

ENERGY SAVINGS PERFORMANCE CONTRACT AGREEMENT

Date: 7/6/2015

THIS AGREEMENT was made and entered into by and between

Company name: McKinstry Essention, LLC

Address: 13465 Midway Road, Suite 100, Dallas, TX 75244

Contact Name: Michael Grabham

Contact Title: Regional Director, South

Telephone: (972) 532-4277 Fax: (972) 239-8835

Email: michaelg@mckinstry.com

Hereinafter called MCKINSTRY, and

Customer name: Brown County

Address: 200 South Broadway Street, Room 109, Brownwood, TX 76801

Contact Name: Judge E. Ray West, III

Contact Title: County Judge

Telephone: 325-643-2828 Fax: 325-646-7013

Email: ray.west@browncountytexas.org

Hereinafter called the CUSTOMER, WITNESSETH

In consideration therefore, the parties agree as follows:

- 1. SCOPE OF THE AGREEMENT.** MCKINSTRY agrees to install various utility improvement measures, utility conservation measures, facility improvement measures, and/or operational efficiency improvements, which will result in utility savings or allow the CUSTOMER to avoid future capital or operational costs as set forth in detail in the Energy Services Proposal dated **7/6/2015** ("ESP") (Exhibit A). After installation, MCKINSTRY agrees to provide the post construction services identified in the ESP that are necessary to monitor, measure, and achieve the identified Project Benefits (savings, cost avoidances, and mutually agreed upon billable usage increases), subject to the terms of the guarantees set forth in the ESP. The CUSTOMER agrees to take all actions identified in this AGREEMENT that are necessary to achieve the Project Benefits identified. As a result, and as specifically set forth in the ESP, MCKINSTRY will provide all labor, materials, equipment, design services, and supervision necessary to install the equipment ("Work") as well as provide the post construction monitoring, measurement and verification services for a one year period ("Services") detailed in the ESP. Monitoring, measurement and verification services for Years 2-15 are not part of this AGREEMENT and shall be under a separate agreement. MCKINSTRY shall supervise and direct the Work and shall be solely responsible for all construction means, methods, techniques, sequences, and procedures and for coordinating all portions of the Work and Services under this AGREEMENT. MCKINSTRY shall be responsible to pay for all labor, materials, equipment, tools, construction equipment and machinery, transportation, and other facilities and services necessary for

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(Exhibit #1)

the proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

2. **COMPENSATION.** CUSTOMER shall pay MCKINSTRY the Contract Sum of **\$5,799,795 (five million seven hundred and ninety nine thousand seven hundred and ninety five dollars)** for MCKINSTRY's performance of the Work and Services. Additional project financial information including total compensation and payment terms is as set forth in Section 4 of the ESP.
3. **TERM.** The Term of this AGREEMENT shall begin on the Commencement Date, which shall be **7/6/2015**, or, if no date is included, the date of last signature of this AGREEMENT. If the Work is divided into phases or individual projects for which individual prices have been negotiated, then separate Commencement Dates shall apply to each phase or individual project. The Work shall be completed by the Substantial Completion Date, which shall be the earlier of:
 - a. the date on which the CUSTOMER executes a Certificate of Substantial Completion; or
 - b. **365 days after Commencement Date**, subject to adjustments as set forth in Paragraph 4 below.

If the Work is divided into phases or individual projects for which individual prices have been negotiated, then Substantial Completion Dates shall apply to each phase or individual project. Substantial Completion means that MCKINSTRY has provided sufficient materials and services to permit the CUSTOMER to operate the Equipment for its intended purpose or to achieve the intended benefit from the Work. The Services shall commence on the Substantial Complete Date and shall continue for twelve (12) months. The term of all utility cost savings guarantees as set forth in the ESP shall coincide with the term of the Services. If for any reason, the CUSTOMER cancels or breaches this AGREEMENT, including but not limited to its obligations pursuant to the Services portion of the AGREEMENT or other separate agreement, the utility cost savings guarantees in the ESP shall automatically terminate.

