





TO: John McDonough, City Manager

FROM: Eden Freeman, Assistant City Manager

DATE: October 26, 2011 for submission on the Agenda of the November 1, 2011 City Council Meeting

ITEM: Consideration of Acceptance of Grant Award under the Southeast Propane Autogas Development Program

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## **Background**

In August 2011, an application was submitted to Virginia Clean Cities at James Madison University for funding under the Southeast Propane Autogas Development Program. The application requested funding to convert 38 Sandy Springs Police Department fleet vehicles and two Sandy Springs Fire Rescue battalion vehicles to propane autogas. The total project cost requested was \$232,000 or \$116,000 in federal funds and \$116,000 in City matching funds.

## **Discussion**

Since the City of Sandy Springs' beginning in 2005, City leaders have made innovation a priority. The primary objective for this project is to lessen the City's dependence on traditional gas and increase fuel efficiency. Specifically our goals are to:

- Improve the City's level of emergency preparedness by maintaining a two week supply of fuel in times of shortages, cutoffs, natural disasters or homeland security emergencies;
- Improve the environmental sustainability of our fleet and decrease the fleet's carbon footprint; and
- Reduce the amount of City funds expended for gasoline.

The City was notified on October 13, 2011 that the submitted application was awarded at the requested level. The grant requires a 50% match (\$116,000), which staff proposes to be taken from the Economic Development/Innovations Fund as this project will serve as a technological innovation in public safety fleet operations. Further, the City will serve as a pilot project for the funder as our project will mark the first use of the new Chevrolet Caprice police vehicle for autogas propane conversion.

## **Alternatives**

Council could choose not to accept the grant award.

## **Attachment**

1. Subaward Agreement V10-123-44

*City  
Manager*

# Subaward Agreement

Institution: UNIVERSITY/JMU Name: James Madison University Address: VA Clean Cities at JMU Attn: Office of Sponsored Programs MSC 5728 1031 Harrison St., JMAC 6, Suite 26 Harrisonburg, Virginia 22807	Partner: SUBRECIPIENT/SUB Name: City of Sandy Springs Address: 7840 Roswell Road, Building 500 Sandy Springs, Georgia 30350-4891 EIN or Tax ID No.: 20-3767748 DUNS No.: 619646040								
Prime Award No.: DE-EE0002172 DMME Identifier: C10-6065	Subaward No. V10-123-44								
Awarding Agency: US Department of Energy (through VA Department of Mines, Minerals & Energy)	CFDA No. 81.086, Conservation Research & Development								
Subaward Period of Performance September 22, 2011 – December 6, 2013	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 15%;"># Vehicles</td> <td style="width: 25%;">Funded by Grant</td> <td style="width: 25%;">Match from Sub</td> <td style="width: 35%;">Total Project Value</td> </tr> <tr> <td style="text-align: center;"><b>40</b></td> <td style="text-align: center;"><b>\$116,000</b></td> <td style="text-align: center;"><b>\$116,000</b></td> <td style="text-align: center;"><b>\$232,000</b></td> </tr> </table>	# Vehicles	Funded by Grant	Match from Sub	Total Project Value	<b>40</b>	<b>\$116,000</b>	<b>\$116,000</b>	<b>\$232,000</b>
# Vehicles	Funded by Grant	Match from Sub	Total Project Value						
<b>40</b>	<b>\$116,000</b>	<b>\$116,000</b>	<b>\$232,000</b>						
Project Title <b>Propane Corridor Development Program</b>									
<b>Reporting Requirements:</b> [Check here if applicable: <input checked="" type="checkbox"/> See Attachments 4 and 6 for reporting requirements.	<b>ARRA/Stimulus Funding:</b> <input checked="" type="checkbox"/> See regulations and requirements at Attachment 2 and Attachments B,D,F								
<b>Terms and Conditions</b>									
<p>1) University/JMU hereby provides notice, as described above, to Lower Tier Subrecipient (Sub). The named Sub has been selected to participate in the referenced program. The Sub shall furnish 40 vehicles to be converted to propane use. The grant will fund \$116,000. The Sub will provide \$116,000 cash match for a total project value of \$232,000. This number is represented by the cost of conversion equipment kits at \$4,375 each and the labor for the installations at \$1,425 each on 40 vehicles as identified by the Sub. The Sub's Statement of Project Objectives/Workplan and Budget for this subaward is shown in Attachment 5. In performance of specified work, Sub shall be an independent entity and not an employee or agent of JMU.</p> <p>2) Sub shall not invoice JMU for the cost of the kits or labor for the conversions. JMU will pay these costs on behalf of the Sub directly to the equipment supplier and to the conversion center as agreed upon by the parties. The Sub shall provide project Match in the amount of \$116,000 to be paid directly to the vendors as follows: Parts supplier, American Alternative Fuels (\$87,500) and the fleet's assigned conversion center (\$28,500) as a condition of participation in this program. Payment will be due upon invoice from each vendor.</p> <p>3) Matters concerning the technical performance of this subaward should be directed to the Project Director, as shown in Attachment 3 column A. Matters concerning the request or negotiation of any changes in the terms, conditions, or amounts cited in this subaward agreement, and any budget revision requests, and any changes requiring prior approval, should be directed to the Administrative Contact, as shown in Attachment 3. Any such changes made to this subaward agreement require the written approval of both party's Authorized Officials, as shown in Attachment 3 columns A and B.</p> <p>4) REPORTING: Periodic reports are required. See Attachments 4 and 6 for monitoring and reporting requirements. Sub must agree to provide project data and financial information as requested by JMU's Project Director noted on Attachment 3 column A. An amendment may be issued at any time to update reporting requirements in response to additional requirements from the Sponsor including but not limited to terms and data elements and specific instructions for reporting and report formats.</p> <p>5) INDEMNITY: To the extent allowable by law, the recipient shall indemnify the Commonwealth of Virginia and its officers, agents, or employees for any and all liability, including litigation expenses and attorney's fees, arising from suits, actions, or claims of any character for death, bodily injury, or loss of or damage to property or to the environment, resulting from the project, except to the extent that such liability results from the direct fault or negligence of state officers, agents or employees, or to the extent such liability may be covered by applicable allowable costs provisions.</p> <p>6) Failure to comply with the reporting requirements of this award will be considered a material noncompliance with the terms of the award and may result in termination.</p> <p>7) This Subaward is subject to all terms and conditions of the Prime Award (Attachment G), the Subrecipient/JMU Award (Attachment 8), and other special terms and conditions in compliance with the American Recovery and Reinvestment Act (ARRA) of 2009 (Attachments 2,B,D,F). Sub must comply with all requirements specified in Division A of the ARRA (Public Law 111-5), including reporting requirements outlined in Section 1512 of the Act.</p> <p>8) Sub agrees to use propane fuel in the converted project vehicles 85% of the on-road time during the entire project period. If propane is not used in project vehicles, documentation must be provided as to the reasons for non-use.</p> <p>9) The Sub affirms that conversions will be complete no later than 12 months from execution of agreement.</p> <p>10) By signing below Sub makes the certifications and assurances shown in Attachment 1 and agrees to all terms and conditions referenced in all attachments, 2-9 and B-I of this document.</p>									
By an Authorized Official of University /JMU:  _____ Name: John D. Hulvey, CRA - Director      Date Title: Sponsored Programs Administration & Accounting	By an Authorized Official of Subrecipient /Sub:  _____ Name: John McDonough      Date Title: City Manager								

**Attachment 1  
Subaward Agreement  
Certifications & Assurances**

By signing the Subaward Agreement, the authorized official of Sub certifies, to the best of his/her knowledge and belief, that:

**Certification Regarding Lobbying**

1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the Collaborator, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or intending to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the Collaborator shall complete and submit Standard Form -LLL, "Disclosure Form to Report Lobbying," to the University.

3) The Sub shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U. S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

**Debarment, Suspension, and Other Responsibility Matters**

Sub certifies by signing this Subaward Agreement that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.

**OMB Circular A-133 Assurance**

Sub assures University that it complies with A-133 and that it will notify UNIVERSITY/JMU of completion of required audits and of any adverse findings, which impact this subaward.

**Attachment 2**  
**Subaward Agreement to Lower Tier Subrecipients from University/JMU**  
**Special Terms and Conditions**

\*\*Sub recipient is subject to all terms and conditions set forth in  
Attachment B (from DMME sub to JMU) see separate attachment  
Amendment 001 of DE-EE0002172, 19 pages.

