workers, etc., including apprentices and trainees. **The DOL focuses on the actual work being performed by the person, not necessarily the title.** As a general rule, an employee who spends the majority of time in a supervisory position onsite and who spends less than 20% of the work week engaged in skilled labor, is exempt from Davis-Bacon requirements for the percentage of time spent in that skilled time. Clerical staff (timekeepers), professionals (architects, engineers, inspectors), and certain utility installers are also exempt.

Force account employees

Davis-Bacon does not apply to “force account” work in which the Contractor performs the construction in-house with its own “force account” employees rather than contracting out the construction work. Furthermore, the DOL does not consider a state or local government to be a contractor, even if it enters into a contract to perform construction work (see 29 CFR 5.2(h)).

Business owners

Davis-Bacon requirements do **not** apply to the owner of a construction company. However, to be exempt, the owner must be a “business owner” as defined under 29 CFR § 541.101 and be actively engaged in the management of their business. Davis-Bacon would **apply** if the owner were not engaged in management but predominantly performs manual or physical duties of construction work.

Truck drivers Davis-Bacon does **not** apply to truck drivers employed by the contractor who come on the job site to deliver construction materials because they are not employed “directly upon the site of the work.” Davis-Bacon **does** apply to truck drivers employed by the contractor to move materials on the site of work or from a property located adjacent or virtually adjacent to it. Davis-Bacon does **not** apply to truck drivers employed by the contractor to move materials at any location that existed prior to bid opening (e.g., contractor’s headquarters).