4. **DELAYS.** If MCKINSTRY is delayed in the commencement or completion of the Work by causes beyond its control and without its fault or negligence, including but not limited to fire, flood, labor disputes, supplier delays, abnormal adverse weather conditions, acts of God, acts of the public enemy or unusual deliveries caused by any of the foregoing occurrences, or failure by the CUSTOMER to perform its obligations under the AGREEMENT or failure by the CUSTOMER to cooperate with MCKINSTRY in the timely completion of the Work, then MCKINSTRY shall provide written notice to the CUSTOMER of the existence, extent of, and reason for such delays. An equitable adjustment in Substantial Completion Date shall be made as a result.
5. **CERTIFICATE OF SUBSTANTIAL COMPLETION.** The Certificate of Substantial Completion to be executed by the CUSTOMER shall include:
 - a. an acknowledgement by the CUSTOMER of the Utility Improvement Measures (UIM) substantially completed and the Substantial Completion Date for each UIM.
 - b. an acknowledgment by the CUSTOMER of receipt of manuals and training provided by MCKINSTRY under the AGREEMENT.
 - c. an acknowledgement by the CUSTOMER of the warranty start date and warranty period.
 - d. a punchlist of items remaining to be completed by MCKINSTRY.
6. **CUSTOMER USE.** Upon turnover at Substantial Completion, CUSTOMER acknowledges that:

- a. MCKINSTRY does not warrant against system malfunction caused by improper use, misuse or wrong entry of data by the CUSTOMER, and MCKINSTRY shall not be liable for situations or damages that are the direct result of user-generated databases.
7. **TAXES, PERMITS, AND FEES.** MCKINSTRY shall be responsible for obtaining all permits and related permit fees associated with the Work and Services. MCKINSTRY shall pay sales, consumer, use, and other similar taxes and shall secure and pay for the building permit and other permits and governmental fees, licenses, and inspections necessary for proper execution. The CUSTOMER shall be responsible for real estate and personal property taxes where applicable. The CUSTOMER shall be responsible for securing any necessary approvals, easements, assessments, or zoning changes. MCKINSTRY makes no representations regarding the tax implications or CUSTOMER's accounting treatment of this AGREEMENT.
8. **WARRANTY.** MCKINSTRY warrants that materials and equipment furnished by MCKINSTRY will be of good quality and new; that the Work will be free from defects not inherent in the quality required or permitted; and that the Work and Services will conform to the requirements of the ESP. MCKINSTRY warrants that the Work shall be free from defects in material and workmanship arising from normal usage for a period of one year from the Substantial Completion Date and that its Services will be free from defects in workmanship, design, and material until the end of the Term, or for one year, whichever is earlier. Upon written notice from the CUSTOMER, MCKINSTRY shall, upon the mutual agreement of the parties, repair or replace the defective Work or re-perform Services that are deemed defective. These warranties do not extend to any Work or Services that have been abused, altered, misused, or repaired by the CUSTOMER or third parties without the supervision of and prior written approval of MCKINSTRY; or if MCKINSTRY serial numbers or warranty date decals have been removed or altered. The CUSTOMER must promptly report any failure of the installed equipment to MCKINSTRY in writing. All replaced equipment or parts become MCKINSTRY's property.

THESE WARRANTIES ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THOSE OF MERCHANTABILITY AND FITNESS FOR A SPECIFIC PURPOSE.

CUSTOMER understands that MCKINSTRY is a provider of services under this AGREEMENT. MCKINSTRY shall not be considered a merchant or a vendor of goods. If MCKINSTRY installs or furnishes a piece of equipment under this AGREEMENT, and that equipment is covered by a warranty from the manufacturer, MCKINSTRY will transfer the benefits of that manufacturer's warranty to CUSTOMER if this AGREEMENT terminates before the equipment manufacturer's warranty expires.

9. **CLEANUP.** MCKINSTRY shall keep the premises and the surrounding area free from accumulation of waste materials or rubbish caused by the Work and, upon completion of the Work, MCKINSTRY shall remove all waste materials, rubbish, tools, construction equipment, machinery, and surplus materials.
10. **SAFETY.** MCKINSTRY shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Work or Services. MCKINSTRY shall comply with all applicable laws, ordinances, rules, regulations, and lawful orders of public authorities related to safety of persons or property.
11. **HAZARDOUS MATERIALS.** Unless specifically noted in the ESP, MCKINSTRY's obligations expressly exclude any Work or Services of any nature associated or connected with the identification, abatement, cleanup, control, removal, or disposal of hazardous materials or substances, including but not limited to asbestos, lead or PCBs, in or on the premises. The CUSTOMER represents that, to the best of the CUSTOMER's knowledge, there is no asbestos or hazardous material in the CUSTOMER's premises that will in any way affect MCKINSTRY's work. Should MCKINSTRY become aware of or suspect the presence of asbestos or hazardous materials, MCKINSTRY shall

have the right to stop work in the affected area immediately and notify the CUSTOMER. The CUSTOMER will be responsible for correcting the condition in accordance with all applicable statutes and regulations. MCKINSTRY shall assume no responsibility for any claims arising out of or relating to the presence of asbestos or hazardous materials in the CUSTOMER's building. MCKINSTRY shall be entitled to an equitable adjustment to the Substantial Completion Date and/or Contract Sum caused by encountering asbestos or other hazardous materials or substances on the premises.