*Both of the above mentioned attachments may be found in the second document, titled:*

**“Commonwealth of Virginia**

**Contract**

**Department of Mines, Minerals, and Energy  
and  
James Madison University**

**Contract Number C10-6065”**

**Attachment 3**

**Subaward Agreement Authorized Contacts**

University/JMU Contacts (A)	Subrecipient (Sub) Contacts (B)
<p>Administrative Contact</p> <p>Name: Tamara Hatch, Associate Director, Sponsored Programs Administration</p> <p>Address: Office of Sponsored Programs MSC 5728 James Madison University 1031 South Main St. Harrisonburg, Virginia 22807</p> <p>Telephone: (540) 568-2350 Fax: (540) 568-6240 Email: hatchtt@jmu.edu</p>	<p>Administrative Contact</p> <p>Name: Eden Freeman, Assistant City Manager</p> <p>Address: 7840 Roswell Road, Building 500, Sandy Springs, Georgia 30350- 4891</p> <p>Telephone: 770.206.1418 Fax: 770-206.1420 Email: efreeman@sandyspringsga.gov</p>
<p>Project Director</p> <p>Name: To be Determined Propane Corridor Development Program Director</p> <p>Address: Virginia Clean Cities at JMU MSC 4115 James Madison University 701 Carrier Drive, HHS Room 0301 Harrisonburg, Virginia 22807</p> <p>Telephone: Fax: Email:</p>	<p>Project Director</p> <p>Name: Lt. Bart Humble</p> <p>Address: 7840 Roswell Road, Building 500, Sandy Springs, Georgia 30350- 4891</p> <p>Telephone: 770.551.6924 Fax: 770.551.6911 Email: bhumble@sandyspringsga.gov</p>
<p>Financial Contact</p> <p>Name: John D. Hulvey, Director, Sponsored Programs Administration and Accounting</p> <p>Address: Office of Sponsored Programs MSC 5728 James Madison University 1031 South Main St. Harrisonburg, Virginia 22807</p> <p>Telephone: (540) 568-3725 Fax: (540) 568-6240 Email: hulveyjd@jmu.edu</p>	<p>Financial Contact</p> <p>Name: Karen Ellis, Interim Finance Director</p> <p>Address: 7840 Roswell Road, Building 500, Sandy Springs, Georgia 30350- 4891</p> <p>Telephone: 770.206.1457 Fax: 770.206.1480 Email: kellis@sandyspringsga.gov</p>
<p>Authorized Official:</p> <p>Name: John D. Hulvey, Director, Sponsored Programs Administration and Accounting</p> <p>Address: Office of Sponsored Programs MSC 5728 James Madison University 1031 South Main St. Harrisonburg, Virginia 22807</p> <p>Telephone: (540) 568-3725 Fax: (540) 568-6240 Email: hulveyjd@jmu.edu</p>	<p>Authorized Official</p> <p>Name: John McDonough, City Manager</p> <p>Address: 7840 Roswell Road, Building 500, Sandy Springs, Georgia 30350- 4891</p> <p>Telephone: 770.206.1414 Fax: 770.206.1420 Email: jmcdonough@sandyspringsga.gov</p>

**Attachment 4**  
**ARRA Reporting Requirements**  
**AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009 (RECOVERY ACT) REPORTING**

**Definition.** "Reporting" includes invoicing, ARRA Data Elements, and technical reporting.

**Invoicing.** Lower Tier Subrecipient (Sub) must invoice the Subrecipient Recipient: (JMU)

- not less often than quarterly
- not less often than monthly

**Amendment for Updated Reporting Requirements.** A unilateral amendment may be issued to update reporting requirements in response to any additional requirements or guidance from the OMB or Sponsor including, but not limited to, the definition of terms and data elements, and specific instructions for reporting and report formats.

**Compliance with the American Recovery and Reinvestment Act (ARRA) of 2009.** Lower Tier Subrecipient (Sub) must comply with all requirements specified in Division A of the ARRA (Public Law 111-5), including reporting requirements outlined in Section 1512 of the Act.

**Responsibilities for Informing Sub-recipients.** If Subrecipient (JMU) issues Subawards under this agreement, Subrecipient agrees to separately inform each Lower Tier Subrecipient, and document at the time of Subaward and at the time of disbursement of funds, the Federal award number, any CFDA number assigned for ARRA purposes, and amount of ARRA funds. (2 CFR 215.26, 45 CFR 74.26, and 45 CFR 92.26) (See cover page of this Subaward Agreement for required information.)

**Delegation of Reporting in federalreporting.gov.** Subrecipient (JMU) hereby

- delegates
  - does not delegate
- ARRA quarterly reporting requirements to the Subrecipient.

Where reporting is not delegated, Subrecipient shall submit quarterly ARRA reports to the Subrecipient Recipient (JMU), Compliance Monitor as shown on Attachment 6:

**Quarterly ARRA Reports from Sub to University/JMU**

Quarterly ARRA reports are due no later than each of the following dates during the Subaward period of performance:

**September 25, December 24, March 25, June 25.**

Sub shall use the forms included herein (Attachments 6, 7, 8) where appropriate to meet its reporting obligations.

Sub's reports shall be submitted to the following contact at James Madison University as designated by the Project Director:

Name of Contact Person at JMU	Jamsion Walker
Mailing Street Address	Virginia Clean Cities C/O James Madison university
Mailing Street Address 2	701 Carrier Drive, HHS 0301 MSC 4115
Place of Performance City, State, Zip Code	Harrisonburg, VA 22807
Telephone	(757) 407-0292
Fax	(866) 711-5987
Email	jwalker@vacleancities.org

**Data to be Reported**

**A. Technical Reporting.** In addition to any other technical reporting requirements set forth under this Subaward Agreement, *when requested by JMU Project Director*, the Lower-Tier Sub shall provide a brief update on cumulative programmatic achievements, including significant deliverables or milestones reached.

**B. Sub Agreement Required Data Elements** *highlighted fields must be filled in and returned to* compliance JMU Contact above before any invoices will be paid.

Sub Recipient DUNS	619646040
Sub Recipient Congressional District	GA-05 and GA-06
Sub Recipient Legal Name, Address, City, State, Zip	City of Sandy Springs 7840 Roswell Road, Building 500, Sandy Springs, Georgia 30350-4891
Sub Recipient EIN	20-3767748
Sub Recipient CCR registration, Yes or No	YES
Amount of Subaward	\$116,000

**C. Performance Site**

Subrecipient shall identify the physical location of the Primary Place of Performance of the Subaward.

Place of Performance Street Address 1	7840 Roswell Road, Building 300
Place of Performance Street Address 2	
Place of Performance City	Sandy Springs
Place of Performance State (two character code)	GA
Place of Performance Zip (zip code+ four)	30350-4891
Place of Performance Congressional District (two digit code)	06
Place of Performance Country Code (two character code)	GA

**D. Jobs Created / Retained (to be completed with assistance of James Madison University Project Director):**

(1) Jobs created/retained must be reported but with guidance from JMU/sponsor. You will be contacted separately to this regard.

**E. Most Highly Compensated Officers – if applicable**

Subrecipient shall provide the names and total compensation of the five most highly compensated officers of the Lower-Tier Subrecipient (Sub) entity if the following items (1) and (2) apply.

If either item (1) or (2) does not apply, the Lower-Tier Subrecipient's report shall include a statement certifying this.

If these items do apply, but there is no change in the most highly compensated individuals or their total compensation, the Lower-Tier Subrecipient's report shall include a statement certifying this.

- (1) The Subrecipient in its preceding fiscal year received—
  - (a) 80 percent or more of its annual gross revenues in Federal awards; and
  - (b) \$25,000,000 or more in annual gross revenues from Federal awards; and

(2) The public does not have access to information about the compensation of the senior executives of the entity through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986 [26 USC § 6104].

“Total compensation” means the cash and non-cash dollar value earned by the executive during the Subrecipient's past fiscal year of the following (for more information see 17 CFR 229.402(c) (2)):

- (i). Salary and bonus.
- (ii). Awards of stock, stock options, and stock appreciation rights. Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with FAS 123R.

- (iii). Earnings for services under non-equity incentive plans. Does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.
- (iv). Change in pension value. This is the change in present value of defined benefit and actuarial pension plans.
- (v). Above-market earnings on deferred compensation which are not tax qualified.
- (vi). Other compensation. For example, severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property if the value for the executive exceeds \$10,000.

**HIGHLY COMPENSATED OFFICERS**

Exempt from reporting compensation (Yes or No)?	<b>YES</b>
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If not exempt per Section 1512 of ARRA

Officer 1 Name	
Officer 1 Compensation	
Officer 2 Name	
Officer 2 Compensation	
Officer 3 Name	
Officer 3 Compensation	
Officer 4 Name	
Officer 4 Compensation	
Officer 5 Name	
Officer 5 Compensation	

**F. Vendor Payments in Excess of \$25,000.**

Lower-Tier Subrecipient must report, for any payments made to a single vendor equal to or greater than \$25,000, the identity of the vendor. Lower-Tier Subrecipient shall report the vendor name and DUNS number if available. If the DUNS is not available, the Lower-Tier Subrecipient shall report on the vendor name and zip code of the vendor's headquarters. For the definition of vendor, please see <http://www.recovery.gov/FAQ/Pages/glossaryHome.aspx#vwxyz>.

