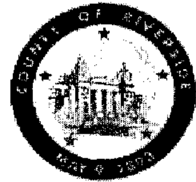
SUBMITTAL TO THE BOARD OF SUPERVISORS
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA

905



FROM: Community Action Partnership of Riverside County

SUBMITTAL DATE: November 17, 2010

SUBJECT: GREEN TEAMWorks Project Agreement with the City of Riverside

RECOMMENDED MOTION: That the Board of Supervisors approve and

1. Authorize the Chairman of the Board to sign the attached agreement between the City of Riverside and Community Action Partnership of Riverside County (CAP Riverside) for the GREEN TEAMWorks Project (GTW), for the term January 1, 2011 through December 31, 2011, not to exceed $250,000;
2. Instruct the Auditor Controller to adjust the budget as identified in the attached Schedule A;
3. Authorize the Purchasing Agent to sign ministerial amendments to the GREEN TEAMWorks Agreement, not to exceed the Board authorized amount;

FISCAL PROCEDURES APPROVED
ROBERT E. BYRD, AUDITOR-CONTROLLER
BY ______ 12/2/10
SAMUEL WONG

Lois J. Carson, Executive Director, CCAP

Continued (4 pages total)

FINANCIAL DATA				
	Current F.Y. Total Cost:	$ 160,000	In Current Year Budget:	No
	Current F.Y. Net County Cost:	$	Budget Adjustment:	Yes
	Annual Net County Cost:	$	For Fiscal Year:	10/11

SOURCE OF FUNDS: 100% City of Riverside

Positions To Be Deleted Per A-30 ☐

Requires 4/5 Vote ☒

C.E.O. RECOMMENDATION: APPROVE

BY: Debra Cournoyer

County Executive Office Signature

FORM APPROVED COUNTY COUNSEL
BY: LARISA R-MCKENNA 11/30/10 DATE

Purchasing: Mark Seiller, Assistant Director

Departmental Concurrence

☐ Consent ☒ Policy

☐ Consent ☒ Policy

Dep't Recomm.:

Per Exec. Ofc.:

Prev. Agn. Ref.: **District:** All **Agenda Number:** 3.8

ATTACHMENTS FILED
WITH THE CLERK OF THE BOARD

RECOMMENDED MOTION (Continued):

4. Authorize the Purchasing Agent to execute GTW Professional Services Agreements for the following vendors not to exceed an aggregate amount of $142,425 for the term January 1, 2011 through December 31, 2011. In the event any one contractor exceeds $100,000, the agreement will be sent to the Board for approval.

   Ace & Sons Construction, Inc., David Hopkins Constructions, Ecowize, Energy Services Partnership, Inc., Hawaii Blue Construction, James D. Restoration and Construction, Inc, David Starrett Construction, and Synergy Companies;

5. Authorize the Purchasing Agent to sign ministerial amendments to the GTW Professional Services Agreements, not to exceed the Board authorized aggregate amount;

6. Authorize the Executive Director or designee to sign exhibits, assurances and reports made under the agreement; and

7. Authorize the Executive Director or designee to administer the program.

BACKGROUND:

Foster youth nationwide continue to be an underserved population. In Riverside County over 40% of foster youth leave the welfare system without a high school diploma and an additional 50-60% do not have any job skills or job opportunities. CAP Riverside piloted the GTW in 2009 to create a green job-ready workforce of seven (7) foster youth who had termed-out of the foster care system (emancipated.) GTW is the first of its kind in Riverside County that specifically links the foster care population and marketable green job skills.

In the pilot year, each youth was matched with an existing CAP Riverside weatherization sub-contractor for 1,324 hours of on-the-job training. GTW youth received 236 hours of classroom training which included: life skills; financial literacy; soft (people) job skills; weatherization, basic construction and minor home repair; and certificated weatherization classes at a local State of California certified training center. GTW youth received a stipend that started at minimum wage ($8.00 per hour) and increased on a graduated basis to $10.00 per hour. They were paid prevailing wages when eligible under Davis-Bacon requirements. The youth were encouraged to save a portion of their stipends, which was matched, dollar for dollar up to $100.00, by both CAP Riverside and their employer. CAP Riverside partnered with other public and private sector organizations to provide GTW youth with work supports such as tools, uniforms, transportation, housing, childcare, healthcare services, and cross-enrollment in asset-building and family self-sufficiency programs.

BACKGROUND (Continued):

***Pilot Program Successes*:**

- All seven (7) youth completed 120 hours of the State of California weatherization training and have become Certified WeatherizationTechnicians.
- Three (3) youth graduated from GTW and were hired by their sub-contractors.
- One (1) youth relocated to Texas with his family and was hired as a weatherization technician by a Community Action Agency due to his GTW training.
- The program was presented and recognized as a successful, replicable model before 1,200 community action agencies at the 2010 Community Action Partnership National Conference.

The City of Riverside agreement provides funding for round two of the GTW program. CAP Riverside will recruit and train nine (9) emancipated foster youth who live within the boundaries of the City of Riverside. Youth will receive training in: life skills; financial literacy; soft (people) job skills; and, weatherization, basic construction and minor home repair.

CAP Riverside will subcontract with its existing Weatherization vendors to provide on-the-job home weatherization training for the youth. In December 2007, CAP Riverside in conjunction with County Purchasing issued a formal Request for Qualifications (#CAARC-008) and the following subcontractors were approved by the Board to perform home weatherization services through September 2012:

- Ace and Sons Construction, Inc (#3.48, 2/26/08)
- James D. Restoration and Construction (#3.48, 2/26/08),
- Ecowize (formerly doing business as B.A.B. Contracting) [#3.12, 3/31/09]
- Hopkins Construction (#3.12, 3/31/09)
- David Starrett Construction (#3.7, 4/28/09)
- Synergy Companies (#3.12, 5/19/09)
- Energy Services Partnership, Inc. (#3.12, 5/19/09)
- Hawaii Blue Construction (#3.23, 9/1/09)

FINANCIAL IMPACT: No County General Funds will be required. $160,000 is budgeted for FY 2010-2011 and remaining funds of $90,000 will be budgeted through the normal budget process for FY 2011-2012.

CONCUR/EXECUTE: Auditor Controller
Purchasing

LC:MYJ:KA:jb

SCHEDULE A

Community Action Partnership of Riverside County
Budget Adjustment
Fiscal Year 2010/2011

INCREASE IN EST. REVENUE:

CAARC-21050-5200200000-781360	Other Miscellaneous Revenue	$160,000

INCREASE IN APPROPRIATIONS:

CAARC-21050-5200200000-525500	Salary/Benefit Reimbursement	$160,000

PROFESSIONAL CONSULTANT SERVICES AGREEMENT

COMMUNITY ACTION PARTNERSHIP RIVERSIDE COUNTY

(Green TEAMWorks Project)

THIS PROFESSIONAL CONSULTANT SERVICES AGREEMENT ("Agreement") is made and entered into this ______ day of _______________, 2010 ("Effective Date"), by and between the CITY OF RIVERSIDE ("City"), a California charter city and municipal corporation and COMMUNITY ACTION PARTNERSHIP RIVERSIDE COUNTY ("Consultant"), a public entity.

1. **Scope of Services**. City agrees to retain and does hereby retain Consultant and Consultant agrees to provide the services more particularly described in Exhibit "A," "Scope of Services" ("Services"), and further agrees to abide by the Energy Efficiency and Conservation Block Grant ("EECBG") Program - Subrecipient Flowdown Requirements, Special Terms and Conditions Exhibit "D," hereto and incorporated herein by reference, in conjunction with the Green TEAMWorks Project ("Project").

2. **Effective Period**. This Agreement is effective January 1, 2011, through December 31, 2011.

3. **Compensation/Payment**. Consultant shall perform the Services under this Agreement for the total sum not to exceed Two Hundred Fifty Thousand Dollars ($250,000.00) payable in accordance with the terms set forth in Exhibit "B." Exhibit "B" may be modified, upon mutual agreement between the City's Contract Administrator and the Consultant's representative, by adjusting the amount of the EECBG Funds Request in each Expense Category up or down, so long as the total amount does not exceed Two Hundred Fifty Thousand Dollars ($250,000.00). Said payment shall be made in accordance with City's usual accounting procedures upon receipt and approval of an itemized invoice setting forth the services performed. The invoices shall be delivered to City at the address set forth in Section 4 hereof.

4. **Notices**. All notices, reports, claims, correspondence, and/or statements authorized or required by this Agreement shall be addressed as follows:

City of Riverside:

Public Works Department
Attn: Cindie Perry
3900 Main Street
Riverside, CA 92522
(951) 826-5975

Consultant:

Community Action Partnership
2038 Iowa Avenue, Suite B-102
Riverside, CA 92507-2412
(951) 955-4900

All notices shall be deemed effective when they are made in writing, addressed as indicated above, and deposited in the United States mail. Any notices, correspondence, reports and/or statements authorized or required by this Agreement, addressed in any other fashion will not be acceptable.

5. **Prevailing Wage**. If applicable, Consultant and all subcontractors are required to pay the general prevailing wage rates of per diem wages and overtime and holiday wages determined by the Director of the Department of Industrial Relations under Section 1720 et seq. of the California Labor Code and implemented by Resolution No. 13346 of the City Council of the City of Riverside. The Director's determination is available on-line at www.dir.ca.gov/dlsr/DPreWageDetermination.htm and is referred to and made a part hereof; the wage rates therein ascertained, determined, and specified are referred to and made a part hereof as though fully set forth herein.

6. **Contract Administration**. A designee of the City will be appointed in writing by the City Manager or Department Director to administer this Agreement on behalf of City and shall be referred to herein as Contract Administrator.

7. **Standard of Performance**. While performing the Services, Consultant shall exercise the reasonable professional care and skill customarily exercised by reputable members of Consultant's profession practicing in the Metropolitan Southern California Area, and shall use reasonable diligence and best judgment while exercising its professional skill and expertise.

8. **Personnel**. Consultant shall furnish all personnel necessary to perform the Services and shall be responsible for their performance and compensation. Consultant recognizes that the qualifications and experience of the personnel to be used are vital to professional and timely completion of the Services. The key personnel listed in Exhibit "C" attached hereto and incorporated herein by this reference and assigned to perform portions of the Services shall remain assigned through completion of the Services, unless otherwise mutually agreed by the parties in writing, or caused by hardship or resignation in which case substitutes shall be subject to City approval.

9. **Assignment**. Consultant shall not assign any interest in this Agreement, and shall not transfer any interest in the same, whether by assignment or novation, without the prior written consent of City. Any attempt to assign or delegate any interest herein without said consent shall be deemed void and of no force or effect.

10. **Independent Contractor**. In the performance of this Agreement, Consultant, and Consultant's employees, subcontractors and agents, shall act in an independent capacity as independent contractors, and not as officers or employees of the City of Riverside. Consultant acknowledges and agrees that the City has no obligation to pay or withhold state or federal taxes or to provide workers' compensation or unemployment insurance to Consultant, or to Consultant's employees, subcontractors and agents. Consultant, as an independent contractor, shall be responsible for any and all taxes that apply to Consultant as an employer.

11. **Hold Harmless/Indemnification.**

11.1 City agrees to indemnify and hold harmless Consultant, its officers, employees, agents, and volunteers from any and all liabilities for injury to persons and damage to property arising out of any act or omission of City, its officers, employees, agents or volunteers in connection with City's performance of its obligations under this Agreement.

11.2 Consultant agrees to indemnify and hold harmless City, its officers, employees, agents, and volunteers from any and all liabilities for injury to persons and damage to property arising out of any act or omission of Consultant, its officers, employees, agents or volunteers in connection with Consultant performance of its obligations under this Agreement.

11.3 The specified insurance limits required in the Agreement shall in no way limit or circumscribe Consultant's obligations to indemnify and hold harmless the City herein from third party claims.

11.4 In the event there is conflict between this clause and California Civil Code Section 2782, this clause shall be interpreted to comply with Civil Code 2782. Such interpretation shall not relieve Consultant from indemnifying the City to the fullest extent allowed by law.

12. **Insurance.**

12.1. Without limiting or diminishing Consultant's obligation to indemnify or hold the City harmless, Consultant shall procure and maintain or cause to be maintained, at its sole cost and expense, the following insurance coverage during the term of this Agreement.

12.1.1. Workers' Compensation:

Consultant shall maintain Workers' Compensation Insurance (Coverage A) as prescribed by the laws of the State of California. Policy shall include Employers' Liability (Coverage B) including Occupational Disease with limits not less than $1,000,000 per person per accident. Policy shall be endorsed to waive subrogation in favor of the City; and, if applicable, to provide a Borrowed Servant/Alternate Employer Endorsement.