City of Wharton

Contractor Name

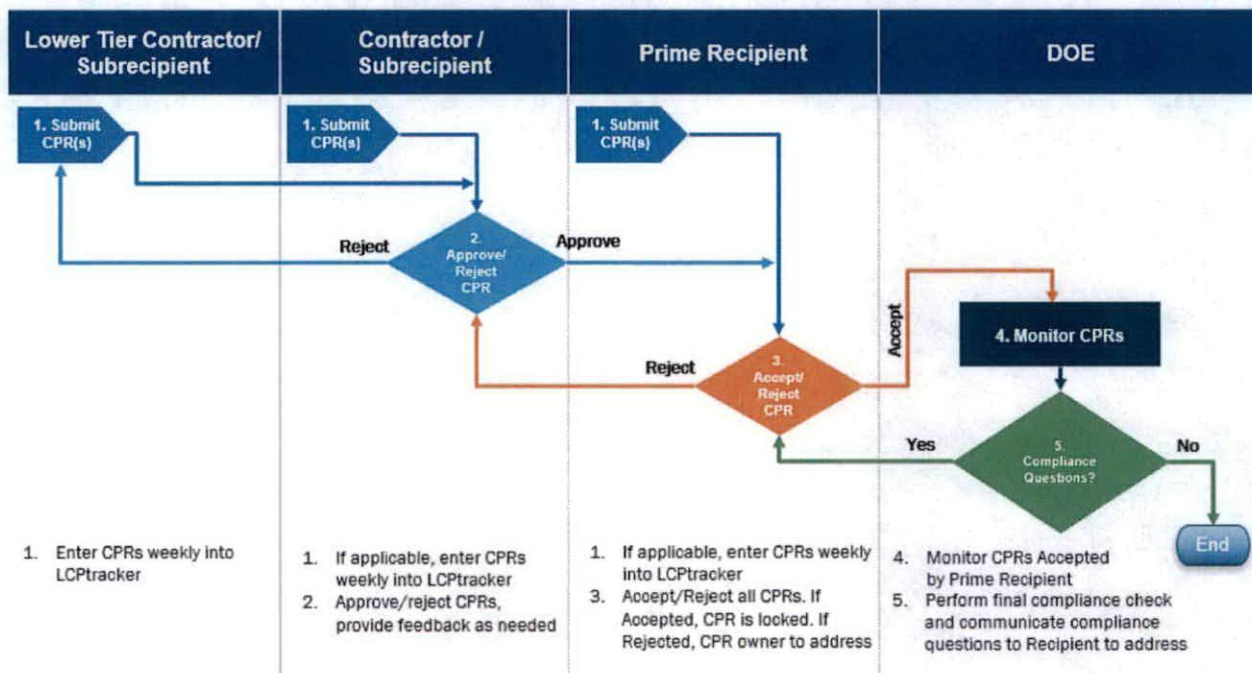
Joseph R. Pace, City Manager

Name and Title of Authorized Representative

Signature

Date

ATTACHMENT P LCPTRACKER FLOW CHART



ATTACHMENT Q LCPTRACKER TRAINING SCHEDULE

	Administrator (1 hour each)	Prime Approver (Prime Contractor) (1.5 hours)	Contractor (Prime & Lower Tier) (1 hour each)
LCPtracker Pro Live <ul style="list-style-type: none"> Payroll Entry 1st & 3rd Wed of the month at 1 pm ET 		X	X
LCPtracker Pro Live <ul style="list-style-type: none"> Overview 1st & 3rd Tue of the month at 1 pm ET 	X		
LCPtracker Pro Live <ul style="list-style-type: none"> Settings Thur after 1st & 3rd Tue at 1 pm ET 	X		
LCPtracker Pro Live <ul style="list-style-type: none"> Setup, eDocs, Reports 2nd & 4th Tue of the month at 1 pm ET 	X		
LCPtracker Pro Live <ul style="list-style-type: none"> Hands-On User Setup Thur after 2nd & 4th Tue at 1 pm ET 	X		
Daily Reporter <ul style="list-style-type: none"> Daily Logs 2nd & 4th Wed of the month 	X		X
As-Needed LCPtracker Pro Live Training Sessions			X

PART V APPLICATION

EECBG Municipally Owned Building Energy Efficiency Retrofits Application RFA No. EECBG-IIJA1-2024

SECTION 1: GENERAL INFORMATION

1.A APPLICANT'S INFORMATION

- Name of Applicant: City of Wharton
- Mailing Address: 120 E Caney
- City / State / Zip Code: Wharton, TX 77488
- Federal Employer Identification Number ("FEIN" or "EIN"): 74-6002557
- Texas Tax Identification/Registration Number, if any: 1-746002557-4
- DUNS Number: 070137716
- Proposer Date: 07/25/2024
- Total Amount Requested: \$ 250,000

1.B SIGNING AUTHORITY

- Name: Joseph R. Pace
- Title: City Manager
- Telephone: 979-532-2491
- Email Address: jpace@cityofwharton.com

1.C PRIMARY CONTACT

- Name: Joseph R. Pace
- Title: City Manager
- Telephone: 979-532-2491
- Email Address: jpace@cityofwharton.com

1.D SECONDARY CONTACT

- Name: Joan Andel
- Title: Finance Director
- Telephone: 979-532-2491
- Email Address: jandel@cityofwharton.com

1.E ADMINISTRATIVE CONTACT FOR ACCOUNTING

- Name: Joan Andel
- Title: Finance Director
- Telephone: 979-532-2491
- Email Address: jandel@cityofwharton.com

1.F SIGNATURE AUTHORITY**Signature and Certification by Authorized Signatory of Applicant**

By signature hereon, Applicant represents and warrants that:

- (1) The undersigned signatory has full authority to submit this application and to enter into any contract resulting from this RFA on behalf of Applicant;
- (2) Applicant has reviewed the RFA and the Sample Contract Agreement and will comply with all the terms and conditions set forth in the RFA and the Sample Contract Agreement if awarded a contract under this RFA; and
- (3) The contents of this Application are true and correct to the best of Applicant's knowledge.