**VENDOR DATA**

Vendor DUNS (9 digit)	
Vendor Name	
Vendor Headquarters Zip Code (zip code plus 4)	
Product/Service Description(s)	
Payment Amount	

**Attachment 5**  
**STATEMENT OF PROJECT OBJECTIVES/WORKPLAN & BUDGET**

**Project Description:**

Project partners including the State of Virginia, Virginia Clean Cities at James Madison University, Alliance AutoGas (a team comprised of Blossman Gas, American Alternative Fuel, and Alliance AutoGas Conversion Centers), fleets in the southeastern states of Virginia, Maryland, Tennessee, South Carolina, Georgia, Florida, Alabama, Mississippi, and Louisiana, Clean Cities Coalitions, the Propane Education and Research Council, and MSM Communications will collaborate to:

- Convert up to 1200 vehicles to be propane powered;
- Install propane refueling infrastructure to support each participating fleet;
- Leverage existing propane facilities of Alliance Autogas members to create a Southeastern refueling corridor in order to market the availability of such fuel to the public;
- Create a marketing, education and outreach campaign to inform the public of the advantages of propane as a transportation fuel and promote use of propane refueling facilities;
- Collect critical data related to the transition and operation of propane fleets; and
- Host training for mechanics/technicians, first responders, drivers, and other appropriate audiences.

The conversion kit that will be utilized for all fleet vehicle conversions is the PRINS VSI system, to be supplied in full by American Alternative Fuel.

**Project Tasks:**

Fleet Name is responsible for the use of 200 converted propane/gasoline vehicles. The propane conversion will be completed by Conversion Center Name of Conversion Center Location within 12 months beginning the date of subcontract execution. The fleet will coordinate with American Alternative Fuel, Baker Equipment, and James Madison University to ensure this timeline and objectives are successfully completed.

Upon completion of the conversion, the fleet is responsible for consistent use of the converted vehicles. The fleet must run on propane fuel at least 85% of the time. The fleet must collect data as required by Virginia Clean Cities (VCC)/James Madison University (JMU), and provide this data on a quarterly scheduled basis. The fleet manager or point of contact must also participate in conference calls and meetings as requested and as appropriate.

If entity is a for-profit venture, vehicle must be used and disposed of in accordance to Federal Regulation 10CFR600.321. If entity is a not-for-profit venture or municipality, vehicle must be used and disposed of in accordance to Federal Regulation 10CFR600.132. ([http://edocket.access.gpo.gov/cfr\\_2003/10cfr600.htm](http://edocket.access.gpo.gov/cfr_2003/10cfr600.htm))

The primary task of the fleet is to use propane in the converted vehicles, collect data, and report the findings. Specifically, the fleet must:

- Collect data on an ongoing basis
- Provide quarterly reports including data and other feedback as requested
- Participate in conference calls or meetings as requested and appropriate
- Participate in outreach and education events as necessary and appropriate

**Milestones or Schedule:**

The following represents key milestones for the Propane Corridor Development Program that are related to Virginia Premier's performance:

<b>Title:</b>	Ensure converted vehicles are in fleet's possession and in use, consuming at least 85% propane at all times during project period
<b>Planned Date:</b>	Ongoing
<b>Verification Method:</b>	Pictures, collected data, reoccurring reports

- Title:** Cooperate with conversion center and other appropriate parties to ensure vehicle conversions are completed and appropriate fleet personnel are trained
- Planned Date:** Within 12 months of project start
- Verification Method:** Pictures, invoice, supporting documentation, and 3<sup>rd</sup> party verification
- Title:** Perform ongoing data collection and submit reports on a quarterly basis
- Planned Date:** Collected constantly, submitted quarterly, for the project period
- Verification Method:** Submitted reports with suitable detail and accuracy
- Title:** Coordinate and cooperate with communications partners, Virginia Clean Cities, JMU, and other project partners to advance ongoing education and outreach objectives.
- Planned Date:** Ongoing
- Verification Method:** Participation rate, other metrics as appropriate
- Title:** Ensure fleet vehicles are maintained in accordance to general fleet practices.
- Planned Date:** Ongoing
- Verification Method:** Scheduled and unscheduled inspections

**Budget Detail:**

Budget Category	Total Units/ Conversion Kits	DOE Contribution	Sub's Contribution/ Match
A. Personnel			
B. Fringe Benefits			
C. Travel			
D. Equipment (propane version technology)		\$87,500	\$87,500
E. Supplies			
F. Contractual (retrofit installation)		\$28,500	\$28,500
G. Construction			
H. Other			
I. Total Direct Charges			
J. Indirect Charges			
K. Total	40	\$116,000	\$116,000

**\*\*Note:** Conversion expense, minus any cost share, will be paid by JMU directly to the parts vendor and conversion center.

**Attachment 6**  
**Monitoring & Reporting Plan for Subs**  
**(See also Attachment 4 for ARRA specific information)**

Introduction

The purpose of this monitoring plan is to ensure compliance with Department of Energy program requirements and special terms and conditions of the American Recovery and Reinvestment Act (ARRA) and to identify any problems requiring corrective action or follow-up. James Madison University (JMU) personnel will track and monitor the progress of the work through quarterly reports, site visits (as needed), and project telephone calls and e-mails. Each Sub will provide the required information in the format prescribed by the JMU Project Director and/or Compliance & Technical Contact noted below. Sub may be required to enter project data and financial information in a designated online management system to be password protected and managed by JMU. Sub also agrees to provide information in written format as requested by the JMU Project Director /Compliance & Technical Contact.

Monitoring Plan Objectives:

Compliance with Department of Energy program requirements and special terms and conditions of the American Recovery and Reinvestment Act (ARRA) requirements.

Utilizes Department of Energy funds effectively in accomplishing the goals set out in the Sub's Statement of Project Objectives/Work plan/Budget, Attachment 5.

Monitoring Plan Components

Quarterly and Final Reports  
Financial Status Reports  
Site Visits (as needed)  
Project Calls  
Single Audit Report (OMB A-133, Audits of States, Local Governments and Non-Profit Orgs) or equivalent\*)  
Project Contacts

\* As a recipient of federal funding, recipient agrees to audit requirements as applicable to subrecipient type.

James Madison University (JMU) personnel/Compliance & Technical Contacts:

TBD, Project Director Propane Corridor Development Program Virginia Clean Cities at JMU MSC 4115 James Madison University 701 Carrier Drive, HHS Room 0301 Harrisonburg, Virginia 22807 Tel: Fax: Email:	Peter Denbigh, Project Manager Propane Corridor Development Program Virginia Clean Cities at JMU 701 Carrier Drive, MSC 4115 James Madison University Harrisonburg, Virginia 22807 Tel: (540) 466-4510 Fax: (866) 711-5987 Email: pdenbigh@vacleancities.org	Jamison Walker, Assistant Project Manager Propane Corridor Development Program Virginia Clean Cities at JMU 701 Carrier Drive, MSC 4115 James Madison University Harrisonburg, Virginia 22807 Tel: (757) 407-0292 Fax: (866) 711-5987 Email: jwalker@vacleancities.or
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Quarterly and Final Reports

Each quarterly report is due within 5 days of the close of the reporting quarter to JMU Project Director named above and in Attachment 3. James Madison University (JMU) personnel/Compliance & Technical Contact will review and comment on the reports in writing either via hard copy or electronic mail within ten business days. JMU Project Director or other designated personnel will either notify Sub of a problem or approve payment to Sub for reimbursement of eligible expenses. Reports will be completed and submitted electronically per a VCC Reporting System.

Note Report Due Dates:

March 25  
June 25  
Sept.25  
Dec. 24

Report Content. Each quarterly report shall include:

Work Status/Progress  
Tasks Completed this Quarter  
Problems Encountered  
Problem Resolution  
Outstanding Issues  
Schedule Updates  
Anticipated Activities Next Quarter  
Percent of Project Completed vs. Project Schedule  
Various Fleet Metrics, including but not limited to time, fuel use, etc

Final Report:

The final project report will include a summary of the project or activity, actual results (outputs and outcomes) and costs, the successes and lessons learned for the entire project as well as all categories of information required for quarterly reporting.

Financial Reports

The final Financial Report shall be made in the form of a final invoice (See Attachment 7) is due within 15 calendar days after the termination or completion of this award agreement. The final invoice must be mailed to JMU Project Director or other designated personnel as shown on this attachment or on Attachment 3.

Site Visits

James Madison University (JMU) personnel/Compliance & Technical Contact may set up a site visit and meeting with the Sub. The Sub will be notified in advance of the time of the site visit.

- DOE and their representatives have the right to make site visits at reasonable times to:
  - Review Project Accomplishments
  - Review Management Controls
  - Provide Technical Assistance
- Recipients and their sub-recipients must provide reasonable:
  - Access to facilities
  - Office space
  - Resources and assistance

Project Calls

The Sub will participate in conference calls with James Madison University (JMU) personnel/Compliance & Technical Contact monthly, beginning prior to the Sub's first request for reimbursement of Department of Energy funds. The purpose of these calls is to report on progress, identify potential issues and develop solutions to keep the project on schedule. Other call topics may include:

Project purpose, timeline, responsible parties

- Sub travel plans, if applicable
- Eligible activities/allowable costs
- Compliance with OMB Circulars
- Maintenance of appropriate program documentation/reporting requirements
- Identification and tracking of government owned property
- Sub's financial standards and systems
- Procurement procedures
- Deadline for expenditure of funds

Project Contacts – see above

Each Sub will be assigned a point of contact for the project. This person will offer assistance and guidance to the Sub as needed.

James Madison University (JMU) personnel/Compliance & Technical Contact:

Sub Point of Contact

Each Sub will assign a point of contact for the project and will provide full contact information for that person (i.e., name, address, phone number, fax number, and email address) on Attachment 3, Column B.