12.1.2 Commercial General Liability:

Commercial General Liability insurance coverage, including but not limited to, premises liability, contractual liability, products and completed operations liability, personal and advertising injury, cross liability coverage, and employment practices liability covering claims which may arise from or out of Consultant's performance of its obligations hereunder. Policy shall name the City of Riverside, and the City's employees, officers, managers, agents, and council members as

Additional Insureds. Policy's limit of liability shall not be less than $1,000,000 per occurrence combined single limit. If such insurance contains a general aggregate limit, it shall apply separately to this Agreement or be no less than two (2) times the occurrence limit.

12.2.3 Vehicle Liability:

If Consultant's vehicles or mobile equipment are used in the performance of the obligations under this Agreement, Consultant shall maintain liability insurance for all owned, non-owned or hired vehicles so used in an amount not less than $1,000,000 per occurrence combined single limit. If such insurance contains a general aggregate limit, it shall apply separately to this Agreement or be no less than two (2) times the occurrence limit. Policy shall name the City of Riverside and the City's employees, officers, managers, agents, and council members as Additional Insureds.

12.2.4 General Insurance Provisions – All lines:

12.2.4.1 Any insurance carrier providing insurance coverage hereunder shall be admitted to the State of California and have an A.M. BEST rating of not less than an A:VIII(A:7) unless such requirements are waived, in writing, by the City's Risk Manager. If the City's Risk Manager waives a requirement for a particular insurer such waiver is only valid for that specific insurer and only for one policy term.

12.2.4.2 Consultant insurance carrier(s) must declare its insurance deductibles or self-insured retentions. If such deductibles or self insured retentions exceed $500,000 per occurrence such deductibles and/or retentions shall have the prior written consent of the City's Risk Manager before the commencement of operations under this Agreement. Upon notification of deductibles or self insured retention's unacceptable to the City, and at the election of the City's Risk Manager, Consultant's carriers shall either; 1) reduce or eliminate such deductibles or self-insured retentions as respects this Agreement with the City, or 2) procure a bond which guarantees payment of losses and related investigations, claims administration, defense costs and expenses.

12.2.4.3 Consultant shall cause their insurance carrier(s) to furnish the City of Riverside with 1) a properly executed original Certificate(s) of Insurance and original copies of Endorsements effecting coverage as required herein; or, 2) if requested to do so orally or in writing by the City Risk Manager, provide original copies of policies including all Endorsements and all attachments thereto, showing such insurance is in full force and effect. Further, said Certificate(s) and policies of insurance shall contain the covenant of the insurance carrier(s) that thirty (30) days written notice be given to the City of Riverside prior to any material modification, cancellation, expiration or reduction in coverage of such insurance. In the event of a material modification, cancellation, expiration, or reduction in coverage, this

Agreement shall terminate forthwith, unless the City of Riverside receives, prior to such effective date, another properly executed original Certificate of Insurance and original copies of endorsements or original policies, including all endorsements and attachments thereto evidencing coverage's set forth herein and the insurance required herein is in full force and effect.

12.2.4.4 It is understood and agreed by the parties hereto and the insurance company(s), that the Certificate(s) of Insurance and policies shall so covenant and shall be construed as primary insurance, and the City's insurance and/or deductibles and/or self-insured retentions or self-insured programs shall not be construed as contributory.

12.2.4.5 The City of Riverside's Reserved Rights for Insurance: If, during the term of this Agreement or any extension thereof, there is a material change in the scope of services or performance of work; or, there is a material change in the equipment to be used in the performance of the scope of work, the City of Riverside reserves the right to adjust the types of insurance required under this Agreement and the monetary limits of liability for the insurance coverage's required herein, if; in the City Risk Manager's reasonable judgment, the amount or type of insurance carried by Consultant has become inadequate.

12.2.4.6 Consultant shall pass down the insurance obligations contained herein to all tiers of subcontractors working under this Agreement.

12.2.4.7 The insurance requirements contained in this Agreement may be met with program(s) of self-insurance acceptable to the City's Risk Manager.

13. **Time of Essence.** Time is of the essence for each and every provision of this Agreement.

14. **City's Right to Employ Other Consultants**. City reserves the right to employ other consultants in connection with the Project. If the City is required to employ another consultant to complete Consultant's work, due to the failure of Consultant to perform, or due to the breach of any of the provisions of this Agreement, the City reserves the right to seek reimbursement from Consultant.

15. **Records, Inspections, and Audits**. Consultant shall maintain auditable books, records, documents, and other evidence pertaining to costs and expenses in this Agreement. Consultant shall maintain these records for three (3) years after final payment has been made or until all pending county, state, and federal audits, if any, are completed, whichever is later.

15.1 Any authorized representative of the City of Riverside, the State of California, and the federal government shall have access to any books, documents, papers, electronic data, and other records, which these representatives may determine to be pertinent to this Agreement, for the purpose of performing an audit, evaluation, inspection, review,

assessment, or examination. These representatives are authorized to obtain excerpts, transcripts, and copies, as they deem necessary. Further, these authorized representatives shall have the right at all reasonable times to inspect or otherwise evaluate the work performed, or being performed, under this Agreement and the premises in which it is being performed.

15.2 This access to records includes, but is not limited to, service delivery, referral, financial, and administrative documents for three (3) years after final payment is made, or until all pending county, state, and federal audits are completed, whichever is later.

15.3 Should Consultant disagree with any audit conducted by City, Consultant shall have the right to employ a licensed, Certified Public Accountant (CPA) to prepare and file with Consultant a certified financial and compliance audit that is in compliance with generally-accepted government accounting standards of related services provided during the term of this Agreement. Consultant shall not be reimbursed by City for such an audit.

15.4 In the event Consultant does not make available its books and financial records at the location where they are normally maintained, Consultant agrees to pay all necessary and reasonable expenses, including legal fees, incurred by City in conducting such an audit.

15.5 All records maintained by Consultant shall meet the OMB requirements contained in the following Circulars: A 102, Subpart C, ("Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments") or A 110, Subpart C, Nonprofit Organizations, whichever is applicable.

15.6 Consultant assures that employee and applicant records shall be maintained in a confidential manner to assure compliance with the Information Practices Act of 1977, as amended, and the Federal Privacy Act of 1974, as amended.

16. **Supplantation.** Consultant shall not supplant any federal, state, or county funds intended for the purpose of this Agreement with any funds made available under any other Agreement. Consultant shall not claim reimbursement from City for, or apply any sums received from City with respect to the portion of its obligations, which have been paid by another source of revenue. Consultant agrees that it will not use funds received pursuant to this Agreement, either directly or indirectly, as a contribution or compensation for purposes of obtaining state funds under any state program or any programs without prior approval of the City.

17. **Disallowance.** In the event Consultant receives payment for services under this Agreement which is later disallowed for nonconformance with the terms and conditions herein by City, Consultant shall promptly refund the disallowed amount to City on request, or at its option, City may offset the amount disallowed from any payment due to Consultant under any contract with City.

18. **Financial Resources**. Consultant warrants that during the term of this Agreement, Consultant shall retain sufficient financial resources necessary to perform all aspects of its obligations, as described under this Agreement. Further, Consultant warrants that there has been no adverse material change in Consultant, parent, or subsidiary business entities, resulting in negative impact to the financial condition and circumstances of Consultant since the date of the most recent financial statements.

19. **Availability of Funding**. City's obligation for payment of this Agreement is contingent upon the availability of funds from which payment can be made.

20. **Confidentiality**. Consultant shall maintain the confidentiality of all information and records and comply with all other statutory laws and regulations relating to privacy and confidentiality.

21. **Ownership of Documents**. All reports, maps, drawings and other contract deliverables prepared under this Agreement by Consultant shall be and remain the property of City. Consultant shall not release to others information furnished by City without prior express written approval of City.

22. **Copyrights.** Consultant agrees that any work prepared for City which is eligible for copyright protection in the United States or elsewhere shall be a work made for hire. If any such work is deemed for any reason not to be a work made for hire, Consultant assigns all right, title and interest in the copyright in such work, and all extensions and renewals thereof, to City, and agrees to provide all assistance reasonably requested by City in the establishment, preservation and enforcement of its copyright in such work, such assistance to be provided at City's expense but without any additional compensation to Consultant. Consultant agrees to waive all moral rights relating to the work developed or produced, including without limitation any and all rights of identification of authorship and any and all rights of approval, restriction or limitation on use or subsequent modifications.

23. **Conflict of Interest**. Consultant covenants that it presently has no interest, including, but not limited to, other projects or independent agreements, and shall not acquire any such interest, direct or indirect, which are, or which Consultant believes to be, incompatible in any manner or degree with the performance of services required to be performed under this Agreement. Consultant further covenants that in the performance of this Agreement, no person having such interest shall be employed or retained by it under this Agreement.

23.1 Consultant agrees to inform City of all of Consultant's interests, if any, which are or which Consultant believes to be incompatible with any interest with City.

24. **Solicitation**. Consultant warrants that Consultant has not employed or retained any person or agency to solicit or secure this Agreement, nor has it entered into any agreement or understanding for a commission, percentage, brokerage, or contingent fee to be paid to secure this Agreement. For breach of this warranty, City shall have the right to terminate this Agreement without liability and pay Consultant only for the value of work Consultant has actually performed,

or, in its sole discretion, to deduct from the Agreement price or otherwise recover from Consultant the full amount of such commission, percentage, brokerage or commission fee. The remedies specified in this section shall be in addition to and not in lieu of those remedies otherwise specified in this Agreement.

25. **Licenses and Permits**. In accordance with the provisions of Chapter 9 of Division 3 of the Business and Professions Code concerning the licensing of contractors, all Contractors shall be licensed, if required, in accordance with the laws of this State and any Contractor not so licensed is subject to the penalties imposed by such laws.

Consultant warrants that it has all necessary permits, approvals, certificates, waivers, and exemptions necessary for the provision of services hereunder and required by the laws and regulations of the United States, State of California, the County of Riverside and all other appropriate governmental agencies, and shall maintain these throughout the term of this Agreement.

26. **Reporting**. Consultant shall provide City with a monthly report detailing its expenditures in connection with Exhibit "B". The format of the reports shall be mutually agreed upon by the parties.

27. **Modification of Terms**. The City Manager of the City of Riverside or his/her designated representative, is the only authorized representative who may at any time, by written order, make alterations within the general scope of this Agreement, in the definition of services to be performed, and the time (i.e. hours of the day, days of the week, etc.) and place of performance thereof. If any such alteration causes an increase or decrease in the cost of, or the time required for the performance of any part of the work under this Agreement, an equitable adjustment shall be made in the contract price or delivery schedule, or both, and the contract shall be modified in writing accordingly. Any claim by Consultant for adjustment under this paragraph shall be assessed within thirty (30) days of when City received notice of the alteration in the work. Notwithstanding the foregoing, if the City Manager or his/her designated representative decides that the facts provide sufficient justification, he/she may receive and act upon any claim, which is asserted by Consultant at any time prior to final payment under this Agreement. However, nothing in this clause shall excuse Consultant from proceeding with the Agreement as changed.

28. **Waiver**. No action or failure to act by the City shall constitute a waiver of any right or duty afforded City under this Agreement, nor shall any such action or failure to act constitute approval of or acquiescence in any breach thereunder, except as may be specifically, provided in this Agreement or as may be otherwise agreed in writing.

29. **Amendments**. This Agreement may be modified or amended only by a written agreement executed by Consultant and City.

30. **Termination**. This Agreement may be terminated without cause by either party by giving thirty (30) days written notification to the other party. In the event City elects to abandon, indefinitely postpone, or terminate the Agreement, City shall make payment for all services performed up to the date that written notice was given in a prorated amount.

31. **Successors and Assigns.** This Agreement shall be binding upon City and its successors and assigns, and upon Consultant and its permitted successors and assigns, and shall not be assigned by Consultant, either in whole or in part, except as otherwise provided in paragraph 9 of this Agreement.

32. **Venue and Attorneys' Fees.** Any action at law or in equity brought by either of the parties hereto for the purpose of enforcing a right or rights provided for by this Agreement shall be tried in a court of competent jurisdiction in the County of Riverside, State of California, and the parties hereby waive all provisions of law providing for a change of venue in such proceedings to any other county. In the event either party hereto shall bring suit to enforce any term of this Agreement or to recover any damages for and on account of the breach of any term or condition of this Agreement, it is mutually agreed that the prevailing party in such action shall recover all costs thereof, including reasonable attorneys' fees, to be set by the court in such action.