Signature	Title
	City Manager
Printed Name	Date
Joseph Pace	7/25/24

SECTION 2: PROJECT DESCRIPTION
**2.A DESCRIPTION OF EXISTING ENERGY EFFICIENCY RETROFITS TO BE REPLACE
WITH NEW ENERGY EFFICIENCY RETROFITS EQUIPMENT.**

In this section, provide a detailed narrative description of the existing energy efficiency retrofits to be replaced with new energy efficiency retrofits, the functional area(s) (i.e. parking lot, waiting room, hallways, etc.) where the retrofits will be replaced, and include how the existing retrofits are controlled/turned on and off (ex: on/off wall switch, mechanical/electronic timeclock or controlled through the building energy management system). The narrative should also describe the quantity of retrofits in each functional area where retrofits will be replaced. (Attach additional sheet, if necessary).

The Wharton Civic Center is an approximately 80,000-square-foot building that serves multiple community resources and programs. Such programs include but are not limited to in times of a disaster participating as a Disaster Recovery Center through FEMA to assist citizens with applications for assistance as well as assistance with the appeal process, housing of National Guard and any other federal agency that needs places to stay during an event, functions as a distribution center for food and supplies to the general public provided by volunteer agencies (i.e. Salvation Army or American Red Cross).

The building also houses the City's Emergency Medical Services Department which provides service to the east side of Wharton County. The facility is a training center for the Emergency Management Office, Emergency Medical Services Department, and Police Department for programs available to the general public.

Public meetings are held in the facility for informational purposes regarding City/Countywide projects (i.e. United States Army Corps of Engineers Levee project and City Comprehensive Plan) to obtain public involvement.

This building is also a Wharton County Jury Selection site for cases involving many potential jurors since it is the only building large enough in the city.

There are twelve (12) DX rooftop and split system AC units that serve the space. RTUs (4) are gas heat and split systems (8) are resistive electric heat. Replacement of the six (6) units (5 splits + 1 RTU) over 10 years old are part of this application.

All HVAC units are currently controlled with non-programmable thermostats. All 12 thermostats would be replaced with a networked smart thermostat to allow better control of schedules and setpoints throughout.

The building does not have extensive glazing, but there are 14 windows that are all single pane aluminum frame. These are in poor condition and have condensation issues. In addition, weatherstripping of the doors to reduce infiltration will also be completed.

The site was converted to LED lighting in 2016 and lighting is not part of this application.

2.B TABLE OF EXISTING ENERGY EFFICIENCY RETROFITS AND PROPOSED RETROFIT PLAN

Complete the table below for the retrofits to be replaced by providing the building name & function type, existing retrofit type, proposed energy efficiency retrofit fixture, and new measures.

A.	B.	C.	D.	E.	F.
Line Item	Building Name (ex: [Successful Applicant] Community Center)	Function Area(s) (ex: Bleachers, Field Parking lot)	Existing Measures	Proposed Retrofits	New Measures (Existing areas with new retrofits)
1	Civic Center	All	Non-Programmable Thermostats	Web based Smart Thermostats (EcoBEE or similar)	
2	Civic Center	Kitchen	5-Ton DX Split w/ Electric Heat (1990's)	5-Ton Heat Pump w/ new AHU	
3	Civic Center	Foyer	5-Ton DX Split w/ Electric Heat (2008)	5-Ton Heat Pump w/ new AHU	
4	Civic Center	O'Quinn Room	5-Ton DX Split w/ Electric Heat (1991)	5-Ton Heat Pump w/ new AHU	
5	Civic Center	Emergency Management	10-ton RTU w/ Gas (2011)	10-ton High Efficiency RTU	
6	Civic Center	Admin Office	7.5-Ton DX Split w/ Electric Heat (2005)	7.5-Ton Heat Pump w/ new AHU	
7	Civic Center	Conference Room	3.5-Ton DX Split w/ Electric Heat (2012 Condenser/2003 AHU)	3.5-Ton Heat Pump w/ new AHU	
8	Windows	All	14 single pane, aluminum windows	14 Double pane, thermally broken windows	
9	Weatherstripping	All	Approximately 6 doors	Weatherstrip existing doors	

2.C PROPOSED ENERGY EFFICIENCY RETROFITS PLAN AND PROPOSED RETROFITS EQUIPMENT

In this section, provide a description of the energy efficiency retrofits plan to convert existing measures areas with new retrofits. Include building area description, existing retrofits and proposed controls type equipment, describe coordination with building staff and/or contractor assigned, permits and inspection process for energy efficiency retrofits installations, Complete Table 2B. Attach additional sheets, if necessary.