Jamison Walker  
Virginia Clean Cities  
C/O James Madison University  
701 Carrier Drive, HHS 0301  
MSC 4115  
Harrisonburg, VA 22807  
757-407-0292  
jwalker@vacleancities.org

**Attachment 7 Page 1 of 2  
Invoice/Financial Report**

James Madison University  
 Attention: John D. Hulvey, CRA, Director  
 Sponsored Programs Administration and Accounting  
 MSC 5728  
 1031 South Main St.  
 Harrisonburg, VA 22807

LOWER TIER SUB-RECIPIENT REIMBURSEMENT REQUEST	
Date:	Subaward Number: V10-123-44

**Propane Corridor Development Program**  
 Requested Amount:

Name of Organization: \_\_\_\_\_

Make Check Payable to: \_\_\_\_\_

Address to Which Payment Should Be Sent: \_\_\_\_\_

AWARD AMOUNT				
Budget Category	Budget	Requested Reimbursement	Cumulative Reimbursements	Remaining Budget
Personnel				
Fringe Benefits				
Travel				
Supplies				
Equipment				
Contractual				
Other				
Total Direct Charges				
Indirect Charges				
Total				

COST SHARE AND 3RD PARTY CONTRIBUTIONS				
Budget Category	Budget	Spent this Period	Spent to Date	Remaining Commitment
Personnel				
Fringe Benefits				
Travel				
Supplies				
Equipment				
Contractual				
Other				
Total Direct Charges				
Indirect Charges				
Total				

**\*\*Please see attachment list and signature form on following sheet\*\***

**Attachment 7 Page 2 of 2**  
**Invoice/Financial Report Attachment List and Signature Form**

List of Attachments (please check all that apply)

- A listing of expenditures made under this Agreement. The list shall include:
  - Description of the budget category items for which expenses have been incurred.
  - Date of transaction, voucher number, amount paid, and vendor name.

I certify that to the best of my knowledge and belief the information provide above and in all attachments is correct and accurate and that all expenditures were made in accordance with grant conditions and that payment is due and has not been previously requested.

Please type or print the following information:

Name \_\_\_\_\_ Title \_\_\_\_\_ Telephone Number \_\_\_\_\_

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

**ATTACHMENT 8**

**Award to James Madison University from DMME (Prime)**

DMME Identifier: C10-6065



DIVISIONS  
 ENERGY  
 GAS AND OIL  
 MINED LAND RECLAMATION  
 MINERAL MINING  
 GEOLOGY AND MINERAL RESOURCES  
 MINES  
 ADMINISTRATION

# COMMONWEALTH OF VIRGINIA

*Department of Mines, Minerals and Energy*

1100 Bank Street / 8<sup>th</sup> Floor  
 Washington Building  
 Richmond, Virginia 23219-3402  
 (804) 692-3200 FAX (804) 692-3237  
 www.dmme.virginia.gov

## CONTRACT

**Department of Mines, Minerals and Energy  
 and  
 James Madison University**

**Contract Number: C10-6065**

This **Contract**, entered into this 15<sup>th</sup> day of March, 2010, by James Madison University (JMU), hereinafter called the “Grantee” and the Department of Mines, Minerals and Energy (DMME).

**SCOPE:** DMME will support the project entitled: **Paving the Way with Propane: The Propane Auto Gas Corridor Development Project**, as outlined in Attachment A, Statement of Project Objectives and Budget, and subject to all terms and conditions of this contract.

**PERIOD OF PERFORMANCE:** December 7, 2009 through December 6, 2013.

**PROJECT BUDGET:** The Grantee shall propose a schedule of payments for work completed. These milestones will be the basis of a negotiated schedule of incremental payments, according to the following approved budget:

<u>Grant Amount</u>	<u>Local Match</u>	<u>Total Approved Budget</u>
\$8,605,100	\$10,449,184	\$19,054,284

**COMPENSATION AND METHOD OF PAYMENT:** Upon receipt and approval of invoices with proper documentation submitted no more frequently than once monthly or as necessary to advance payment to sub-recipients in extreme cases, the Grantee shall be advanced payment or reimbursed by DMME in accordance with the Commonwealth’s payment policies. Documentation of expenditures for both the Contract award and local match during the invoice period must be submitted with each invoice. Acceptable documentation includes, but is not limited to invoices, cancelled checks, time sheets, comptroller’s reports, or other documentation subject to approval by DMME. DMME will approve invoices and other requests for payment only when DMME agrees that grantee has complied with all requirements and terms and conditions of this contract.

**REPORTING:** The Grantee shall complete, sign, and submit to DMME the following reports:

1. **Quarterly Federal Financial Report** (Form SF-425) - due within 5 days after the end of the reporting quarter. Quarters are defined as January thru March, April thru June, July thru September, and October thru December. The financial information on the report should accurately reflect the expenditures, by funding source, incurred during the quarter for the project including both the federal and the non-federal expenditures.
2. **Final Financial Status Report** (SF-425) - due within 90 days after completion of the project. A **Special Status Report**, which reports on developments that may have a favorable or adverse impact on the project, is due within 5 days after a favorable or adverse event.
3. **Quarterly ARRA Program Status Report** (DOE/SEP-PSR, Updated 6/09) - due within 5 days after the end of each calendar quarter, which will detail project expenditures, performance metrics activity, and short-term outcomes (e.g., energy saved, jobs created/retained).
4. **Annual Report** - due one year after the effective date of the award, and annually thereafter to DMME.
5. Additional reporting requirements are described in Contract Document attachments and Attachment C: US Department of Energy Federal Assistance Reporting Checklist. The Grantee also agrees to assist DMME to comply with any additional reporting requirements that the U.S. Department of Energy might impose during the life of the American Recovery and Reinvestment Act funding that supports this grant. Failure to comply with the reporting requirements of this contract will be considered a material noncompliance with terms of the contract and may result in termination of the contract.

**COMPLIANCE WITH FEDERAL RULES AND REGULATIONS:** Funding for this Contract is authorized through the Catalog of Federal Domestic Assistance (CFDA) #81.086, Conservation Research and Development. Expenditures made and services provided pursuant to this Contract shall be in accordance with 2 CFR Part 225, "Cost Principles for State, Local, and Indian Tribal Governments" (OMB Circular A-87), and OMB Circular A-133, "Audits of States, Local Governments and Non-Profit Organizations". The Grantee shall adhere, and require adherence by all subcontractors performing work required by this agreement, to the federal rules as noted.

**SPECIAL TERMS AND CONDITIONS:** The Grantee must comply with other specific ARRA terms and conditions, including ARRA Requirements for Transparency and Accountability, and Other Terms and Conditions (e.g., NEPA requirements, Davis-Bacon Act assurances, National Historic Preservation Act, and Buy American Act) which are included in the attachments in Contract Documents or contained in portions of attachments.

**CONTRACT DOCUMENTS:** The agreement shall consist of the following, all of which documents are incorporated herein:

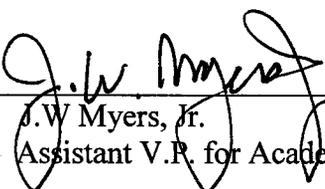
- 1) This signed Contract;
- 2) **Attachment A: Statement of Project Objectives and Budget.**
- 3) **Attachment B: Special Terms and Conditions for Most Grants and Cooperative Agreements.**

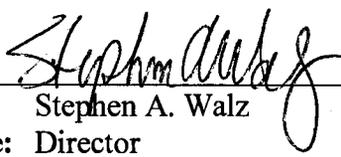
- 4) **Attachment C: US Department of Energy Federal Assistance Reporting Checklist, ID # DE-EE0002172.**
- 5) **Attachment D: Federal Flow Down Requirements SEP 11-20-09.**
- 6) **Attachment E: DEB Notice 073009 – Revised American Recovery and Reinvestment Act of 2009, N/A on Non-Construction Subawards.**
- 7) **Attachment F: Virginia ARRA Terms and Conditions, August 5, 2009.**
- 8) **Attachment G: Prime Award to DMME (DE-EE0002172).**
- 9) **Attachment H: Pre-Award Letter to DMME from NETL, October 22, 2009.**
- 10) **Attachment I: ARRA Program Status Report form (DOE/SEP-PSR, Updated 6/09).**

IN WITNESS WHEREOF, the parties have caused this Contract to be duly executed, intending to be bound thereby.

**JAMES MADISON UNIVERSITY**

**DEPT. OF MINES, MINERALS AND ENERGY**

By:   
J.W. Myers, Jr.  
Title: Assistant V.P. for Academic Resources  
Date: February 18, 2010

By:   
Stephen A. Walz  
Title: Director  
Date: 3/15/2009

**Attachment A - STATEMENT OF PROJECT OBJECTIVES & BUDGET**  
**Paving the Way with Propane: The Propane Corridor Development Program**

**A. OBJECTIVES:**

1. To increase the use of alternative fueled vehicles and advanced technology vehicles as a means to reduce U.S. dependence on imported petroleum, increase fuel economy and improve emissions.
2. To install infrastructure that supports alternative fuel and advanced technology vehicles.
3. To ensure that vehicles capable of using alternative fuel do so to the greatest extent possible.
4. To provide appropriate training for individuals associated with this project and in the larger community about the benefits of alternative fuel and advanced technology vehicles and provide them with strategies that will help them to maximize these benefits.
5. To collect data on the success of the project through collection of vehicle, infrastructure and training information.
6. To create and retain jobs.