33. **Nondiscrimination.** During Consultant's performance of this Agreement, CONSULTANT shall not discriminate on the grounds of race, religious creed, color, national origin, ancestry, age, physical disability, mental disability, medical condition, including the medical condition of Acquired Immune Deficiency Syndrome (AIDS) or any condition related thereto, marital status, sex, or sexual orientation, in the selection and retention of employees and subcontractors and the procurement of materials and equipment, except as provided in Section 12940 of the California Government Code. Further, Consultant agrees to conform to the requirements of the Americans with Disabilities Act in the performance of this Agreement.

34. **Severability.** Each provision, term, condition, covenant and/or restriction, in whole and in part, of this Agreement shall be considered severable. In the event any provision, term, condition, covenant and/or restriction, in whole and/or in part, of this Agreement is declared invalid, unconstitutional, or void for any reason, such provision or part thereof shall be severed from this Agreement and shall not affect any other provision, term, condition, covenant and/or restriction of this Agreement, and the remainder of the Agreement shall continue in full force and effect.

35. **Authority.** The individuals executing this Agreement and the instruments referenced herein on behalf of Consultant each represent and warrant that they have the legal power, right and actual authority to bind Consultant to the terms and conditions hereof and thereof.

36. **Entire Agreement.** This Agreement constitutes the entire Agreement between the parties hereto with respect to the subject matter hereof, and all prior or contemporaneous Agreements of any kind or nature relating to the same shall be deemed to be merged herein.

37. **Interpretation.** City and Consultant acknowledge and agree that this Agreement is the product of mutual arms-length negotiations and accordingly, the rule of construction, which provides that the ambiguities in a document shall be construed against the drafter of that document, shall have no application to the interpretation and enforcement of this Agreement.

37.1 Titles and captions are for convenience of reference only and do not define, describe or limit the scope or the intent of the Agreement or any of its terms. Reference to section numbers are to sections in the Agreement unless expressly stated otherwise.

37.2 This Agreement shall be governed by and construed in accordance with the laws of the State of California in effect at the time of the execution of this Agreement.

37.3 In the event of a conflict between the body of this Agreement and Exhibit "A" - Scope of Services hereto, the terms contained in Exhibit "A" shall be controlling.

38. **Exhibits.** The following exhibits attached hereto are incorporated herein to this Agreement by this reference:

Exhibit "A" - Scope of Services
Exhibit "B" - Compensation
Exhibit "C" - Key Personnel
Exhibit "D" - EECBG Program Subrecipient Flowdown Requirements, Special Terms and Conditions

(Signatures on following page)

IN WITNESS WHEREOF, City and Consultant have caused this Agreement to be duly executed the day and year first above written.

CITY OF RIVERSIDE, a California charter city and municipal corporation

By: ______________________________
City Manager

Attest: ______________________________
City Clerk

Certified as to Availability of Funds:

By: ______________________________
Finance Director

Approved as to Form:

By: ______________________________
Supv. Deputy City Attorney

COMMUNITY ACTION PARTNERSHIP RIVESIDE COUNTY, a public entity

By: ______________________________

____
[Printed Name]

____
[Title]

By: ______________________________

____
[Printed Name]

____
[Title]

Attest: ______________________________
Clerk of the Board

Approved as to Form:

By: [signature] 11/30/10
Dep County Counsel

O:\Cycom\Wpdocs\D012\P011\00051958.DOC
CA: 10-2268
11/02/10

EXHIBIT "A"

SCOPE OF SERVICES

Green TEAMWorks Program

EXHIBIT A – Scope of Services

PROJECT CONTACTS:

Community Action Partnership Riverside County (CAP Riverside)
Maria Juarez, CCAP, Deputy Director
2038 Iowa Avenue, Suite B-102
Riverside, CA 92507
Phone: 951-955-4900
Fax: 951-955-6494
Email: mjuarez@capriverside.org

BACKGROUND

Foster youth nationwide continue to be an underserved population. In Riverside County over 40% of foster youth leave the welfare system without a high school diploma and an additional 50-60% do not have any job skills or job opportunities. Community Action Partnership of Riverside County (CAP Riverside) piloted its Green TEAMWorks program (GTW) in 2009 to create a green job-ready workforce of seven (7) foster youth who had termed-out of the foster care system (emancipated.) GTW is the first of its kind in Riverside County that specifically links the foster care population and marketable green job skills.

In the pilot year, each youth was matched with a weatherization sub-contractor for 1,324 hours of on-the-job training (OJT). GTW youth received 236 hours of classroom training which included: life skills; financial literacy; soft (people) job skills; weatherization, basic construction and minor home repair; and certificated weatherization classes at a local State of California certified training center. GTW youth received a stipend that started at minimum wage ($8.00 per hour) and increased on a graduated basis to $10.00 per hour. They were paid prevailing wages when eligible under Davis-Bacon requirements. The youth were encouraged to save a portion of their stipends, which was matched, dollar for dollar up to $100.00, by both CAP Riverside and their employer. CAP Riverside partnered with other public and private sector organizations to provide GTW youth with work supports such as tools, uniforms, transportation, housing, childcare, healthcare services, and cross-enrollment in asset-building and family self-sufficiency programs.

***Pilot Program Successes*:**

- All seven (7) youth completed 120 hours of State of California certified weatherization training.
- Three (3) youth graduated from GTW and were hired by their sub-contractors.
- One (1) youth relocated to Texas with his family and was hired as a weatherization technician due to his GTW training.
- The three (3) youth who did not graduate completed their classroom training and are certified technicians.
- Overall, the GTW Program resulted in a 57% (4 of 7) success rate.
- The program was presented as a successful, replicable model before 1,200 community action agencies at the 2010 Community Action Partnership National Conference.

SCOPE OF SERVICE

The GTW program consists of full-time entry-level weatherization technician positions with the goal of permanent job placement. GTW youth could expect to continue as weatherization technicians, and/or could expand their career opportunities in other areas such as weatherization assessment/inspections, energy audits, lead abatement, home construction/ rehabilitation, solar or other alternative energy programs, etc.

CAP Riverside will: 1) provide the program design; 2) provide program implementation, supervision, evaluation, monitoring, and reporting; 3) participate in youth recruitment, screening, and employer matching process; 4) conduct and schedule orientation, classroom training, and OJT with CAP Riverside Weatherization Inspectors; 5) prepare and deploy media coverage throughout the contract term; and, 6) provide liaison to advisory committee.

CAP Riverside will partner with weatherization sub-contractors, recruit, and train nine (9) emancipated foster youth who live within the boundaries of the City of Riverside. Youth will receive training in: life skills; financial literacy; soft (people) job skills; and, weatherization, basic construction and minor home repair. GTW youth will also be coached and mentored by program staff and sub-contractors for permanent employment and/or continued education in green jobs.

Program Goals:

The GTW program will:

1. increase green jobs in Riverside County;
2. create a green job-ready workforce;
3. create safer and healthier communities through green technology; and,
4. expand community partnerships.

Measurable Results:

1) New full-time equivalent (FTE) green jobs will be created for City of Riverside emancipated foster youth through partnerships with small businesses.
   a) Indicator: 9 of 9 (100%) weatherization technician full-time jobs will be created and filled by an emancipated foster youth living within the boundaries of the City of Riverside.
2) Emancipated foster youth will increase job readiness skills for green jobs.
   a) Indicator: 8 of 9 (89%) foster youth will demonstrate increased life skills by completing a one (1) week program orientation.
   b) Indicator: 6 of 9 (67%) foster youth will demonstrate increased job skills through monthly program performance reports submitted by their sub-contractor.
   c) Indicator: 7 of 9 (78%) foster youth will demonstrate increased job skills by completing two (2) of three (3) required State certified weatherization class.
   d) Indicator: 5 of 9 (56%) foster youth will demonstrate an increase in financial literacy by qualifying for matched savings.
3) Emancipated foster youth will obtain permanent full-time green jobs at close of program.
   a) Indicator: 5 of 9 (56%) foster youth will obtain permanent full-time green jobs at end of program.

Program Phases:

The GTW program is divided into three (3) phases. Youth participate at 40 hours/week for 9 months totaling 1,560 hours. Of the 1,560 hours, 224 hours are comprised of classroom training and 1,336 hours are comprised of on-the-job (OJT) training. Sub-contractors are required to pay prevailing wages whenever Davis-Bacon requirements apply. This is verified by certified payrolls as required by the American Recovery and Reinvestment Act of 2009 (ARRA).

- Phase I (months 1-3 of enrollment)
  Youth will receive: a 40-hour orientation; life skills, financial literacy and soft (people) job skills training; weatherization, basic construction and minor home repair training; and on-the-

job (OJT) training with weatherization sub-contractors and CAP Riverside Weatherization Inspectors. Youth will be hired at minimum wage ($8.00/hour). Youth will create a baseline Participant Portfolio and self-assessment (Journal).

- Phase II (months 4-6 of enrollment)
  Youth who successfully complete Phase I will: receive a wage increase to $8.50/hour; continue classroom training; and continue OJT.
- Phase III (months 7-9 of enrollment)
  Youth who successfully complete Phase II will: receive a wage increase to $10.00/hour; be eligible for permanent employment with sub-contractor upon graduation; be eligible for their savings match up to $200; and participate in a graduation event.

Training:

- 224 hours of classroom training in life skills; financial literacy; soft (people) job skills; weatherization, basic construction and minor home repair.
  a) Orientation: 1 week = 40 hours
  b) Monthly Training Sessions: 8 hours/session x 8 sessions = 64
  c) State Certified Classes: 40 hours/course x 3 courses = 120 hours
- On-the-Job Training (OJT)
  a) 1,336 hours of on-the-job (OJT) training via partnering with weatherization sub-contractors and CAP Riverside Weatherization Inspectors: basic weatherization, minor home repair, basic construction, lead abatement, blower door, combustion appliance, assessments, and inspections.

Work Supports:

It was determined during the pilot program that these marginalized, low-income youth require more personal help to retain their jobs. Work supports funded by the EECBG include: uniforms and accessories; tool box and tools; transportation; childcare; food; medical services; etc. Additional in-kind support is available through partners based on eligibility requirements.

- All youth will receive support from the County of Riverside Independent Living Region and CAP Riverside in the areas of housing, childcare, medical services, transportation, etc. They will have assigned counselors to work with them and provide guidance, resources / referrals as individual needs arise. ILR staff will administer any enrollment assessments.
- All youth will receive educational and job readiness counseling, and some work supports from the Riverside Community College Independent Living Program (ILP).
- CAP Riverside will provide referrals to and support from programs it administers, such as: Individual Development Account (IDA) to open a savings account and attend workshops in money management, budgeting, debt elimination, etc; Earned Income Tax Credit (EITC) where youth will receive free tax preparation assistance; Energy Services for assistance with weatherization or paying utility bills; and Project BLISS (Building Links Impacts Self-sufficiency) a community organizing strategy that match 3-5 individuals who share information, community resources, motivation and emotional support to help an individual/family overcome barriers to ending poverty in their lives, etc.

Monitoring and Evaluation:

CAP Riverside will monitor and evaluate program effectiveness and Contract Compliance via review of reports, site visits, and meetings with its GTW Program Manager and other CAP Riverside staff. Monitoring and evaluation include pre/post tests on topics, self-evaluation surveys, and credential testing on all classes. Prior to acceptance into the program, GTW applicants must pass a Comprehensive Adult Student Assessment (CASA) to determine academic levels. Enrollment in the program includes a baseline self-evaluation to determine skill levels, interests, and work support needs. Youth complete workshop evaluations for *all* classroom training. Sub-contractors complete a monthly GTW youth evaluation that tracks skill-building progress, customer/co-worker relationships, work ethics (attendance, following instructions, communications, etc.), and special training needs. Independent Living Program

partners provide on-going case management. Program evaluation is aggregated and analyzed quarterly in order to make program improvements or capitalize on successes. Hours are tracked by timesheets. GTW youth receive a face-to-face quarterly evaluation by the Program Manager.

Partnerships:
CAP Riverside enjoys long-term public and private sector partnerships that provide in-kind support for its high-impact programs. CAP Riverside will continue to leverage the following support from local partners, and public and private sector funders to sustain GTW:

- *County of Riverside Department of Public Social Services – Independent Living Region DPSS-ILR* will: provide youth recruitment, screening, and assessments; case management; some work supports such as housing allowances, childcare, transportation, medical coverage, etc.; provide program outreach; participate in graduation event; and, provide liaison to advisory committee, etc.
- *Riverside Community College District – Independent Living Program (ILP)* will: provide youth recruitment and referrals, high school certification, college enrollment, case management, and some work supports such as housing allowances, childcare, transportation, medical coverage, etc.; provide program outreach; participate in graduation event; and, provide liaison to advisory committee, etc.
- *City of Riverside* will: provide liaison to advisory committee and publicity and outreach (press releases, public service announcements, and newsletter articles); and, participate in graduation event.