Building Area Description/Existing Retrofits/Proposed Control System -- Civic Center

The Wharton Civic Center was built in 1976 and is located at 1924 N Fulton St, Wharton, TX. This 80,000 Square Feet facility was originally built as a hospital and later converted to a municipal facility for community use.

The facility serves as an emergency operations center for disasters, housing FEMA and other agencies as needed. Such programs include but are not limited to in times of a disaster participating as a Disaster Recovery Center through FEMA to assist citizens with applications for assistance as well as assistance with the appeal process, housing of National Guard and any other federal agency that needs places to stay during an event, functions as a distribution center for food and supplies to the general public provided by volunteer agencies (i.e. Salvation Army or American Red Cross).

The facility was originally served by a central utility plant, but was converted to DX cooling in the early-90's. There are a total of 12 units, 6 of which are over 10 years old and in need of replacement. The inventory of units requiring replacements is below:

HVAC	Area Served	Size (tons)	Refrigerant	Heat Source	Type	Year Installed
Unit 1	Kitchen	5	R22	Electric	Split	1990's
Unit 2	Foyer	5	R22	Electric	Split	2008
Unit 3	O'Quinn Room	5	R22	Electric	Split	1991
Unit 4	Emergency Management	10	410A	Gas	Rooftop	2011
Unit 5	Admin Office	7.5	R22	Electric	Split	2005
Unit 6	Conference Room	3.5	410A	Electric	Split	2012

The building does not have extensive windows, but those that exist appear to be original to the building. These single pane aluminum windows are in poor condition and many are showing signs of condensation and moisture damage. The 14 windows to be replace are shown below:

Windows	Width (in)	Height (in)	Quantity
Set 1	82	58	5
Set 2	48	32	2
Set 3	69	33	3
Set 4	72	60	2
Set 5	48	27	2

Contracting Process & Coordination With Staff

In July 2024, the City Staff toured the Civic Center with Holistic Utility Solutions, an Energy Services Company based in Dallas-Ft Worth.

The City intends to contract with Holistic Utility Solutions as the prime contractor. Holistic will contract with the City's local mechanical subcontractor, Roberson Air Conditioning (TACLA44413C), to complete installation. Roberson will pull Mechanical Permits through the City and be paid prevailing wage rates per Davis-Bacon. Holistic staff and subcontractors will oversee the commissioning of the system as well.

2.D DESCRIBE THE EXISTING PROCESS FOR IMPLEMENTING THE PROPOSED RETROFITS

City of Wharton has implemented several energy retrofits throughout other areas of the City since 2016. These included VFDs at the wastewater plant and LED lighting throughout facilities. HVAC, controls, and windows/weatherization was not a focus of prior initiatives and is the primary opportunity for this RFA. HVAC replacements have taken place on an as-needed basis, leading to several units of 20+ years old remaining in service with R22 refrigerant.

With assistance from Holistic Utility Solutions, the City of Wharton identified and evaluated the Civic Center as the primary opportunity for reduced energy spend through replacement of aging HVAC units, programmable thermostats throughout, and replacement of single pane aluminum windows.

If this grant is approved, the City of Wharton intends to implement through Holistic Utility Solutions as a turnkey contract with local licensed firms providing installation services.

2.E WHAT BENEFITS WILL THESE RETROFITS PROVIDE TO THE MUNICIPALLY OWNED BUILDING? (ATTACH ADDITIONAL SHEET, IF NECESSARY.)