**B. PROJECT SCOPE**

The project will convert approximately 1,189\* vehicles in fleets across the states of Virginia, Maryland, Tennessee, South Carolina, Florida, Georgia, Alabama, Mississippi, and Louisiana to run on propane. To support these vehicles, the project will create a southeast region-wide propane fueling corridor through the same states, deploying new or upgrading existing propane fueling facilities at approximately 17 locations along the corridor. The program will include the launch of a professional and far-reaching training, marketing and education program that integrates US DOE Clean Cities Coalitions and subject-matter experts, and includes a comprehensive team to address critical needs or implementation barriers. The use of propane in these vehicles will improve emissions and eliminate airborne pollutants. The project will create and/or retain jobs in the areas of manufacturing of vehicle conversion kits, construction of the fueling facilities, the training and certification of the vehicle conversion technicians, and the procurement and distribution of the propane fuel. Many of the jobs created will be the endpoint of a process of retraining skilled workers to transition from traditional trades to alternative fuel-focused jobs.

\* Note: The number of vehicle conversions was originally proposed as 1,064. The applicant subsequently requested that this number be increased to 1,189 vehicles.

**C. TASKS TO BE PERFORMED:**

**Task 1: Project Management and Planning**

Subtask 1.1 Conduct a project kick-off meeting with all partners to plan and coordinate all project activities. This meeting will include representatives from the partner

- organizations and will include finalization of the project schedule and coordination of all project-related activities.
- Subtask 1.2 Finalize sub-recipient agreements with project partners.
- Subtask 1.3 Revise and Update Project Management Plan (PMP).

Task 2: Vehicle Deployment

Subtask 2.1: Complete Vehicle NEPA process.

Subtask 2.2: Complete actions necessary to enable vehicle conversions to operate on propane. This could include, but is not limited to drafting specifications, issuing Requests for Quotes (RFQs), Evaluating Quotes, Selecting Conversion Kit Vendor, Negotiating Agreements with Vendor, etc.

Subtask 2.3: Convert Vehicles to Operate on Propane.

Subtask 2.4: Application of appropriate signage to vehicles stating that they are part of a US DOE Clean Cities Award and are powered by propane fuel. For example, application of a CC Logo to the vehicle and verbiage stating “This Vehicle Powered by Propane” would fulfill this subtask.

Subtask 2.5: Deployment of vehicles

Task 3: Infrastructure Development

Subtask 3.1: Complete Infrastructure NEPA process and obtain necessary permits

Subtask 3.2: Complete actions necessary to begin station construction and upgrades. This could include, but is not limited to identifying sites, drafting specifications, issuing Requests for Quotes (RFQs), Evaluating Quotes, Selecting Infrastructure/Fuel Hardware Vendor, Negotiating Agreements with Vendor, etc.

Subtask 3.3: Installation/Development of Fueling Infrastructure

Subtask 3.4: Application of appropriate signage to fueling infrastructure including all required federal, state and local fuel dispensing information including, but not limited to fuel contents, safety precautions, etc.

Subtask 3.5: Application of appropriate signage to fueling infrastructure stating that it is part of a US DOE Clean Cities Award.

Subtask 3.6: Infrastructure Operational

Task 4: Training Development & Delivery

Subtask 4.1: Identify specific training needs of vehicle operators, vehicle technicians, vehicle staff, refueling site supervisors, refueling site staff, and individuals who will use or be impacted by refueling infrastructure and propane fueled vehicles.

Subtask 4.2: Develop training to address needs identified in subtask 4.1.

Subtask 4.3: Provide training to appropriate audiences.

Subtask 4.4: Perform on-going identification of additional training needs and hold follow-up training, as necessary.

Task 5: Outreach/Marketing

Subtask 5.1: Provide a plan for project marketing/outreach that informs the public on the progress of this project.

Subtask 5.2: Execution of project marketing/outreach plan.

Subtask 5.3: Documentation of all marketing/outreach conducted.

Task 6: Documentation and Reporting

Subtask 6.1: Monitor performance of vehicles for a period of 24 months after deployment. Documentation to include ridership, fuel usage, fuel costs, emissions, operation record, operation schedule, maintenance record, maintenance schedule, lessons learned, etc.

Subtask 6.2: Monitor performance of infrastructure for a period of 24 months after deployment. Documentation to include quantity of fuel dispensed, average fuel price, maintenance issues, etc.

Subtask 6.3: Documentation of all training provided, attendance at training session(s) and evaluation of training success. Provide DOE with copies of any and all training provided.

Subtask 6.4: Documentation of all marketing/outreach conducted.

Subtask 6.5: Documentation of Clean Cities involvement in project.

Subtask 6.6: Annual reporting of fleet data to local Clean Cities coalition for inclusion in the DOE Annual Survey.

Subtask 6.7: Participate in DOE- or Industry-sponsored merit reviews, peer exchanges, conferences, etc. to provide project updates/lessons learned to ensure that the information and knowledge gained by project participants is shared.

#### **D. DELIVERABLES**

- Reports and other deliverables will be provided in accordance with the Federal Assistance Reporting Checklist following the instructions included therein.
- In addition, the following deliverables are required to be submitted as follows: one electronic copy is required to be submitted to the Contract Specialist and the Project Officer and one hardcopy to the Project Officer only.
  - Copies of all training materials developed
  - Copies of all marketing/outreach materials developed
- A Project Management Plan shall be provided for review and approval by DOE Project Officer within 30 days of the award. Updates or verification of the current PMP shall be provided to DOE Project Officer for review and approval on no less than a quarterly basis.

#### **E. BRIEFINGS/TECHNICAL PRESENTATIONS**

The Recipient shall prepare detailed briefings for presentation to the Project Officer at the Project Officer's facility located in Pittsburgh, PA, Morgantown, WV or Golden, CO, or at DOE Headquarters in Washington, DC. Briefings shall be given by the Recipient to explain the plans, progress, and results of the technical effort. The first briefing shall be presented within 60 days after the award of the cooperative agreement. Additional briefings shall be presented at least 45 days before completion of a budget period and in conjunction with the continuation application for the next budget period. However in any case, at least one (1) technical briefing shall be made to the DOE per year. The final briefing shall be presented at least 45 days before the award is due to expire. These briefings shall be made at one of the DOE locations (Washington DC/Pittsburgh, PA/ Morgantown, WV/Golden, CO) or at one of the project team sites as appropriate.

In addition, reports shall be developed and delivered as appropriate at Program Merit Reviews, or at technical exchange meetings, which may be organized by DOE.

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**Section - - SPECIAL TERMS AND CONDITIONS FOR USE IN MOST GRANTS AND COOPERATIVE AGREEMENTS**

**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.

**AWARD AGREEMENT TERMS AND CONDITIONS**

This award/agreement consists of the Grant and Cooperative Agreement cover page, plus the following:

- a. Special terms and conditions.
- b. Attachments:

Attachment No.	Title
1	Intellectual Property Provisions
2	Statement of Project Objectives
3	Federal Assistance Reporting Checklist
4	Budget Pages
5	Wage Determination(s)
- c. Applicable program regulations [none]
- d. DOE Assistance Regulations, 10 CFR Part 600 at <http://ecfr.gpoaccess.gov> and if the award is for research and to a university or non-profit, the Research Terms & Conditions and the DOE Agency Specific Requirements at <http://www.nsf.gov/bfa/dias/policy/rtc/index.jsp>.
- e. Application/proposal (original dated 5/29/09 and revision dated 11/6/09) as approved by DOE.
- f. National Policy Assurances to Be Incorporated as Award Terms in effect on date of award at [http://management.energy.gov/business\\_doe/1374.htm](http://management.energy.gov/business_doe/1374.htm).

**AWARD PROJECT PERIOD AND BUDGET PERIODS**

The Project Period for this award is 12/07/2009 through 12/06/2013 consisting of the following Budget Periods.

Budget Period	Start Date	End Date
1	12/07/2009	12/06/2013

**PAYMENT PROCEDURES - ADVANCES THROUGH THE AUTOMATED STANDARD APPLICATION FOR PAYMENTS (ASAP) SYSTEM**

- a. Method of Payment. Payment will be made by advances through the Department of Treasury's ASAP system.
- b. Requesting Advances. Requests for advances must be made through the ASAP system. You may submit requests as frequently as required to meet your needs to disburse funds for the Federal share of project costs. If feasible, you should time each request so that you receive payment on the same day that you disburse funds for direct project costs and the proportionate share of any allowable indirect costs. If same-day transfers are not feasible, advance payments must be as close as is administratively feasible to actual disbursements.
- c. Adjusting payment requests for available cash. You must disburse any funds that are available from repayments to and interest earned on a revolving fund, program income, rebates, refunds, contract settlements, audit recoveries, credits, discounts, and interest earned on any of those funds before requesting additional cash payments from DOE/NNSA.
- d. Payments. All payments are made by electronic funds transfer to the bank account identified on

the ASAP Bank Information Form that you filed with the U.S. Department of Treasury.