Advisory Committee:
CAP Riverside will host a quarterly advisory committee meeting with partners and key stakeholders to assess the progress of GTW.

Timeline: January 01, 2011 – December 31, 2011

QUARTER	ACTIVITY
1st	• Program Manager starts • Conduct media splash • Youth recruited / selected (pre-selection assessments conducted) • Month 1- youth stipends ($8.00/hour base; $15.00/hour Davis-Bacon) • Orientation (40 hours at CAP Riverside) • Youth create Participant Portfolio and Journal • Youth matched with weatherization sub-contractor (OJT) • Distribute uniforms and tools • Open Savings Account • Baseline (pre) evaluations conducted • Quarterly Advisory Committee Meeting • Progress reports generated for funder
2nd	• Months 2 and 3- youth stipends ($8.00/hour base; $15.00/hour Davis-Bacon) • Month 4 - youth stipends (increase to $8.50/hour base; $15.00/hour Davis-Bacon) • State certified weatherization classes begin • CAP Riverside classroom training and OJT continue • Conduct media splash • Quarterly face-to-face youth evaluation conducted • Quarterly Advisory Committee Meeting • Progress reports generated for funder
3rd	• Months 5 and 6 - youth stipends ($8.50/hour base; $15.00/hour Davis-Bacon) • Month 7 - youth stipends (increase to $10.00/hour base; $15.00/hour Davis-Bacon) • CAP Riverside classroom training and OJT continue • Conduct media splash • Quarterly face-to-face youth evaluation conducted • Quarterly Advisory Committee Meeting • Progress reports generated for funder
4th	• Months 8 and 9 - youth stipends ($10.00/hour base; $15.00/hour Davis-Bacon) • CAP Riverside classroom training and OJT continue • Conduct media splash • Quarterly and post face-to-face youth evaluations conducted • Quarterly Advisory Committee Meeting • Graduation Event • Program close-out and reports generated for funder

ESTIMATED COSTS

The estimated cost to complete the scope of services described herein is $250.000. The attached Budget/Budget Narrative (Exhibit B) presents a breakdown of the estimated costs.

EXHIBIT “B”

COMPENSATION

PROPOSED ENERGY EFFICIENCY CONSERVATION BLOCK GRANT (EECBG) BUDGET ($250,000)

EXPENSE CATEGORY	REQUESTED EECBG FUNDS	BUDGET JUSTIFICATION
Personnel:		
Project Manager: Community Program Specialist I (FTE) Annual Salary @ 2,080 hours	$39,244	Responsible for implementation and oversight of project; 12-month position required for youth recruitment through program close-out
Fringe Benefits (Employer Mandated = 36%)		
FICA, Medicare, Worker's Comp, FUI, SUI, FUTA, SUTA	$14,128	FICA = 8.75%; Medicare = 2%; Worker's Comp and Health Insurance = 12.78%; FUI (Federal Unemployment Insurance) = 3.07%; SUI (State Umployment Insurance) = 3.2%; FUTA (Federal Unemployment Tax Act) = 0.8%; SUTA (State Unemployment Tax Act) = 5.4% (totals 23.22%) Note: retirement is not provided.
Personnel Sub-total:	$53,372	
Direct Costs		
		** 9 Green TEAMWorks (GTW) Youth will receive a stipend throughout their 9-month participation. **Stipend rates vary by quarter and the type of activity: 1) classroom training; 2) On-the-Job (OTJ) Non-Davis Bacon Work (NDB); and 3) OTJ Davis Bacon Work (DB) [based on Davis-Bacon Wage Determination No. CA28 - Riverside County, CA - Weatherization Survey]. ** Stipends for the first two quarters will be paid 100% by the EECBG grant. ** Stipends for the third quarter will be shared 50/50 by the EECBG grant and the weatherization sub-contractors. ** 224 of the 1,560 hours each youth spends in the project will be in classroom training: 1-week CAP Orientation = 40 hours; 8 Monthly Training Days @ 8 hours/day = 64 hours; 3 Certified Weatherization Courses @ 40/hours each = 120 hours (Basic Weathization; Combustion Appliance Safety, and Blower Door) ** The balance of hours are divided 33% for NDB work, for which they will get paid the going stipend rate for that quarter, and 67% for DB eligible work, for which they will get paid $15.00/hour at the EECBG Weatherization Worker rate. Youth will not be allowed to work as Door & Window Replacement Workers or HVAC Replacement Workers on Davis-Bacon eligible work.
Stipend = $15,825 per Youth x 9 Youth for 9 months	$142,425	**<u>1st Quarter (Months 1-3) - 100% EECBG Grant Paid</u>** **Basic Hourly Rate = $8/hour** **Training**: 56 hours @ $8/hour x 9 Youth = $4,032 ** 1 CAP Orientation @ 40 hours ** 2 monthly training days @ 8 hours/day = 16 Hours **NDB Work:** 33% of hours = 153 hours/youth @ $8/hour x 9 youth = $11,016 **DB Work:** 67% of hours = 311 hours/youth @ $15/hour x 9 youth = $41,985 **Total EECBG 1st Quarter Grant Share (100%) = $57,033**

PROPOSED ENERGY EFFICIENCY CONSERVATION BLOCK GRANT (EECBG) BUDGET ($250,000)

EXPENSE CATEGORY	REQUESTED EECBG FUNDS	BUDGET JUSTIFICATION
		2nd Quarter (Months 4-6) - 100% EECBG Grant Paid **Basic Hourly Rate = $8.50/hour** **Training**: 144 hours/youth @ $8.50/hour x 9 youth = $11,016 ** 3 Certified Weatherization Courses @ 40 hours/each = 120 hours ** 3 monthly training days @ 8 hours/day = 24 hours **NDB Work:** 33% of hours = 124 hours/youth @ $8.50/hour x 9 youth = $9,486 **DB Work:** 67% of hours = 252 hours/youth @ $15/hour x 9 youth = $34,020 **Total EECBG 2nd Quarter Grant Share (100%) = $54,522**
		3rd Quarter (Months 7-9) - 50% EECBG Grant Paid / 50% Weatherization Sub-Contractor Paid **Basic Hourly Rate = $10/hour** **Training**: 24 hours/youth @ $10/hour x 9 youth = $2,160 ** 3 monthly training days @ 8 hours/day = 24 hours. **NDB Work:** 33% of hours = 164 hours/youth @ $10/hour x 9 youth = $14,760 **DB Work:** 67% of hours = 332 hours/youth @ $15/hour x 9 youth = $44,820 **Total EECBG 3rd Quarter Grant Share (50%) = $61,740 x 50% = $30,870 EECBG Grant Share**
Certified Weatherization Training Registration Fee $599/course x 3 courses = $1,797/youth x 9 youth	$16,173	State required training for weatherization workers. Training provided at the State certified Community Action Partnership of San Bernardino Weatherization Training Center. Courses include: 1) Basic Weatherization; 2) Combustion Appliance Safety; and 3) Blower Door
Uniforms	$3,870	
a. GTW Shirts $35 each x 5 shirts = $175/youth x 9 youth = $1,575		Green TEAMWorks Logo Shirts to provide a spirit de corps identity and team spirit amongst disenfranchised youth. Team spirit promotes a positive self-image which encourages retention and reduces program drop-outs. Project identity also promotes professionalism and good customer service when working with clients
b. Work Pants $35 each x 5 pants = $175/youth x 9 youth = $1,575		High-quality, tear-resistant work pants that provide extra safety while on the job.
c. Work Boots $80/youth x 9 youth = $720		Steel toe safety work boots to protect feet while on the job
Tool Box and Tools $200 x 9 youth	$1,800	Employers require every weatherization crew member to provide their own set of basic tools. Tool Box includes, but is not limited to: box, safety goggles, safety gloves, flashlight, and basic tools for minor home repair, construction, and weatherization
Personal First Aid/Safety Kit $10/kit x 9 youth = $270	$90	First Aid/Safety Kit designed to fit in tool box for emergencies
Cooling Neck Scarves $5/each x 9 youth = $45	$45	Protection from extreme hot weather and hot spaces such as attics
Cool Weather Jacket $35/each x 9 youth = $315	$315	Protection from inclement weather
Personal Water Jug $5/each x 9 youth = $45	$45	Protection from dehydration
Insulated Lunch Bag $5 x 9 youth	$45	Keeps food safe, healthy, and at proper temperatures

PROPOSED ENERGY EFFICIENCY CONSERVATION BLOCK GRANT (EECBG) BUDGET ($250,000)

EXPENSE CATEGORY	REQUESTED EECBG FUNDS	BUDGET JUSTIFICATION
Work Supports $100/month x 9 months = $900/youth x 9 = $8,100	$8,100	Work supports include: transportation, childcare, food, medical, etc.
Training Materials: printing, binding, binders, document portfolio, educational books (e.g., financial literacy, budgeting, goal setting, etc.)	$500	40-hour Orientation and monthly 8-hour training day: educational materials, Basic Weatherization notebook, water-proof portfolio to hold work orders and other important documents; books on financial literacy and budgeting, goal setting, etc.
Office Supplies (stationery, pens, postage, files, copying, etc.)	$264	
Consumable Supplies: refreshment and supplies for training (28 days), graduation, graduation recognition incentives	$1,500	food will be provided for orientation, 8 monthly training days, and graduation. Graduation recognition/ incentives will be provided.
Office Rent $250/month x 12 months = $3,000	$3,000	Program space for meetings and Program Manager
Telephone $138/month x 12 months = $1,656	$1,656	
Mileage 300 miles/month @ $0.50/mile = $150/month x 12 months = $1,800	$1,800	Program Manager: site visits, work monitoring, meetings Rate based on current county approved rate
Direct Costs Sub-total:	**$181,628**	
Indirect Costs (6.00%)	$15,000	
Indirect Costs Sub-totals:	**$15,000**	
TOTAL BUDGET/EXPENSES	**$250,000**	

EXHIBIT "C"

KEY PERSONNEL

Green TEAMWorks Project

EXHIBIT C – Key Personnel

1. Project Manager (Community Program Specialist I) Full-Time (FTE)
   Position Vacant (to be hired)

EXHIBIT "D"

EECBG PROGRAM
SUBRECIPIENT FLOWDOWN REQUIREMENTS, SPECIAL TERMS AND CONDITIONS

ENERGY EFFICIENCY AND CONSERVATION BLOCK GRANT PROGRAM

SUBRECIPIENT OR SUBCONTRACTOR FLOWDOWN REQUIREMENTS

Subawardees who receive federal funds under an assistance agreement shall comply with the flow down requirements for subawardees specified in the "Special Provisions Relating to Work Funded under American Recovery and Reinvestment Act of 2009" which apply to this award. Additionally, as required by 10 CFR 600.2(b), 10 CFR 600.236, and 10 CFR 600.237, any new, continuation, or renewal award and any subsequent subaward shall comply with any applicable Federal statute, Federal rule, Office of Management and Budget (OMB) Circular and Government-wide guidance in effect as of the date of such award. These requirements include, but are not limited to the following:

a. DOE Assistance Regulations, 10 CFR Part 600 at http://ecfr.gpoaccess.gov.
b. In addition to 10 CFR 600, Appendix A, Generally Applicable Requirements, the National Policy Assurances to Be Incorporated as Award Terms in effect on date of award at http://management.energy.gov/business_doe/1374.htm apply.
c. 2 CFR 215, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations (OMB Circular A-110)."
d. OMB Circular A-102, "Grants and Cooperative Agreements with State and Local Governments" Common Rules.
e. OMB Circular A-21, "Cost Principles for Educational Institutions," OMB Circular A-87, "Cost Principles for State , Local, and Indian Tribal Governments," OMB Circular A-122, "Cost Principles for Non-Profit Organizations," or FAR at 48 CFR Part 31, "Contract Cost Principles and Procedures," for Profit Organizations, as applicable.
f. OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations."
g. Subawardee Application/proposal as approved by DOE.

The following pages set forth subgrant flowdown provisions suggested for use in issuing subawards.

Recipients are also advised that all contracts must include the provisions in 10 CFR 600.236, "Procurement", Section (i) "Contract Provisions", numbers 1-13.