Lower energy costs

- Replacement of the 6 aging HVAC units and programmable thermostats on of all units is expected to reduce energy costs 5-10% at the Civic Center. This will result in ongoing operational savings that will be repurposed to serving our community.

Lower maintenance costs

- Through reduced runtime, mechanical equipment is expected to last longer and require replacement less often. This will further increase savings in the Budget.
- New windows will mitigate issues with moisture damage from condensation.

Improved Comfort

- The ability to better manage temperatures and schedules through a centralized smart thermostat system will improve comfort for building occupants.

Increased sustainability

- City of Wharton has undertaken several programs to reduce greenhouse gas emissions and improve sustainability within their facilities. Example of this include LED lighting and VFDs at the Wastewater Treatment Plant. Investment into the Civic Center is part of a long-term goal to improve the sustainability throughout the facility portfolio and general operations.

2.F IS THIS YOUR ORGANIZATION'S FIRST TIME RESPONDING TO AN RFA ISSUED BY SECO?

X No

Project Experience

Is this the first time you are considering the energy efficiency retrofits for your facilities?

X No

SECTION 3: EVALUATION FORM AND SCORING SHEET

	Total Possible Points	Score Assigned by Applicant
3.3 Is your Municipally Owned Building located in or share a boundary with an area designated as a "Disadvantaged Community" (DAC) in accordance with the Climate and Economic Justice Screening Tool of the Department of Energy (CEJST Map). Attach screenshot to application. ➤ Yes, located in DAC- score 50 points ➤ Share a boundary with a DAC- score 25 points ➤ Not located in or does not share a border with a DAC- score 10 points	50	50
3.4 How old is your activity center, recreational facility, pavilion, park, library or facility serving as an emergency shelter during disasters? ➤ Older than 20 years, score 25 points ➤ 10 – 20 years, score 15 points ➤ Less than 10 years, score 5 points Insert the age of the building here: 1976	25	25
3.5 What is the total population by place of the municipality where the building is located? ➤ Fewer than 10,000 residents, score 25 points ➤ 10,000 – 50,000 residents, score 20 points ➤ More than 50,000 residents, score 10 points Population Estimates by Texas State Demographer – use 2022 "Total Population By Place" reference website: https://demographics.texas.gov/Estimates/2022/ . Insert the population number here: 8,803	25	25
Maximum Base Score	100	
Total Score Assigned By Applicant	100	100

**CITY OF WHARTON
RESOLUTION NO. 2024-XX**

A RESOLUTION OF THE WHARTON CITY COUNCIL APPROVING AN INTERLOCAL AGREEMENT FOR THE MUNICIPALLY OWNED BUILDING ENERGY EFFICIENCY RETROFITS PROGRAM WITH THE STATE ENERGY CONSERVATION OFFICE (SECO) AND AUTHORIZING THE CITY MANAGER OF THE CITY OF WHARTON TO EXECUTE ALL DOCUMENTS RELATED TO SAID AGREEMENT.

WHEREAS, On August 28, 2024, the City of Wharton received notification that the application for new energy efficiency retrofit equipment at the Wharton Civic Center from the State Energy Conservation Office had been selected to receive funding in the amount of \$250,000; and,

WHEREAS, The Wharton City Council wishes to accept the Interlocal Agreement in the amount of \$250,000.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WHARTON, TEXAS as follows:

Section I. That the Wharton City Council hereby approves the Interlocal Agreement for the Municipally Owned Building Energy Efficiency Retrofit Program with the State Energy Conservation Office and authorizes the City Manager of the City of Wharton to execute on behalf of the City of Wharton, all documents related to said agreement.

Section II. That this resolution shall become effective immediately upon its passage.

Passed, Approved, and Adopted this 14th day of October 2024.

CITY OF WHARTON, TEXAS

By: _____
TIM BARKER
Mayor

ATTEST:

PAULA FAVORS
City Secretary