**INCREMENTAL FUNDING AND MAXIMUM OBLIGATION - COEXTENSIVE BUDGET PERIOD AND PROJECT PERIOD**

This award is funded on an incremental basis. The maximum obligation of the DOE/NNSA is limited to the amount shown on the Agreement Face Page. You are not obligated to continue performance of the project beyond the total amount obligated and your pro rata share of the project costs, if cost sharing is required. Additional funding is contingent upon the availability of appropriated funds and substantial progress towards meeting the objectives of the award.

**COST SHARING FFRDC'S NOT INVOLVED**

a. Total Estimated Project Cost is the sum of the Government share and Recipient share of the estimated project costs. The Recipient's cost share must come from non-Federal sources unless otherwise allowed by law. By accepting federal funds under this award, you agree that you are liable for your percentage share of total allowable project costs, on a budget period basis, even if the project is terminated early or is not funded to its completion. This cost is shared as follows:

Budget Period No.	Budget Period Start	Government Share \$/%	Recipient Share \$/%	Total Estimated Cost
1	12/07/09	\$8,605,100 / 45%	\$10,449,184 / 55%	\$19,054,284

b. If you discover that you may be unable to provide cost sharing of at least the amount identified in paragraph a of this article, you should immediately provide written notification to the DOE Award Administrator indicating whether you will continue or phase out the project. If you plan to continue the project, the notification must describe how replacement cost sharing will be secured.

c. You must maintain records of all project costs that you claim as cost sharing, including in-kind costs, as well as records of costs to be paid by DOE/NNSA. Such records are subject to audit.

d. Failure to provide the cost sharing required by this Article may result in the subsequent recovery by DOE/NNSA of some or all the funds provided under the award.

**REBUDGETING AND RECOVERY OF INDIRECT COSTS - INDIRECT COSTS AND FRINGE BENEFITS ARE NOT REIMBURSABLE**

The budget for this award does not include indirect costs or fringe benefits. Therefore, these expenses shall not be charged to nor reimbursement requested for this project nor shall the fringe and indirect costs from this project be allocated to any other federally sponsored project. In addition, indirect costs or fringe benefits shall not be counted as cost share unless approved by the Contracting Officer.

**PRE-AWARD COSTS**

You are entitled to reimbursement for costs incurred as authorized by the pre-award costs letter dated October 22, 2009, if such costs are allowable in accordance with the applicable Federal cost principles referenced in 10 CFR part 600.

The recipient must include the following Indemnity provision in any for-profit sub-award(s), at any tier.

#### INDEMNITY

*include* The awardee shall indemnify the Government and its officers, agents, or employees for any and all liability, including litigation expenses and attorneys' fees, arising from suits, actions, or claims of any character for death, bodily injury, or loss of or damage to property or to the environment, resulting from the project, except to the extent that such liability results from the direct fault or negligence of Government officers, agents or employees, or to the extent such liability may be covered by applicable allowable costs provisions.

#### STATEMENT OF FEDERAL STEWARDSHIP

DOE/NNSA 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.

#### SITE VISITS

DOE/NNSA'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.

#### PROPERTY

Real property, and equipment acquired by the Recipient shall be subject to the rules set forth in 10 CFR 600.130-137, 10 CFR 600.231-233, or 10 CFR 600.320-324 as applicable.

Consistent with the goals and objectives of this project, the Recipient may continue to use Recipient acquired property beyond the Period of Performance, without obligation, during the period of such use, to extinguish DOE's conditional title to such property as described in 10 CFR 600.132-135, 10 CFR 600.231-233, 600.321-324, subject to the following: (a) the Recipient continues to utilize such property for the objectives of the project as set forth in the Statement of Project Objectives; (b) DOE retains the right to periodically ask for, and the Recipient agrees to provide, reasonable information concerning the use and condition of the property; and (c) the Recipient follows the property disposition rules set forth in the applicable sections of 10 CFR Part 600, if the property is no longer used by the Recipient for the objectives of the project, and the fair market value of property exceeds \$5,000.

Once the per unit fair market value of the property is less than \$5,000, pursuant to the applicable sections of 10 CFR Part 600, DOE's residual interest in the property shall be extinguished and Recipient shall have no further obligation to the DOE with respect to the property.

The regulations as set forth in 10 CFR Part 600 and the requirements of this article shall also apply to property in the possession of any team member, sub-recipient or other entity where such property was acquired in whole in part with funds provided by DOE under this grant or where such property was counted as cost-sharing under the grant.

## 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. **Dissemination of scientific/technical reports.** Scientific/technical reports submitted under this award will be disseminated on the Internet via the DOE Information Bridge ([www.osti.gov/bridge](http://www.osti.gov/bridge)), unless the report contains patentable material, protected data, or SBIR/STTR data. Citations for journal articles produced under the award will appear on the DOE Energy Citations Database ([www.osti.gov/energycitations](http://www.osti.gov/energycitations)).

c. **Restrictions.** Reports submitted to the DOE Information Bridge must not contain any Protected Personal Identifiable Information (PII), limited rights data (proprietary data), classified information, information subject to export control classification, or other information not subject to release.

**NOTE: Subject to OMB approval pursuant to the Paperwork Reduction Act, DOE reserves the right to amend the reporting requirements to request more frequent and more detailed reporting.**

## 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 Federal 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 under Award Number(s) DE-EE0002172."

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."

## FEDERAL, STATE, AND MUNICIPAL REQUIREMENTS

You must obtain any required permits and comply with applicable federal, state, and municipal laws, codes, and regulations for work performed under this award.

## INTELLECTUAL PROPERTY PROVISIONS AND CONTACT INFORMATION

a. The intellectual property provisions applicable to this award are provided as an attachment to this award or are referenced on the Agreement Face Page. A list of all intellectual property provisions may be found at [http://www.gc.doe.gov/financial\\_assistance\\_awards.htm](http://www.gc.doe.gov/financial_assistance_awards.htm).

b. Questions regarding intellectual property matters should be referred to the DOE Award Administrator and the Patent Counsel designated as the service provider for the DOE office that issued the award. The IP Service Providers List is found at [http://www.gc.doe.gov/documents/Intellectual\\_Property\\_\(IP\)\\_Service\\_Providers\\_for\\_Acquisition.pdf](http://www.gc.doe.gov/documents/Intellectual_Property_(IP)_Service_Providers_for_Acquisition.pdf)

#### **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.

#### **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.

#### **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/NNSA providing either a NEPA clearance or a final NEPA decision regarding this project.

**Prohibited actions include but are not limited to, vehicle conversions and infrastructure work such as demolition of existing buildings, site clearing, ground breaking, construction, and/or detailed design. This restriction does not preclude you from Statement of Project Objective activities that have received NEPA clearance; specifically administration, educational, training, and outreach/marketing related activities which are allowable.**

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/NNSA initiating the NEPA process.

#### **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 this Agreement.

#### **FINAL INCURRED COST AUDIT**

In accordance with 10 CFR 600, DOE reserves the right to initiate a final incurred cost audit on this award. If the audit has not been performed or completed prior to the closeout of the award, DOE retains the right to recover an appropriate amount after fully considering the recommendations on disallowed costs resulting from the final audit.

ask  
John

#### **SPECIAL PROVISIONS RELATING TO WORK FUNDED UNDER AMERICAN RECOVERY AND REINVESTMENT ACT OF 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.

*highlight*

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 relation 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](http://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 grand jury, the head of a Federal agency, or their representatives information that the employee believes is evidence of:

- gross mismanagement 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](http://www.Recovery.gov), for specific requirements of this section and prescribed language for the notices.).

#### G. Request for Reimbursement

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 supporting 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 appropriated under the Recovery Act and obligated to this award are available for reimbursement of costs until September 30, 2015.

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

Certification by Governor -- Not later than April 3, 2009, 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.

**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 recipients 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.

#### **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.

#### **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.

## **DAVIS BACON ACT AND CONTRACT WORK HOURS AND SAFETY STANDARDS ACT**

**Definitions:** For purposes of this article, 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; and
- (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.

#### **RECIPIENT FUNCTIONS**

- (1) On behalf of the Department of Energy (DOE), Recipient shall perform the following functions:
  - (a) Obtain, maintain, and monitor all DBA certified payroll records submitted by the Subrecipients and Contractors at any tier under this Award;
  - (b) Review all DBA certified payroll records for compliance with DBA requirements, including applicable DOL wage determinations;
  - (c) 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 (b) above;
  - (d) 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;
  - (e) Provide DOE with detailed information regarding the resolution of any DBA non-compliance issues;
  - (f) Perform services in support of DOE investigations of complaints filed regarding noncompliance by Subrecipients and Contractors with DBA requirements;
  - (g) Perform audit services as necessary to ensure compliance by Subrecipients and Contractors with DBA requirements and as requested by the Contracting Officer; and
  - (h) Provide copies of all records upon request by DOE or DOL in a timely manner.
- (2) All records maintained on behalf of the DOE in accordance with paragraph (1) above are federal government (DOE) owned records. DOE or an authorized representative shall be granted access to the records at all times.
- (3) In the event of, and in response to any Freedom of Information Act, 5 U.S.C. 552, requests submitted to DOE, Recipient shall provide such records to DOE within 5 business days of receipt of a request from DOE.