SUBGRANT FLOWDOWN PROVISIONS FOR EECBG FINANCIAL ASSISTANCE AWARDS

SPECIAL TERMS AND CONDITIONS

Table of Contents

Number	Subject	Page
1.	RESOLUTION OF CONFLICTING CONDITIONS	3
2.	CEILING ON ADMINISTRATIVE COSTS	3
3.	LIMITATIONS ON USE OF FUNDS	3
4.	REIMBURSABLE INDIRECT COSTS AND FRINGE BENEFIT COSTS	4
5.	USE OF PROGRAM INCOME	4
6.	STATEMENT OF FEDERAL STEWARDSHIP	4
7.	SITE VISITS	4
8.	REPORTING REQUIREMENTS	5
9.	PUBLICATIONS	5
10.	FEDERAL, STATE, AND MUNICIPAL REQUIREMENTS	6
11.	LOBBYING RESTRICTIONS	6
12.	NATIONAL ENVIRONMENTAL POLICY ACT (NEPA) REQUIREMENTS	6
13.	HISTORIC PRESERVATION	6
14.	WASTE STREAM	7
15.	DECONTAMINATION AND/OR DECOMMISSIONING (D&D) COSTS	7
16.	SUBGRANTS AND LOANS	7
17.	JUSTIFICATION OF BUDGET COSTS	8
18.	ADVANCE UNDERSTANDING CONCERNING PUBLICLY FINANCED ENERGY IMPROVEMENT PROGRAMS	9
19.	SPECIAL PROVISIONS RELATING TO WORK FUNDED UNDER AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009 (May 2009)	9
20.	REPORTING AND REGISTRATION REQUIREMENTS UNDER SECTION 1512 OF THE RECOVERY ACT	14
21.	NOTICE REGARDING THE PURCHASE OF AMERICAN-MADE EQUIPMENT AND PRODUCTS -- SENSE OF CONGRESS	15
22.	REQUIRED USE OF AMERICAN IRON, STEEL, AND MANUFACTURED GOODS – SECTION 1605 OF THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009	15
23.	REQUIRED USE OF AMERICAN IRON, STEEL, AND MANUFACTURED GOODS (COVERED UNDER INTERNATIONAL AGREEMENTS) – SECTION 1605 OF THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009	18
24.	WAGE RATE REQUIREMENTS UNDER SECTION 1606 OF THE RECOVERY ACT	22
25.	RECOVERY ACT TRANSACTIONS LISTED IN SCHEDULE OF EXPENDITURES OF FEDERAL AWARDS AND RECIPIENT RESPONSIBILITIES FOR INFORMING SUBRECIPIENTS	22
26.	DAVIS-BACON ACT AND CONTRACT WORKHOURS AND SAFETY STANDARD ACT	23

1. RESOLUTION OF CONFLICTING CONDITIONS

Any apparent inconsistency between Federal statutes and regulations and the terms and conditions contained in this award must be referred to the DOE Award Administrator for guidance.

2. CEILING ON ADMINISTRATIVE COSTS

STATES

a. State Recipients may not use more than 10 percent of amounts provided under the program for administrative expenses (EISA Sec 545 (c)(4)). These costs should be captured and summarized for each activity under the Projected Costs Within Budget: Administration.

b. Recipients are expected to manage their administrative costs. DOE will not amend an award solely to provide additional funds for changes in administrative costs. The Recipient shall not be reimbursed on this project for any final administrative costs that are in excess of the designated 10 percent administrative cost ceiling. In addition, the Recipient shall neither count costs in excess of the administrative cost ceiling as cost share, nor allocate such costs to other federally sponsored project, unless approved by the Contracting Officer.

LOCAL GOVERNMENT (Cities & Counties) and INDIAN TRIBES

a. Local government and Indian Tribe Recipients may not use more than 10 percent of amounts provided under this program, or $75,000, whichever is greater (EISA Sec 545 (b)(3)(A)), for administrative expenses, excluding the costs of meeting the reporting requirements under Title V, Subtitle E of EISA. These costs should be captured and summarized for each activity under the Projected Costs Within Budget: Administration.

b. Recipients are expected to manage their administrative costs. DOE will not amend an award solely to provide additional funds for changes in administrative costs. The Recipient shall not be reimbursed on this project for any final administrative costs that are in excess of the designated 10 percent administrative cost ceiling. In addition, the Recipient shall neither count costs in excess of the administrative cost ceiling as cost share, nor allocate such costs to other federally sponsored project, unless approved by the Contracting Officer.

3. LIMITATIONS ON USE OF FUNDS

a. By accepting funds under this award, you agree that none of the funds obligated on the award shall be expended, directly or indirectly, for gambling establishments, aquariums, zoos, golf courses or swimming pools.

b. Local government and Indian tribe Recipients may not use more than 20 percent of the amounts provided or $250,000, whichever is greater (EISA Sec 545 (b)(3)(B)), for the establishment of revolving loan funds.

c. Local government and Indian tribe Recipients may not use more than 20 percent of the amounts provided or $250,000, whichever is greater (EISA Sec 545 (b)(3)(C)), for subgrants to nongovernmental organizations for the purpose of assisting in the implementation of the energy efficiency and conservation strategy of the eligible unit of local government or Indian tribe.

4. REIMBURSABLE INDIRECT COSTS AND FRINGE BENEFIT COSTS

a. The Recipient is expected to manage their final negotiated project budgets, including their indirect costs and fringe benefit costs. DOE will not amend an award solely to provide additional funds for changes in the indirect and/or fringe benefit costs or for changes in rates used for calculating these costs. DOE recognizes that the inability to obtain full reimbursement for indirect or fringe benefit costs means the Recipient must absorb the underrecovery. Such underrecovery may be allocated as part of the Recipient's cost share.

b. If actual allowable [indirect and/or fringe benefit] costs are less than those budgeted and funded under the award, the Recipient may use the difference to pay additional allowable direct costs during the project period. If at the completion of the award the Government's share of total allowable costs (i.e., direct and indirect), is less than the total costs reimbursed, the Recipient must refund the difference.

5. USE OF PROGRAM INCOME

If you earn program income during the project period as a result of this award, you may add the program income to the funds committed to the award and used to further eligible project objectives.

6. STATEMENT OF FEDERAL STEWARDSHIP

DOE will exercise normal Federal stewardship in overseeing the project activities performed under this award. Stewardship activities include, but are not limited to, conducting site visits; reviewing performance and financial reports; providing technical assistance and/or temporary intervention in unusual circumstances to correct deficiencies which develop during the project; assuring compliance with terms and conditions; and reviewing technical performance after project completion to ensure that the award objectives have been accomplished.

7. SITE VISITS

DOE's authorized representatives have the right to make site visits at reasonable times to review project accomplishments and management control systems and to provide technical

assistance, if required. You must provide, and must require your subawardees to provide, reasonable access to facilities, office space, resources, and assistance for the safety and convenience of the government representatives in the performance of their duties. All site visits and evaluations must be performed in a manner that does not unduly interfere with or delay the work.

8. REPORTING REQUIREMENTS

a. Requirements. The reporting requirements for this award are identified on the Federal Assistance Reporting Checklist, DOE F 4600.2, attached to this award. Failure to comply with these reporting requirements is considered a material noncompliance with the terms of the award. Noncompliance may result in withholding of future payments, suspension or termination of the current award, and withholding of future awards. A willful failure to perform, a history of failure to perform, or unsatisfactory performance of this and/or other financial assistance awards, may also result in a debarment action to preclude future awards by Federal agencies.

b. Additional Recovery Act Reporting Requirements are found in the Provision below labeled: "REPORTING AND REGISTRATION REQUIREMENTS UNDER SECTION 1512 OF THE RECOVERY ACT."

9. PUBLICATIONS

a. You are encouraged to publish or otherwise make publicly available the results of the work conducted under the award.

b. An acknowledgment of DOE support and a disclaimer must appear in the publication of any material, whether copyrighted or not, based on or developed under this project, as follows:

Acknowledgment: "This material is based upon work supported by the Department of Energy [National Nuclear Security Administration] [add name(s) of other agencies, if applicable] under Award Number(s) [enter the award number(s)]."

Disclaimer: "This report was prepared as an account of work sponsored by an agency of the United States Government. Neither the United States Government nor any agency thereof, nor any of their employees, makes any warranty, express or implied, or assumes any legal liability or responsibility for the accuracy, completeness, or usefulness of any information, apparatus, product, or process disclosed, or represents that its use would not infringe privately owned rights. Reference herein to any specific commercial product, process, or service by trade name, trademark, manufacturer, or otherwise does not necessarily constitute or imply its endorsement, recommendation, or favoring by the United States Government or any agency thereof. The views and opinions of authors expressed herein do not necessarily state or reflect those of the United States Government or any agency thereof."

10. FEDERAL, STATE, AND MUNICIPAL REQUIREMENTS

You must obtain any required permits, ensure the safety and structural integrity of any repair, replacement, construction and/or alteration, and comply with applicable federal, state, and municipal laws, codes, and regulations for work performed under this award.

11. LOBBYING RESTRICTIONS

By accepting funds under this award, you agree that none of the funds obligated on the award shall be expended, directly or indirectly, to influence congressional action on any legislation or appropriation matters pending before Congress, other than to communicate to Members of Congress as described in 18 U.S.C. 1913. This restriction is in addition to those prescribed elsewhere in statute and regulation.

12. NATIONAL ENVIRONMENTAL POLICY ACT (NEPA) REQUIREMENTS

You are restricted from taking any action using Federal funds, which would have an adverse effect on the environment or limit the choice of reasonable alternatives prior to DOE providing either a NEPA clearance or a final NEPA decision regarding this project.

If you move forward with activities that are not authorized for Federal funding by the DOE Contracting Officer in advance of the final NEPA decision, you are doing so at risk of not receiving Federal funding and such costs may not be recognized as allowable cost share.

If this award includes construction activities, you must submit an environmental evaluation report/evaluation notification form addressing NEPA issues prior to DOE initiating the NEPA process.

13. HISTORIC PRESERVATION

Prior to the expenditure of Project funds to alter any historic structure or site, the Recipient or subrecipient shall ensure that it is compliant with Section 106 of the National Historic Preservation Act (NHPA), consistent with DOE's 2009 letter of delegation of authority regarding the NHPA. Section 106 applies to historic properties that are listed in or eligible for listing in the National Register of Historic Places. If applicable, the Recipient or subrecipient must contact the State Historic Preservation Officer (SHPO), and the Tribal Historic Preservation Officer (THPO) to coordinate the Section 106 review outlined in 36 CFR Part 800. SHPO contact information is available at the following link: http://www.ncshpo.org/find/index.htm. THPO contact information is available at the following link: http://www.nathpo.org/map.html . Section 110(k) of the NHPA applies to DOE funded activities.

If applicable, the Recipient or subrecipient certifies that it will retain sufficient documentation, to demonstrate that the Recipient or subrecipient has received required approval(s) from the SHPO or THPO for the Project. Recipients or subrecipients shall avoid

taking any action that results in an adverse effect to historic properties pending compliance with Section 106. The Recipient or subrecipient shall deem compliance with Section 106 of the NHPA complete only after it has received this documentation. The Recipient or subrecipient shall make this documentation available to DOE on DOE's request (for example, during a post-award audit).

14. WASTE STREAM

The Recipient assures that it will create or obtain a waste management plan addressing waste generated by a proposed Project prior to the Project generating waste. This waste management plan will describe the Recipient's or subrecipient's plan to dispose of any sanitary or hazardous waste (e.g., construction and demolition debris, old light bulbs, lead ballasts, piping, roofing material, discarded equipment, debris, and asbestos) generated as a result of the proposed Project. The Recipient shall ensure that the Project is in compliance with all Federal, state and local regulations for waste disposal. The Recipient shall make the waste management plan and related documentation available to DOE on DOE's request (for example, during a post-award audit).

15. DECONTAMINATION AND/OR DECOMMISSIONING (D&D) COSTS

Notwithstanding any other provisions of this Agreement, the Government shall not be responsible for or have any obligation to the Recipient for (i) Decontamination and/or Decommissioning (D&D) of any of the Recipient's facilities, or (ii) any costs which may be incurred by the Recipient in connection with the D&D of any of its facilities due to the performance of the work under this Agreement, whether said work was performed prior to or subsequent to the effective date of the Agreement.