12. **INSURANCE.** Prior to commencing the Work, MCKINSTRY shall provide a certificate of insurance showing its insurance coverage, and MCKINSTRY shall maintain such insurance in full force and effect at all times until the Work and Services have been completed, in the following minimum amounts:

COVERAGE	LIMITS OF LIABILITY
Workmen's Compensation Insurance of self insurance, including Employer's Liability	Statutory
Comprehensive General Liability Insurance, including Contractual	\$5,000,000 One Occurrence \$5,000,000 Each Aggregate
Comprehensive Automobile Liability Insurance	\$5,000,000 Combined Single Limit

The above limits are obtained through primary and excess policies.

MCKINSTRY shall be responsible for obtaining builder's risk insurance.

All deductibles or self-insured retentions (SIR) related to the above insurance requirements, regardless of size, will remain the responsibility of the party causing the claim.

13. McKinstry shall furnish performance and payment Bonds, each in an amount equal to the Contract Sum. The Bonds shall cover completion of the physical work per the approved design, and shall not guarantee or warranty efficiency or system performance. The Bonds shall not cover any obligation of the contractor to ensure that the work as constructed will result in any particular level of energy savings. Any suit on the Bonds must be brought within the period of one (1) year after substantial completion, as defined in the contract; provided, however, that if this suit limitation is void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable. McKinstry shall also furnish a retention bond in lieu of retainage held on respective monthly invoices.
14. **INDEMNITY. MCKINSTRY SHALL INDEMNIFY AND HOLD HARMLESS THE CUSTOMER, ITS EMPLOYEES, AGENTS, AND ASSIGNS AGAINST ALL CLAIMS, ACTIONS, DAMAGES, LIABILITIES, AND EXPENSES, INCLUDING ATTORNEY'S FEES, ARISING OUT OF OR RELATED TO ANY CLAIMS FOR BODILY INJURY OR PROPERTY DAMAGE, PATENT INFRINGEMENT OR CLAIMS OF CONSTRUCTION OR MATERIALMAN'S LIEN MADE BY ANY SUBCONTRACTOR OR MATERIALMAN, BUT ONLY TO THE EXTENT CAUSED BY MCKINSTRY'S NEGLIGENCE.**
15. **LIABILITY AND FORCE MAJEURE.** MCKINSTRY shall not be liable under this AGREEMENT in an amount in excess of its primary general comprehensive policy limits. Neither MCKINSTRY nor the CUSTOMER will be responsible to the other for any special, indirect, or consequential damages arising in any manner from the Work or Services. Neither party will be responsible to the other for damages, loss, injury, or delay caused by conditions that are beyond the reasonable control, and without the intentional misconduct or negligence, of that party. Such conditions include, but are

limited to: acts of God; acts of Government agencies; strikes; labor disputes; fire; explosions or other casualties; thefts; vandalism; riots or war; or unavailability of parts, materials or supplies. If this AGREEMENT covers fire safety or security equipment, the CUSTOMER understands that MCKINSTRY is not an insurer regarding those services. MCKINSTRY shall not be responsible for any damage or loss that may result from fire safety or security equipment that fails to perform properly or fails to prevent a casualty loss. MCKINSTRY is also not responsible for any injury, loss, or damage caused by equipment that is not part of the work set forth in the ESP.