**ATTACHMENT C**

**U.S. Department of Energy  
FEDERAL ASSISTANCE REPORTING CHECKLIST  
AND INSTRUCTIONS**

1. Identification Number: DE-EE0002172, amendment 001		2. Program/Project Title: Recovery Act – Propane Corridor Development Program																
3. Recipient: State of Virginia																		
4. Reporting Requirements: <b>A. MANAGEMENT REPORTING</b> <input checked="" type="checkbox"/> Progress Report <input checked="" type="checkbox"/> Special Status Report	Frequency	No. of Copies	Addressees															
	F A	Upload only 1 copy to the address in the next column at the interval specified in the previous column.	<a href="https://www.eere-pmc.energy.gov/SubmitReports.aspx">https://www.eere-pmc.energy.gov/SubmitReports.aspx</a>															
<b>B. SCIENTIFIC/TECHNICAL REPORTING</b> (Reports/Products must be submitted with appropriate DOE F 241. The 241 forms are available at <a href="http://www.osti.gov/eliink">www.osti.gov/eliink</a> )  <table border="0"> <tr> <td>Report/Product</td> <td>Form</td> <td></td> </tr> <tr> <td><input type="checkbox"/> Final Scientific/Technical Report</td> <td>DOE F 241.3</td> <td><a href="http://www.osti.gov/eliink-2413">http://www.osti.gov/eliink-2413</a></td> </tr> <tr> <td><input type="checkbox"/> Conference papers/proceedings*</td> <td>DOE F 241.3</td> <td><a href="http://www.osti.gov/eliink-2413">http://www.osti.gov/eliink-2413</a></td> </tr> <tr> <td><input type="checkbox"/> Software/Manual</td> <td>DOE F 241.4</td> <td><a href="http://www.osti.gov/estsc/241-4pre.jsp">http://www.osti.gov/estsc/241-4pre.jsp</a></td> </tr> <tr> <td><input type="checkbox"/> Other (see Special Instructions)</td> <td>DOE F 241.3</td> <td></td> </tr> </table> * Scientific and technical conferences only		Report/Product	Form		<input type="checkbox"/> Final Scientific/Technical Report	DOE F 241.3	<a href="http://www.osti.gov/eliink-2413">http://www.osti.gov/eliink-2413</a>	<input type="checkbox"/> Conference papers/proceedings*	DOE F 241.3	<a href="http://www.osti.gov/eliink-2413">http://www.osti.gov/eliink-2413</a>	<input type="checkbox"/> Software/Manual	DOE F 241.4	<a href="http://www.osti.gov/estsc/241-4pre.jsp">http://www.osti.gov/estsc/241-4pre.jsp</a>	<input type="checkbox"/> Other (see Special Instructions)	DOE F 241.3			
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<input type="checkbox"/> Other (see Special Instructions)	DOE F 241.3																	
<b>C. FINANCIAL REPORTING</b> <input checked="" type="checkbox"/> SF-425, Federal Financial Report		Q, F	<a href="https://www.eere-pmc.energy.gov/SubmitReports.aspx">https://www.eere-pmc.energy.gov/SubmitReports.aspx</a>															
<b>D. CLOSEOUT REPORTING</b> <input type="checkbox"/> Patent Certification <input checked="" type="checkbox"/> Property Certification <input checked="" type="checkbox"/> Other: Project Status & Data (see special instruction 1 below)		F Q	<a href="https://www.eere-pmc.energy.gov/SubmitReports.aspx">https://www.eere-pmc.energy.gov/SubmitReports.aspx</a>  See NOTE 1 See NOTE 2															
<b>E. OTHER REPORTING</b> <input type="checkbox"/> Annual Indirect Cost Proposal <input checked="" type="checkbox"/> Annual Inventory Report of Federally Owned Property, if any <input type="checkbox"/> Other		A	<a href="https://www.eere-pmc.energy.gov/SubmitReports.aspx">https://www.eere-pmc.energy.gov/SubmitReports.aspx</a>															
<b>F. AMERICAN RECOVERY AND REINVESTMENT ACT REPORTING</b> <input checked="" type="checkbox"/> Reporting and Registration Requirements		A	<a href="http://www.federalreporting.gov">http://www.federalreporting.gov</a>															
<b>FREQUENCY CODES AND DUE DATES:</b> <table border="0"> <tr> <td>A - Within 5 calendar days after events or as specified.</td> <td>S - Semiannually; within 30 days after end of reporting period.</td> </tr> <tr> <td>F - Final; 90 calendar days after expiration or termination of the award.</td> <td>Q - Quarterly; within 30 days after end of the reporting period.</td> </tr> <tr> <td>Y - Yearly; 90 days after the end of the reporting period.</td> <td></td> </tr> </table>				A - Within 5 calendar days after events or as specified.	S - Semiannually; within 30 days after end of reporting period.	F - Final; 90 calendar days after expiration or termination of the award.	Q - Quarterly; within 30 days after end of the reporting period.	Y - Yearly; 90 days after the end of the reporting period.										
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5. Special Instructions: Forms are available at <a href="https://www.eere-pmc.energy.gov/forms.aspx">https://www.eere-pmc.energy.gov/forms.aspx</a> .																		
NOTE 1 – A signed copy of the Property Certification shall be submitted in PDF format to the NETL Property Administrator at the following address: <a href="mailto:Property.Administrator@netl.doe.gov">Property.Administrator@netl.doe.gov</a> .																		
NOTE 2 - The Recipient shall submit Project Status & Data Quarterly Reports in accordance with the template provided by the Government. (A) For projects containing deployment of vehicles: The Quarterly Report shall contain information on each vehicle (i.e. vehicle type, fleet operator, date of initial deployment), amount of fuel used by the vehicle, and vehicle miles traveled. This information shall be reported for a two-year period. Quarterly reporting shall include quarterly data, as well as cumulative data.  (B) For projects containing development of fueling infrastructure: The Quarterly Report shall contain information on each station (i.e., location, type and size of installation) and schedule and status information for NEPA compliance, installation activities, and station startup. Additionally, once a fueling station has completed its conversion and/or installation and has initiated fuel sales, the quantity and price of the alternative fuels sold at each site shall be reported for a two-year period. Quarterly reporting shall include quarterly data, as well as cumulative data. As available, the Recipient shall also report comparative pricing information on gasoline and diesel products sold at each site.																		

## Federal Assistance Reporting Instructions (5/09)

### A. MANAGEMENT REPORTING

#### Progress Report

The Progress Report must provide a concise narrative assessment of the status of work and include the following information and any other information identified under Special Instructions on the Federal Assistance Reporting Checklist:

1. The DOE award number and name of the recipient.
2. The project title and name of the project director/principal investigator.
3. Date of report and period covered by the report.
4. A comparison of the actual accomplishments with the goals and objectives established for the period and reasons why the established goals were not met.
5. A discussion of what was accomplished under these goals during this reporting period, including major activities, significant results, major findings or conclusions, key outcomes or other achievements. This section should not contain any proprietary data or other information not subject to public release. If such information is important to reporting progress, do not include the information, but include a note in the report advising the reader to contact the Principal Investigator or the Project Director for further information.
6. Cost Status. Show approved budget by budget period and actual costs incurred. If cost sharing is required break out by DOE share, recipient share, and total costs.
7. Schedule Status. List milestones, anticipated completion dates and actual completion dates. If you submitted a project management plan with your application, you must use this plan to report schedule and budget variance. You may use your own project management system to provide this information.
8. Any changes in approach or aims and reasons for change. Remember significant changes to the objectives and scope require prior approval by the contracting officer.
9. Actual or anticipated problems or delays and actions taken or planned to resolve them.
10. Any absence or changes of key personnel or changes in consortium/teaming arrangement.
11. A description of any product produced or technology transfer activities accomplished during this reporting period, such as:

- A. Publications (list journal name, volume, issue); conference papers; or other public releases of results. Attach or send copies of public releases to the DOE Program Manager identified in Block 15 of the Assistance Agreement Cover Page.
- B. Web site or other Internet sites that reflect the results of this project.
- C. Networks or collaborations fostered.
- D. Technologies/Techniques.
- E. Inventions/Patent Applications
- F. Other products, such as data or databases, physical collections, audio or video, software or netware, models, educational aid or curricula, instruments or equipment.

### **Special Status Report**

The recipient must report the following events by e-mail as soon as possible after they occur:

1. Developments that have a significant favorable impact on the project.
2. Problems, delays, or adverse conditions which materially impair the recipient's ability to meet the objectives of the award or which may require DOE to respond to questions relating to such events from the public. The recipient must report any of the following incidents and include the anticipated impact and remedial action to be taken to correct or resolve the problem/condition:
  - a. Any single fatality or injuries requiring hospitalization of five or more individuals.
  - b. Any significant environmental permit violation.
  - c. Any verbal or written Notice of Violation of any Environmental, Safety, and Health statutes.
  - d. Any incident which causes a significant process or hazard control system failure.
  - e. Any event which is anticipated to cause a significant schedule slippage or cost increase.
  - f. Any damage to Government-owned equipment in excess of \$50,000.
  - g. Any other incident that has the potential for high visibility in the media.