16. SUBGRANTS AND LOANS

a. *The Recipient hereby warrants that it will ensure that all activities by sub-grantee(s) and* loan recipients to accomplish the approved Project Description or Statement of Project Objectives are eligible activities under 42 U.S.C. 171534(1)-(13). State recipients hereby warrant that they will ensure that all activities by sub-grantee(s) and loan recipients pursuant to 42 U.S.C. 17155(c)(1)(A) to accomplish the approved Project Description or Statement of Project objects are eligible activities under 42 U.S.C. 171534(3)-(13).

b. Upon the Recipient's selection of the sub-grantee(s) and loan recipients, the Recipient shall notify (i.e. approval not required) the DOE Contracting Officer with the following information for each, regardless of dollar amount:
    - Name of Sub-Grantee
    - DUNS Number
    - Award Amount
    - Statement of work including applicable activities

   State recipients shall notify the DOE Contracting Officer with the above information within 180 days of the award date in Block 27 of the Assistance Agreement Cover Page.

c. In addition to the information in paragraph b. above, for each sub-grant and loan that has an estimated cost greater than $2,000,000, the recipient must submit for approval by the Contracting Officer, a SF424A Budget Information – Nonconstruction Programs, and PMC 123.1 Cost Reasonableness Determination for Financial Assistance (available at http://www.eere-pmc.energy.gov/forms.aspx).

17. JUSTIFICATION OF BUDGET COSTS

a. In the original application, the recipient did not provide sufficient information to justify the approval or release of funds for the proposed activities. In order to receive reimbursement for the costs associated with the activities listed in the approved Statement of Project Objectives (SOPO), a justification for all proposed costs must be submitted to the DOE Contracting Officer.

b. The Recipient must provide justification for the following costs:

Personnel Costs:
The Recipient must submit cost justification for the following personnel costs: for approval by the Contracting Officer.

Fringe Benefit Costs:
The Recipient must submit a fringe benefit rate proposal/agreement for approval by the Contracting Officer.

Travel Costs:
The Recipient must submit cost justification for the following travel costs: for approval by the Contracting Officer.

Equipment Costs:
The Recipient must submit vendor quotes for equipment with an individual item cost of $50,000 or more, for approval by the Contracting Officer.

Supplies Costs:
The Recipient must submit cost justification for the following supplies costs: for approval by the Contracting Officer.

Contractual Costs:
1. The recipient shall provide the following information for each individual or company that will receive EECBG funding, regardless of dollar amount:
- Name
- DUNS Number
- Award Amount
- Statement of work including applicable activities
- NEPA documentation, as applicable

2. In addition to the information in paragraph 1. above, for each individual or company that has an estimated cost greater than $2,000,000, the Recipient must submit a separate SF424A Budget Information – Nonconstruction Programs, and Budget Justification. The DOE Contracting Officer may require additional information concerning these individuals or companies prior to providing written approval.

Other Direct Costs:
The Recipient must submit cost justification for the following other direct costs: for approval by the Contracting Officer.

Indirect Costs:
The Recipient must submit an indirect rate proposal/agreement for approval by the Contracting Officer.

c. Upon written notification and/or approval by the Contracting Officer, the Recipient may then receive payment for the activities listed in the approved SOPO for allowable costs incurred in accordance with the payment provisions contained in the Special Terms and Conditions of this agreement. These written notifications and/or approvals will be incorporated into the award by formal modification at a future date.

18. ADVANCE UNDERSTANDING CONCERNING PUBLICLY FINANCED ENERGY IMPROVEMENT PROGRAMS

The parties recognize that the Recipient may use funds under this award for Property-Assessed Clean Energy (PACE) loans, Sustainable Energy Municipal Financing, Clean Energy Assessment Districts, Energy Loan Tax Assessment Programs (ELTAPS), or any other form or derivation of Special Taxing District whereby taxing entities collect payments through increased tax assessments for energy efficiency and renewable energy building improvements made by their constituents. The Department of Energy intends to publish "Best Practices" or other guidelines pertaining to the use of funds made available to the Recipient under this award pertaining to the programs identified herein. By accepting this award, the Recipient agrees to incorporate, to the maximum extent practicable, those Best Practices and other guidelines into any such program(s) within a reasonable time after notification by DOE that the Best Practices or guidelines have been made available. The Recipient also agrees, by its acceptance of this award, to require its sub-recipients to incorporate to the maximum extent practicable the best practices and other guideline into any such program used by the sub-recipient.

19. SPECIAL PROVISIONS RELATING TO WORK FUNDED UNDER AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009 *(May 2009)*

Preamble

The American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, (Recovery Act) was enacted to preserve and create jobs and promote economic recovery, assist those most

impacted by the recession, provide investments needed to increase economic efficiency by spurring technological advances in science and health, invest in transportation, environmental protection, and other infrastructure that will provide long-term economic benefits, stabilize State and local government budgets, in order to minimize and avoid reductions in essential services and counterproductive State and local tax increases. Recipients shall use grant funds in a manner that maximizes job creation and economic benefit.

The Recipient shall comply with all terms and conditions in the Recovery Act relating generally to governance, accountability, transparency, data collection and resources as specified in Act itself and as discussed below.

Recipients should begin planning activities for their first tier subrecipients, including obtaining a DUNS number (or updating the existing DUNS record), and registering with the Central Contractor Registration (CCR).

Be advised that Recovery Act funds can be used in conjunction with other funding as necessary to complete projects, but tracking and reporting must be separate to meet the *reporting requirements of the Recovery Act and related guidance*. For projects funded by sources other than the Recovery Act, Contractors must keep separate records for Recovery Act funds and to ensure those records comply with the requirements of the Act.

The Government has not fully developed the implementing instructions of the Recovery Act, particularly concerning specific procedural requirements for the new reporting requirements. The Recipient will be provided these details as they become available. The Recipient must comply with all requirements of the Act. If the recipient believes there is any inconsistency between ARRA requirements and current award terms and conditions, the issues will be referred to the Contracting Officer for reconciliation.

Definitions

For purposes of this clause, Covered Funds means funds expended or obligated from appropriations under the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5. Covered Funds will have special accounting codes and will be identified as Recovery Act funds in the grant, cooperative agreement or TIA and/or modification using Recovery Act funds. Covered Funds must be reimbursed by September 30, 2015.

Non-Federal employer means any employer with respect to covered funds -- the contractor, subcontractor, grantee, or recipient, as the case may be, if the contractor, subcontractor, grantee, or recipient is an employer; and any professional membership organization, certification of other professional body, any agent or licensee of the Federal government, or any person acting directly or indirectly in the interest of an employer receiving covered funds; or with respect to covered funds received by a State or local government, the State or local government receiving the funds and any contractor or subcontractor receiving the funds and any contractor or subcontractor of the State or local government; and does not mean any department, agency, or other entity of the federal government.

Recipient means any entity that receives Recovery Act funds directly from the Federal

government (including Recovery Act funds received through grant, loan, or contract) other than an individual and includes a State that receives Recovery Act Funds.

Special Provisions

A. Flow Down Requirement

Recipients must include these special terms and conditions in any subaward.

B. Segregation of Costs

Recipients must segregate the obligations and expenditures related to funding under the Recovery Act. Financial and accounting systems should be revised as necessary to segregate, track and maintain these funds apart and separate from other revenue streams. No part of the funds from the Recovery Act shall be commingled with any other funds or used for a purpose other than that of making payments for costs allowable for Recovery Act projects.

C. Prohibition on Use of Funds

None of the funds provided under this agreement derived from the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, may be used by any State or local government, or any private entity, for any casino or other gambling establishment, aquarium, zoo, golf course, or swimming pool.

D. Access to Records

With respect to each financial assistance agreement awarded utilizing at least some of the funds appropriated or otherwise made available by the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, any representative of an appropriate inspector general appointed under section 3 or 8G of the Inspector General Act of 1988 (5 U.S.C. App.) or of the Comptroller General is authorized --

(1) to examine any records of the contractor or grantee, any of its subcontractors or subgrantees, or any State or local agency administering such contract that pertain to, and involve transactions that relate to, the subcontract, subcontract, grant, or subgrant; and

(2) to interview any officer or employee of the contractor, grantee, subgrantee, or agency regarding such transactions.

E. Publication

An application may contain technical data and other data, including trade secrets and/or privileged or confidential information, which the applicant does not want disclosed to the public or used by the Government for any purpose other than the application. To protect such data, the applicant should specifically identify each page including each line or paragraph thereof containing the data to be protected and mark the cover sheet of the application with the following Notice as well as referring to the Notice on each page to which

the Notice applies:

Notice of Restriction on Disclosure and Use of Data
The data contained in pages ---- of this application have been submitted in confidence and contain trade secrets or proprietary information, and such data shall be used or disclosed only for evaluation purposes, provided that if this applicant receives an award as a result of or in connection with the submission of this application, DOE shall have the right to use or disclose the data here to the extent provided in the award. This restriction does not limit the Government's right to use or disclose data obtained without restriction from any source, including the applicant.

Information about this agreement will be published on the Internet and linked to the website www.recovery.gov, maintained by the Accountability and Transparency Board. The Board may exclude posting contractual or other information on the website on a case-by-case basis when necessary to protect national security or to protect information that is not subject to disclosure under sections 552 and 552a of title 5, United States Code.

F. Protecting State and Local Government and Contractor Whistleblowers.

The requirements of Section 1553 of the Act are summarized below. They include, but are not limited to:

Prohibition on Reprisals: An employee of any non-Federal employer receiving covered funds under the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing, including a disclosure made in the ordinary course of an employee's duties, to the Accountability and Transparency Board, an inspector general, the Comptroller General, a member of Congress, a State or Federal regulatory or law enforcement agency, a person with supervisory authority over the employee (or other person working for the employer who has the authority to investigate, discover or terminate misconduct), a court or grant jury, the head of a Federal agency, or their representatives information that the employee believes is evidence of:

- gross management of an agency contract or grant relating to covered funds;
- a gross waste of covered funds;
- a substantial and specific danger to public health or safety related to the implementation or use of covered funds;
- an abuse of authority related to the implementation or use of covered funds; or
- as violation of law, rule, or regulation related to an agency contract (including the competition for or negotiation of a contract) or grant, awarded or issued relating to covered funds.

Agency Action: Not later than 30 days after receiving an inspector general report of an alleged reprisal, the head of the agency shall determine whether there is sufficient basis to conclude that the non-Federal employer has subjected the employee to a prohibited reprisal. The agency shall either issue an order denying relief in whole or in part or shall take one or more of the following actions:

- Order the employer to take affirmative action to abate the reprisal.
- Order the employer to reinstate the person to the position that the person held before the reprisal, together with compensation including back pay, compensatory damages, employment benefits, and other terms and conditions of employment that would apply to the person in that position if the reprisal had not been taken.
- Order the employer to pay the employee an amount equal to the aggregate amount of all costs and expenses (including attorneys' fees and expert witnesses' fees) that were reasonably incurred by the employee for or in connection with, bringing the complaint regarding the reprisal, as determined by the head of a court of competent jurisdiction.

Nonenforceability of Certain Provisions Waiving Rights and remedies or Requiring Arbitration: Except as provided in a collective bargaining agreement, the rights and remedies provided to aggrieved employees by this section may not be waived by any agreement, policy, form, or condition of employment, including any predispute arbitration agreement. No predispute arbitration agreement shall be valid or enforceable if it requires arbitration of a dispute arising out of this section.

Requirement to Post Notice of Rights and Remedies: Any employer receiving covered funds under the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, shall post notice of the rights and remedies as required therein. (Refer to section 1553 of the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, www.Recovery.gov, for specific requirements of this section and prescribed language for the notices.).

G. Reserved

H. False Claims Act

Recipient and sub-recipients shall promptly refer to the DOE or other appropriate Inspector General any credible evidence that a principal, employee, agent, contractor, sub-grantee, subcontractor or other person has submitted a false claim under the False Claims Act or has committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity or similar misconduct involving those funds.

I. Information in Support of Recovery Act Reporting

Recipient may be required to submit backup documentation for expenditures of funds under the Recovery Act including such items as timecards and invoices. Recipient shall provide copies of backup documentation at the request of the Contracting Officer or designee.

J. Availability of Funds

Funds obligated to this award are available for reimbursement of costs until 36 months after the award date.

K. Additional Funding Distribution and Assurance of Appropriate Use of Funds

Certification by Governor – For funds provided to any State or agency thereof by the

American Reinvestment and Recovery Act of 2009, Pub. L. 111-5, the Governor of the State shall certify that: 1) the state will request and use funds provided by the Act; and 2) the funds will be used to create jobs and promote economic growth.

Acceptance by State Legislature -- If funds provided to any State in any division of the Act are not accepted for use by the Governor, then acceptance by the State legislature, by means of the adoption of a concurrent resolution, shall be sufficient to provide funding to such State.

Distribution -- After adoption of a State legislature's concurrent resolution, funding to the State will be for distribution to local governments, councils of government, public entities, and public-private entities within the State either by formula or at the State's discretion.