- 16. MCKINSTRY'S PROPERTY.** All drawings, specifications and other documents and electronic data, including such documents identified in the ESP, furnished by MCKINSTRY to CUSTOMER under this Agreement ("Work Product") are deemed to be instruments of service and MCKINSTRY shall retain the ownership and property interests therein, including but not limited to any intellectual property rights, copyrights and/or patents, subject to the provisions set forth in this Agreement. Upon Owner's payment in full for all Work performed under the Agreement, MCKINSTRY shall grant CUSTOMER a limited license to use the Work Product in connection with CUSTOMER's use of the Work, conditioned on CUSTOMER's express understanding that its alteration of the Work Product without the involvement of MCKINSTRY is at Owner's sole risk and without liability or legal exposure to MCKINSTRY or anyone working by or through MCKINSTRY, including subcontractors of any tier.
- 17. MODIFICATIONS.** Additions, deletions, and modifications to this AGREEMENT may be made upon the mutual agreement of the parties. The parties contemplate that such modifications may include but are not limited to the installation of additional utility conservation measures, facility improvement measures, and operational efficiency improvements or the furnishing of additional services within the identified facilities, as well as other facilities owned or operated by the CUSTOMER. These modifications may take the form of additional phases of work or modifications to the original scope of Work or Services.
- 18. NOTICES.** All notices or communications related to this AGREEMENT shall be in writing and shall be deemed served if and when sent by facsimile or mailed by certified or registered mail to the contact person(s) and address(es) listed on page 1 of this AGREEMENT. Notwithstanding the foregoing, all notices from CUSTOMER to McKinstry related to potential or actual disputes, claims, or cause of action, shall be written, shall be sent via certified mail or a national courier service or personally delivered, shall consist of one original to Attn: General Counsel, McKinstry, 5005 3rd Ave. S., Seattle, WA 98134, and one original to the contact person(s) and address(es) listed on page 1 of this AGREEMENT, and shall be deemed delivered when received by the General Counsel.
- 19. DISPUTES AND DISAGREEMENTS.** The parties are fully committed to working with each other throughout the Project and agree to communicate regularly with each other at all times so as to avoid or minimize disputes or disagreements. If disputes or disagreements do arise, MCKINSTRY and CUSTOMER each commit to resolving such disputes or disagreements in an amicable, professional and expeditious manner so as to avoid unnecessary losses, delays and disruptions to the Work. MCKINSTRY and CUSTOMER will first attempt to resolve disputes or disagreements with discussions between MCKINSTRY's Representative and CUSTOMER's Representative which shall conclude within thirty (30) days of the written notice provided for in Section 18 unless the CUSTOMER and MCKINSTRY mutually agree otherwise. If after meeting, the Representatives determine that the dispute or disagreement cannot be resolved on terms satisfactory to both parties, the parties shall submit within thirty (30) days of the conclusion of the meeting of Representatives the dispute or disagreement to non-binding mediation. The mediation shall be conducted by a mutually agreeable impartial mediator, or if the parties cannot so agree, a mediator designated by the American Arbitration Association ("AAA") pursuant to its Construction Industry Mediation Rules. The mediation will be governed by and conducted pursuant to a mediation agreement negotiated by the parties or, if the parties cannot so agree, by procedures established by the mediator. Unless otherwise mutually agreed by the CUSTOMER and MCKINSTRY and consistent with the mediator's schedule, the mediation shall commence within ninety (90) days of the submission of the dispute to mediation. Any claims, disputes, or controversies between the parties arising out of or related to the

Agreement, or the breach thereof, which have not been resolved in accordance with the procedures set forth herein shall be resolved in a court of competent jurisdiction in the State of Texas.

20. ADDITIONAL TERMS.

- A. Any failure of MCKINSTRY to require strict performance by the CUSTOMER, or any waiver by MCKINSTRY of any requirement under this AGREEMENT, does not consent to or waive any subsequent failure or breach by the CUSTOMER.
- B. Any failure of the CUSTOMER to require strict performance by MCKINSTRY, or any waiver by the CUSTOMER of any requirement under this AGREEMENT, does not consent to or waive any subsequent failure or breach by MCKINSTRY.
- C. If any provision of this AGREEMENT is invalid under any applicable law, that provision shall not apply, but the remaining provisions shall apply as written.
- D. The captions and titles in this AGREEMENT are for convenience only and shall not affect the interpretation or meaning of this AGREEMENT.
- E. This AGREEMENT is the full agreement between MCKINSTRY and the CUSTOMER as of the date it is signed. All previous conversations, correspondence, agreement, or representations related to this AGREEMENT (including any Project Development agreement) are not part of the agreement between MCKINSTRY and the CUSTOMER and are superseded by this AGREEMENT.
- F. This AGREEMENT shall be construed in accordance with the laws of the State of Texas.
- G. If there is more than one CUSTOMER named in this AGREEMENT, the liability of each shall be joint and several.
- H. MCKINSTRY enters into this AGREEMENT in reliance on CUSTOMER'S representations concerning the appropriateness and validity of the procurement mechanism(s) under which this AGREEMENT is procured. CUSTOMER acknowledges such reliance by MCKINSTRY.

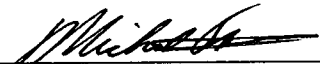
21. AGREEMENT DOCUMENTS. By this reference, the following exhibits are attached hereto and made a part of this AGREEMENT.

- Exhibit "A": Energy Services Proposal, dated 7/6/2015 ("ESP")
- Exhibit "B": N/A
- Exhibit "C": N/A

IN WITNESS WHEREOF of MCKINSTRY and CUSTOMER have executed this AGREEMENT, effective the date of the last authorized signature unless a different Commencement Date is established in Paragraph 2.

MCKINSTRY ESSENTION, LLC

JULY 15, 2015
Date

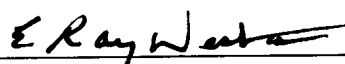

Authorized Signature

MICHAEL FLORES
Printed Name

VICE PRESIDENT
Title

Brown County

July 13, 2015
Date


Authorized Signature

Judge Ray West
Printed Name

County Judge
Title