L. Certifications

With respect to funds made available to State or local governments for infrastructure investments under the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, the Governor, mayor, or other chief executive, as appropriate, certified by acceptance of this award that the infrastructure investment has received the full review and vetting required by law and that the chief executive accepts responsibility that the infrastructure investment is an appropriate use of taxpayer dollars. Recipient shall provide an additional certification that includes a description of the investment, the estimated total cost, and the amount of covered funds to be used for posting on the Internet. A State or local agency may not receive infrastructure investment funding from funds made available by the Act unless this certification is made and posted.

20. REPORTING AND REGISTRATION REQUIREMENTS UNDER SECTION 1512 OF THE RECOVERY ACT

(a) This award requires the recipient to complete projects or activities which are funded under the American Recovery and Reinvestment Act of 2009 (Recovery Act) and to report on use of Recovery Act funds provided through this award. Information from these reports will be made available to the public.

(b) The reports are due no later than ten calendar days after each calendar quarter in which the Recipient receives the assistance award funded in whole or in part by the Recovery Act.

(c) Recipients and their first-tier subrecipients must maintain current registrations in the Central Contractor Registration (*http://www.ccr.gov*) at all times during which they have active federal awards funded with Recovery Act funds. A Dun and Bradstreet Data Universal Numbering System (DUNS) Number (*http://www.dnb.com*) is one of the requirements for registration in the Central Contractor Registration.

(d) The recipient shall report the information described in section 1512(c) of the Recovery Act using the reporting instructions and data elements that will be provided online at *http://www.FederalReporting.gov* and ensure that any information that is pre-filled is corrected or updated as needed.

21. NOTICE REGARDING THE PURCHASE OF AMERICAN-MADE EQUIPMENT AND PRODUCTS -- SENSE OF CONGRESS

It is the sense of the Congress that, to the greatest extent practicable, all equipment and products purchased with funds made available under this award should be American-made.

*Special Note: Definitization of the Provisions entitled, "REQUIRED USE OF AMERICAN IRON, STEEL, AND MANUFACTURED GOODS – SECTION 1605 OF THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009" and "REQUIRED USE OF AMERICAN IRON, STEEL, AND MANUFACTURED GOODS (COVERED UNDER INTERNATIONAL AGREEMENTS) – SECTION 1605 OF THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009" will be done upon definition and review of final activities.

22. REQUIRED USE OF AMERICAN IRON, STEEL, AND MANUFACTURED GOODS – SECTION 1605 OF THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009

If the Recipient determines at any time that any construction, alteration, or repair activity on a public building or public works will be performed during the course of the project, the Recipient shall notify the Contracting Officer prior to commencing such work and the following provisions shall apply.

(a) *Definitions.* As used in this award term and condition—

(1) *Manufactured good* means a good brought to the construction site for incorporation into the building or work that has been—

(i) Processed into a specific form and shape; or

(ii) Combined with other raw material to create a material that has different properties than the properties of the individual raw materials.

(2) *Public building and public work* means a public building of, and a public work of, a governmental entity (the United States; the District of Columbia; commonwealths, territories, and minor outlying islands of the United States; State and local governments; and multi-State, regional, or interstate entities which have governmental functions). These buildings and works may include, without limitation, bridges, dams, plants, highways, parkways, streets, subways, tunnels, sewers, mains, power lines, pumping stations, heavy generators, railways, airports, terminals, docks, piers, wharves, ways, lighthouses, buoys, jetties,

breakwaters, levees, and canals, and the construction, alteration, maintenance, or repair of such buildings and works.

(3) *Steel* means an alloy that includes at least 50 percent iron, between .02 and 2 percent carbon, and may include other elements.

(b) *Domestic preference.* (1) This award term and condition implements Section 1605 of the American Recovery and Reinvestment Act of 2009 (Recovery Act) (Pub. L. 111–5), by requiring that all iron, steel, and manufactured goods used in the project are produced in the United States except as provided in paragraph (b)(3) of this section and condition.

(2) This requirement does not apply to the material listed by the Federal Government as follows:

To Be Determined

(3) The award official may add other iron, steel, and/or manufactured goods to the list in paragraph (b)(2) of this section and condition if the Federal Government determines that—

(i) The cost of the domestic iron, steel, and/or manufactured goods would be unreasonable. The cost of domestic iron, steel, or manufactured goods used in the project is unreasonable when the cumulative cost of such material will increase the cost of the overall project by more than 25 percent;

(ii) The iron, steel, and/or manufactured good is not produced, or manufactured in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or

(iii) The application of the restriction of section 1605 of the Recovery Act would be inconsistent with the public interest.

(c) *Request for determination of inapplicability of Section 1605 of the Recovery Act* . (1)(i) Any recipient request to use foreign iron, steel, and/or manufactured goods in accordance with paragraph (b)(3) of this section shall include adequate information for Federal Government evaluation of the request, including—

(A) A description of the foreign and domestic iron, steel, and/or manufactured goods;

(B) Unit of measure;

(C) Quantity;

(D) Cost;

(E) Time of delivery or availability;

(F) Location of the project;

(G) Name and address of the proposed supplier; and

(H) A detailed justification of the reason for use of foreign iron, steel, and/or manufactured goods cited in accordance with paragraph (b)(3) of this section.

(ii) A request based on unreasonable cost shall include a reasonable survey of the market and a completed cost comparison table in the format in paragraph (d) of this section.

(iii) The cost of iron, steel, and/or manufactured goods material shall include all delivery costs to the construction site and any applicable duty.

(iv) Any recipient request for a determination submitted after Recovery Act funds have been obligated for a project for construction, alteration, maintenance, or repair shall explain why the recipient could not reasonably foresee the need for such determination and could not have requested the determination before the funds were obligated. If the recipient does not submit a satisfactory explanation, the award official need not make a determination.

(2) If the Federal Government determines after funds have been obligated for a project for construction, alteration, maintenance, or repair that an exception to section 1605 of the Recovery Act applies, the award official will amend the award to allow use of the foreign iron, steel, and/or relevant manufactured goods. When the basis for the exception is nonavailability or public interest, the amended award shall reflect adjustment of the award amount, redistribution of budgeted funds, and/or other actions taken to cover costs associated with acquiring or using the foreign iron, steel, and/or relevant manufactured goods. When the basis for the exception is the unreasonable cost of the domestic iron, steel, or manufactured goods, the award official shall adjust the award amount or redistribute budgeted funds by at least the differential established in 2 CFR 176.110(a).

(3) Unless the Federal Government determines that an exception to section 1605 of the Recovery Act applies, use of foreign iron, steel, and/or manufactured goods is noncompliant with section 1605 of the American Recovery and Reinvestment Act.

(d) *Data.* To permit evaluation of requests under paragraph (b) of this section based on unreasonable cost, the Recipient shall include the following information and any applicable supporting data based on the survey of suppliers:

Foreign and Domestic Items Cost Comparison

Description	Unit of measure	Quantity	Cost (dollars)*
Item 1:			
Foreign steel, iron, or manufactured good	______	______	______
Domestic steel, iron, or	______	______	______

manufactured good			
Item 2:			
Foreign steel, iron, or manufactured good	______	______	______
Domestic steel, iron, or manufactured good	______	______	______

List name, address, telephone number, email address, and contact for suppliers surveyed. Attach copy of response; if oral, attach summary.

Include other applicable supporting information.

*Include all delivery costs to the construction site.

23. REQUIRED USE OF AMERICAN IRON, STEEL, AND MANUFACTURED GOODS (COVERED UNDER INTERNATIONAL AGREEMENTS) – SECTION 1605 OF THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009

(a) *Definitions.* As used in this award term and condition—

Designated country — (1) A World Trade Organization Government Procurement Agreement country (Aruba, Austria, Belgium, Bulgaria, Canada, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea (Republic of), Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, and United Kingdom;

(2) A Free Trade Agreement (FTA) country (Australia, Bahrain, Canada, Chile, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Israel, Mexico, Morocco, Nicaragua, Oman, Peru, or Singapore); or

(3) A United States-European Communities Exchange of Letters (May 15, 1995) country: Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovak Republic, Slovenia, Spain, Sweden, and United Kingdom.

Designated country iron, steel, and/or manufactured goods — (1) Is wholly the growth, product, or manufacture of a designated country; or

(2) In the case of a manufactured good that consist in whole or in part of materials from another country, has been substantially transformed in a designated country into a new and different manufactured good distinct from the materials from which it was transformed.

Domestic iron, steel, and/or manufactured good — (1) Is wholly the growth, product, or manufacture of the United States; or

(2) In the case of a manufactured good that consists in whole or in part of materials from another country, has been substantially transformed in the United States into a new and different manufactured good distinct from the materials from which it was transformed. There is no requirement with regard to the origin of components or subcomponents in manufactured goods or products, as long as the manufacture of the goods occurs in the United States.

Foreign iron, steel, and/or manufactured good means iron, steel and/or manufactured good that is not domestic or designated country iron, steel, and/or manufactured good.

Manufactured good means a good brought to the construction site for incorporation into the building or work that has been—

(1) Processed into a specific form and shape; or

(2) Combined with other raw material to create a material that has different properties than the properties of the individual raw materials.

Public building and *public work* means a public building of, and a public work of, a governmental entity (the United States; the District of Columbia; commonwealths, territories, and minor outlying islands of the United States; State and local governments; and multi-State, regional, or interstate entities which have governmental functions). These buildings and works may include, without limitation, bridges, dams, plants, highways, parkways, streets, subways, tunnels, sewers, mains, power lines, pumping stations, heavy generators, railways, airports, terminals, docks, piers, wharves, ways, lighthouses, buoys, jetties, breakwaters, levees, and canals, and the construction, alteration, maintenance, or repair of such buildings and works.

Steel means an alloy that includes at least 50 percent iron, between .02 and 2 percent carbon, and may include other elements.

(b) *Iron, steel, and manufactured goods.* (1) The award term and condition described in this section implements—

(i) Section 1605(a) of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111–5) (Recovery Act), by requiring that all iron, steel, and manufactured goods used in the project are produced in the United States; and

(ii) Section 1605(d), which requires application of the Buy American requirement in a manner consistent with U.S. obligations under international agreements. The restrictions of section 1605 of the Recovery Act do not apply to designated country iron, steel, and/or manufactured goods. The Buy American requirement in section 1605 shall not be applied where the iron, steel or manufactured goods used in the project are from a Party to an

international agreement that obligates the recipient to treat the goods and services of that Party the same as domestic goods and services. This obligation shall only apply to projects with an estimated value of $7,443,000 or more.

(2) The recipient shall use only domestic or designated country iron, steel, and manufactured goods in performing the work funded in whole or part with this award, except as provided in paragraphs (b)(3) and (b)(4) of this section.

(3) The requirement in paragraph (b)(2) of this section does not apply to the iron, steel, and manufactured goods listed by the Federal Government as follows:

To Be Determined

(4) The award official may add other iron, steel, and manufactured goods to the list in paragraph (b)(3) of this section if the Federal Government determines that—

(i) The cost of domestic iron, steel, and/or manufactured goods would be unreasonable. The cost of domestic iron, steel, and/or manufactured goods used in the project is unreasonable when the cumulative cost of such material will increase the overall cost of the project by more than 25 percent;

(ii) The iron, steel, and/or manufactured good is not produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality; or

(iii) The application of the restriction of section 1605 of the Recovery Act would be inconsistent with the public interest.

(c) *Request for determination of inapplicability of section 1605 of the Recovery Act or the Buy American Act.* (1)(i) Any recipient request to use foreign iron, steel, and/or manufactured goods in accordance with paragraph (b)(4) of this section shall include adequate information for Federal Government evaluation of the request, including—

(A) A description of the foreign and domestic iron, steel, and/or manufactured goods;

(B) Unit of measure;

(C) Quantity;

(D) Cost;

(E) Time of delivery or availability;

(F) Location of the project;

(G) Name and address of the proposed supplier; and

(H) A detailed justification of the reason for use of foreign iron, steel, and/or manufactured goods cited in accordance with paragraph (b)(4) of this section.

(ii) A request based on unreasonable cost shall include a reasonable survey of the market and a completed cost comparison table in the format in paragraph (d) of this section.

(iii) The cost of iron, steel, or manufactured goods shall include all delivery costs to the construction site and any applicable duty.

(iv) Any recipient request for a determination submitted after Recovery Act funds have been obligated for a project for construction, alteration, maintenance, or repair shall explain why the recipient could not reasonably foresee the need for such determination and could not have requested the determination before the funds were obligated. If the recipient does not submit a satisfactory explanation, the award official need not make a determination.

(2) If the Federal Government determines after funds have been obligated for a project for construction, alteration, maintenance, or repair that an exception to section 1605 of the Recovery Act applies, the award official will amend the award to allow use of the foreign iron, steel, and/or relevant manufactured goods. When the basis for the exception is nonavailability or public interest, the amended award shall reflect adjustment of the award amount, redistribution of budgeted funds, and/or other appropriate actions taken to cover costs associated with acquiring or using the foreign iron, steel, and/or relevant manufactured goods. When the basis for the exception is the unreasonable cost of the domestic iron, steel, or manufactured goods, the award official shall adjust the award amount or redistribute budgeted funds, as appropriate, by at least the differential established in 2 CFR 176.110(a).

(3) Unless the Federal Government determines that an exception to section 1605 of the Recovery Act applies, use of foreign iron, steel, and/or manufactured goods other than designated country iron, steel, and/or manufactured goods is noncompliant with the applicable Act.

(d) *Data.* To permit evaluation of requests under paragraph (b) of this section based on unreasonable cost, the applicant shall include the following information and any applicable supporting data based on the survey of suppliers:

Foreign and Domestic Items Cost Comparison

Description	**Unit of measure**	**Quantity**	**Cost (dollars)***
Item 1:			
Foreign steel, iron, or manufactured good	______	______	______
Domestic steel, iron, or manufactured good	______	______	______

Item 2:			
Foreign steel, iron, or manufactured good	______	______	______
Domestic steel, iron, or manufactured good	______	______	______

List name, address, telephone number, email address, and contact for suppliers surveyed. Attach copy of response; if oral, attach summary.

Include other applicable supporting information.

*Include all delivery costs to the construction site.

24. WAGE RATE REQUIREMENTS UNDER SECTION 1606 OF THE RECOVERY ACT

(a) Section 1606 of the Recovery Act requires that all laborers and mechanics employed by contractors and subcontractors on projects funded directly by or assisted in whole or in part by and through the Federal Government pursuant to the Recovery Act shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code.

Pursuant to Reorganization Plan No. 14 and the Copeland Act, 40 U.S.C. 3145, the Department of Labor has issued regulations at 29 CFR parts 1, 3, and 5 to implement the Davis-Bacon and related Acts. Regulations in 29 CFR 5.5 instruct agencies concerning application of the standard Davis-Bacon contract clauses set forth in that section. Federal agencies providing grants, cooperative agreements, and loans under the Recovery Act shall ensure that the standard Davis-Bacon contract clauses found in 29 CFR 5.5(a) are incorporated in any resultant covered contracts that are in excess of $2,000 for construction, alteration or repair (including painting and decorating).

(b) For additional guidance on the wage rate requirements of section 1606, contact your awarding agency. Recipients of grants, cooperative agreements and loans should direct their initial inquiries concerning the application of Davis-Bacon requirements to a particular federally assisted project to the Federal agency funding the project. The Secretary of Labor retains final coverage authority under Reorganization Plan Number 14.

25. RECOVERY ACT TRANSACTIONS LISTED IN SCHEDULE OF EXPENDITURES OF FEDERAL AWARDS AND RECIPIENT RESPONSIBILITIES FOR INFORMING SUBRECIPIENTS

(a) To maximize the transparency and accountability of funds authorized under the American Recovery and Reinvestment Act of 2009 (Pub. L. 111–5) (Recovery Act) as required by Congress and in accordance with 2 CFR 215.21 "Uniform Administrative Requirements for

Grants and Agreements" and OMB Circular A–102 Common Rules provisions, recipients agree to maintain records that identify adequately the source and application of Recovery Act funds. OMB Circular A–102 is available at *http://www.whitehouse.gov/omb/circulars/a102/a102.html.*

(b) For recipients covered by the Single Audit Act Amendments of 1996 and OMB Circular A–133, "Audits of States, Local Governments, and Non-Profit Organizations," recipients agree to separately identify the expenditures for Federal awards under the Recovery Act on the Schedule of Expenditures of Federal Awards (SEFA) and the Data Collection Form (SF–SAC) required by OMB Circular A–133. OMB Circular A–133 is available at *http://www.whitehouse.gov/omb/circulars/a133/a133.html.* This shall be accomplished by identifying expenditures for Federal awards made under the Recovery Act separately on the SEFA, and as separate rows under Item 9 of Part III on the SF–SAC by CFDA number, and inclusion of the prefix "ARRA-" in identifying the name of the Federal program on the SEFA and as the first characters in Item 9d of Part III on the SF–SAC.

(c) Recipients agree to separately identify to each subrecipient, and document at the time of subaward and at the time of disbursement of funds, the Federal award number, CFDA number, and amount of Recovery Act funds. When a recipient awards Recovery Act funds for an existing program, the information furnished to subrecipients shall distinguish the subawards of incremental Recovery Act funds from regular subawards under the existing program.

(d) Recipients agree to require their subrecipients to include on their SEFA information to specifically identify Recovery Act funding similar to the requirements for the recipient SEFA described above. This information is needed to allow the recipient to properly monitor subrecipient expenditure of ARRA funds as well as oversight by the Federal awarding agencies, Offices of Inspector General and the Government Accountability Office.

26. DAVIS-BACON ACT AND CONTRACT WORKHOURS AND SAFETY STANDARD ACT

Definitions: For purposes of this provision, "Davis Bacon Act and Contract Work Hours and Safety Standards Act," the following definitions are applicable:

(1) "Award" means any grant, cooperative agreement or technology investment agreement made with Recovery Act funds by the Department of Energy (DOE) to a Recipient. Such Award must require compliance with the labor standards clauses and wage rate requirements of the Davis-Bacon Act (DBA) for work performed by all laborers and mechanics employed by Recipients (other than a unit of State or local government whose own employees perform the construction) Subrecipients, Contractors, and subcontractors.

(2) "Contractor" means an entity that enters into a Contract. For purposes of these clauses, Contractor shall include (as applicable) prime contractors, Recipients, Subrecipients, and Recipients' or Subrecipients' contractors, subcontractors, and lower-

tier subcontractors. "Contractor" does not mean a unit of State or local government where construction is performed by its own employees."

(3) "Contract" means a contract executed by a Recipient, Subrecipient, prime contractor, or any tier subcontractor for construction, alteration, or repair. It may also mean (as applicable) (i) financial assistance instruments such as grants, cooperative agreements, technology investment agreements, and loans; and, (ii) Sub awards, contracts and subcontracts issued under financial assistance agreements. "Contract" does not mean a financial assistance instrument with a unit of State or local government where construction is performed by its own employees.

(4) "Contracting Officer" means the DOE official authorized to execute an Award on behalf of DOE and who is responsible for the business management and non-program aspects of the financial assistance process.

(5) "Recipient" means any entity other than an individual that receives an Award of Federal funds in the form of a grant, cooperative agreement, or technology investment agreement directly from the Federal Government and is financially accountable for the use of any DOE funds or property, and is legally responsible for carrying out the terms and conditions of the program and Award.

(6) "Subaward" means an award of financial assistance in the form of money, or property in lieu of money, made under an award by a Recipient to an eligible Subrecipient or by a Subrecipient to a lower-tier subrecipient. The term includes financial assistance when provided by any legal agreement, even if the agreement is called a contract, but does not include the Recipient's procurement of goods and services to carry out the program nor does it include any form of assistance which is excluded from the definition of "Award" above.

(7) "Subrecipient" means a non-Federal entity that expends Federal funds received from a Recipient to carry out a Federal program, but does not include an individual that is a beneficiary of such a program.

(a) Davis Bacon Act

(1) Minimum wages.

(i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and, without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a

part hereof, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in § 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein, *provided* that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii)(A) The Contracting Officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the Contract shall be classified in conformance with the wage determination. The Contracting Officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination;

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the Contracting Officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the Contracting Officer to the Administrator of the Wage and Hour Division, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every

additional classification action within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.

(C) In the event the Contractor, the laborers or mechanics to be employed in the classification or their representatives, and the Contracting Officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the Contracting Officer shall refer the questions, including the views of all interested parties and the recommendation of the Contracting Officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii)(B) or (C) of this section, shall be paid to all workers performing work in the classification under this Contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the Contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, *provided* that the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(2) Withholding. The Department of Energy or the Recipient or Subrecipient shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the Contractor under this Contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Contractor or any subcontractor the full amount of wages required by the Contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction

or development of the project), all or part of the wages required by the Contract, the Department of Energy, Recipient, or Subrecipient, may, after written notice to the Contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) Payrolls and basic records.

(i) Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made, and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii) (A) The Contractor shall submit weekly for each week in which any Contract work is performed a copy of all payrolls to the Department of Energy if the agency is a party to the Contract, but if the agency is not such a party, the Contractor will submit the payrolls to the Recipient or Subrecipient (as applicable), applicant, sponsor, or owner, as the case may be, for transmission to the Department of Energy. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead, the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at http://www.dol.gov/esa/whd/forms/wh347instr.htm or its successor site. The prime Contractor is responsible for the submission of copies of payrolls

by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the Department of Energy if the agency is a party to the Contract, but if the agency is not such a party, the Contractor will submit them to the Recipient or Subrecipient (as applicable), applicant, sponsor, or owner, as the case may be, for transmission to the Department of Energy, the Contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the sponsoring government agency (or the Recipient or Subrecipient (as applicable), applicant, sponsor, or owner).

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the Contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be provided under § 5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under § 5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the Contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the Contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the Contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 3729 of title 31 of the United States Code.

(iii) The Contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the Department of Energy or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the Contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) Apprentices and trainees—

(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a Contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the

event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity. The utilization of apprentices, trainees, and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended and 29 CFR part 30.

(5) Compliance with Copeland Act requirements. The Contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this Contract.

(6) Contracts and Subcontracts. The Recipient, Subrecipient, the Recipient's, and Subrecipient's contractors and subcontractor shall insert in any Contracts the clauses contained herein in(a)(1) through (10) and such other clauses as the Department of Energy may by appropriate instructions require, and also a clause requiring the

subcontractors to include these clauses in any lower tier subcontracts. The Recipient shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of the paragraphs in this clause.

(7) Contract termination: debarment. A breach of the Contract clauses in 29 CFR 5.5 may be grounds for termination of the Contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this Contract.

(9) Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this Contract shall not be subject to the general disputes clause of this Contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the Recipient, Subrecipient, the Contractor (or any of its subcontractors), and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(10) Certification of eligibility.

(i) By entering into this Contract, the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this Contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

(b) Contract Work Hours and Safety Standards Act. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

(1) Overtime requirements. No Contractor or subcontractor contracting for any part of the Contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (b)(1) of this section, the Contractor and any

subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of $10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.

(3) Withholding for unpaid wages and liquidated damages. The Department of Energy or the Recipient or Subrecipient shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any other Federal contract with the same prime Contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.

(4) Contracts and Subcontracts. The Recipient, Subrecipient, and Recipient's and Subrecipient's contractor or subcontractor shall insert in any Contracts, the clauses set forth in paragraph (b)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The Recipient shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (b)(1) through (4) of this section.

(5) The Contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the Contract for all laborers and mechanics, including guards and watchmen, working on the Contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. The records to be maintained under this paragraph shall be made available by the Contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the Department of Energy and the Department of Labor, and the Contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

(c) Recipient Responsibilities for Davis Bacon Act

(1) On behalf of the Department of Energy (DOE), Recipient shall perform the following functions:

(i) Obtain, maintain, and monitor all Davis Bacon Act (DBA) certified payroll records submitted by the Subrecipients and Contractors at any tier under this Award;

(ii) Review all DBA certified payroll records for compliance with DBA requirements, including applicable DOL wage determinations;

(iii) Notify DOE of any non-compliance with DBA requirements by Subrecipients or Contractors at any tier, including any non-compliances identified as the result of reviews performed pursuant to paragraph (ii) above;

(iv) Address any Subrecipient and any Contractor DBA non-compliance issues; if DBA non-compliance issues cannot be resolved in a timely manner, forward complaints, summary of investigations and all relevant information to DOE;

(v) Provide DOE with detailed information regarding the resolution of any DBA non-compliance issues;

(vi) Perform services in support of DOE investigations of complaints filed regarding noncompliance by Subrecipients and Contractors with DBA requirements;

(vii) Perform audit services as necessary to ensure compliance by Subrecipients and Contractors with DBA requirements and as requested by the Contracting Officer; and

(viii) Provide copies of all records upon request by DOE or DOL in a timely manner.

(d) Rates of Wages

The prevailing wage rates determined by the Secretary of Labor can be found at http://www.wdol.gov/.