## **B. SCIENTIFIC/TECHNICAL REPORTS – N/A**

## **C. FINANCIAL REPORTING**

Recipients must complete the SF-425 as identified on the Reporting Checklist in accordance with the report instructions. A fillable version of the form is available at [http://www.whitehouse.gov/omb/grants/grants\\_forms.aspx](http://www.whitehouse.gov/omb/grants/grants_forms.aspx).

## **D. CLOSEOUT REPORTS**

### **Property Certification**

The recipient must provide the Property Certification, including the required inventories of non-exempt property, located at <http://www.management.energy.gov/documents/PropertyCertFINAL.doc>.

## **E. OTHER REPORTING**

### **Annual Inventory of Federally Owned Property**

Requirement. If at any time during the award the recipient is provided Government-furnished property or acquires property with project funds and the award specifies that the property vests in the Federal Government (i.e. federally owned property), the recipient must submit an annual inventory of this property to the DOE Administrator at the address listed in Block 16 of the Assistance Agreement Cover Page, no later than October 30<sup>th</sup> of each calendar year, to cover an annual reporting period ending on the preceding September 30<sup>th</sup>.

Content of Inventory. The inventory must include a description of the property, tag number, acquisition date, location of property, and acquisition cost, if purchased with project funds. The report must list all federally owned property, including property located at subcontractor's facilities or other locations.

## **F. AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009 (RECOVERY ACT) REPORTING**

Refer to the award term entitled, Reporting and Registration Requirements, of the Special Terms and Conditions for Grants and Cooperative Agreements for details on the reporting requirements under Section 1512 of the Recovery Act. 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.

**SUBGRANT FLOW DOWN PROVISIONS FOR WAP AND SEP FINANCIAL ASSISTANCE AWARDS**

**Resolution of Conflicting Conditions**

**Statement of Federal Stewardship**

**Site Visits**

**Reporting Requirements**

**Publications**

**Federal, State, and Municipal Requirements**

**Intellectual Property Provisions and Contact Information**

**Lobbying Restrictions**

**Notice Regarding the Purchase of American-Made Equipment and Products -- Sense of Congress**

**Decontamination and/or Decommissioning (D&D) Costs**

**Historic Preservation**

**Flow Down Terms For ARRA Awards – See Prescriptions for Applicability**

**Special Provisions Relating To Work Funded Under American Recovery and Reinvestment Act of 2009**

**Reporting and Registration Requirements Under Section 1512 of The Recovery Act**

**Required Use of American Iron, Steel, and Manufactured Goods (Covered Under International Agreements)—Section 1605 of the American Recovery and Reinvestment Act of 2009**

**Wage Rate Requirements Under Section 1606 Of The Recovery Act**

**Recovery Act Transactions Listed In Schedule of Expenditures of Federal Awards and Recipient Responsibilities For Informing Subrecipients**

**Davis Bacon Act Requirements (For WAP ARRA Financial Assistance Awards)**

**Davis Bacon Act and Contract Work Hours and Safety Standards Act (For Use in SEP Financial Assistance Awards)**

**From 10 CFR 600.236-Procurement**

(a) States. When procuring property and services under a grant, a State will follow the same policies and procedures it uses for procurements from its non-Federal funds. The State will ensure that every purchase order or other contract includes any clauses required by Federal statutes and executive orders and their implementing regulations. Other grantees and sub-grantees will follow paragraphs (b) through (i) in this section.

Note: 600.236 (i)-Contract provisions. A grantee's and sub-grantee's contracts MUST contain provisions in paragraph (i) of this section (1) through (13).

10 CFR 600.236 -- <http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&sid=1d87da29f6087f0251f78954c8888ff1&rgn=div8&view=text&node=10:4.0.1.3.9.3.20.23&idno=10>

**From 10 CFR 600.237-Subgrants**

Retention and Access Requirements for Records

<http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?type=simple;c=ecfr;cc=ecfr;sid=4c22613d54c8ee557f9dc9d6015ec1c9;idno=10;region=DIV1;q1=600.242;rgn=div8;view=text;node=10%3A4.0.1.3.9.3.20.27>

Conform any advances of grant funds to sub-grantees substantially to the same standards of timing and amount that apply to cash advances by Federal agencies (refer state to 10 CFR 600.221(c)).

*10 CFR 60.221(c) Advances.* Grantees and subgrantees shall be paid in advance, provided they maintain or demonstrate the willingness and ability to maintain procedures to minimize the time elapsing between the transfer of the funds and their disbursement by the grantee or subgrantee.

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**RESOLUTION OF CONFLICTING CONDITIONS – MANDATORY FLOW DOWN REQUIRED**

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.

**AWARD AGREEMENT TERMS AND CONDITIONS**

This award/agreement consists of the Grant and Cooperative Agreement cover page, plus the following:

a. Special terms and conditions.

b. Attachments:

Attachment No.	Title
1	Intellectual Property Provisions
2	Federal Assistance Reporting Checklist
3	Budget Pages
4	State Annual File
5	State Master File
6	Wage Determination

c. Applicable program regulations [*Specify*][*Date*]

d. DOE Assistance Regulations, 10 CFR Part 600 at <http://ecfr.gpoaccess.gov> and if the award is for research and to a university or non-profit, the Research Terms & Conditions and the DOE Agency Specific Requirements at <http://www.nsf.gov/bfa/dias/policy/rtc/index.jsp>.

e. Application/proposal as approved by DOE.

f. National Policy Assurances to Be Incorporated as Award Terms in effect on date of award at [http://management.energy.gov/business\\_doe/1374.htm](http://management.energy.gov/business_doe/1374.htm).

**PAYMENT PROCEDURES - ADVANCES THROUGH THE AUTOMATED STANDARD APPLICATION FOR PAYMENTS (ASAP) SYSTEM**

a. Method of Payment. Payment will be made by advances through the Department of Treasury's ASAP system.

b. Requesting Advances. Requests for advances must be made through the ASAP system. You may submit requests as frequently as required to meet your needs to disburse funds for the Federal share of project costs. If feasible, you should time each request so that you receive payment on the same day that you disburse funds for direct project costs and the proportionate share of any allowable indirect costs. If same-day transfers are not feasible, advance payments must be as close as is administratively feasible to actual disbursements.

c. Adjusting payment requests for available cash. You must disburse any funds that are available from repayments to and interest earned on a revolving fund, program income, rebates, refunds, contract settlements, audit recoveries, credits, discounts, and interest earned on any of those funds before requesting additional cash payments from DOE.

d. Payments. All payments are made by electronic funds transfer to the bank account identified on the ASAP Bank Information Form that you filed with the U.S. Department of Treasury.

**REBUDGETING AND RECOVERY OF INDIRECT COSTS - REIMBURSABLE INDIRECT COSTS AND FRINGE BENEFITS**

a. If actual allowable indirect costs are less than those budgeted and funded under the award, you 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, you must refund the difference.

b. Recipients are expected to manage their indirect costs. DOE will not amend an award solely to provide additional funds for changes in indirect cost rates. DOE recognizes that the inability to obtain full reimbursement for indirect costs means the recipient must absorb the underrecovery. Such underrecovery may be allocated as part of the organization's required cost sharing.

**USE OF PROGRAM INCOME - ADDITION**

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 use it to further eligible project objectives.

**STATEMENT OF FEDERAL STEWARDSHIP – MANDATORY FLOW DOWN REQUIRED**

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.

**SITE VISITS – MANDATORY FLOW DOWN REQUIRED**

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.

#### **REPORTING REQUIREMENTS -- MANDATORY FLOW DOWN REQUIRED**

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. Dissemination of scientific/technical reports. Scientific/technical reports submitted under this award will be disseminated on the Internet via the DOE Information Bridge ([www.osti.gov/bridge](http://www.osti.gov/bridge)), unless the report contains patentable material, protected data, or SBIR/STTR data. Citations for journal articles produced under the award will appear on the DOE Energy Citations Database ([www.osti.gov/energycitations](http://www.osti.gov/energycitations)).

c. Restrictions. Reports submitted to the DOE Information Bridge must not contain any Protected Personal Identifiable Information (PII), limited rights data (proprietary data), classified information, information subject to export control classification, or other information not subject to release.

#### **PUBLICATIONS – MANDATORY FLOW DOWN REQUIRED**

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

b. An acknowledgment of Federal 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 under Award Number DE-EE0000095

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."

**FEDERAL, STATE, AND MUNICIPAL REQUIREMENTS – MANDATORY FLOW DOWN REQUIRED**

You must obtain any required permits and comply with applicable federal, state, and municipal laws, codes, and regulations for work performed under this award.

**INTELLECTUAL PROPERTY PROVISIONS AND CONTACT INFORMATION – MANDATORY FLOW DOWN REQUIRED**

a. The intellectual property provisions applicable to this award are provided as an attachment to this award or are referenced on the Agreement Face Page. A list of all intellectual property provisions may be found at [http://www.gc.doe.gov/financial\\_assistance\\_awards.htm](http://www.gc.doe.gov/financial_assistance_awards.htm).

b. Questions regarding intellectual property matters should be referred to the DOE Award Administrator and the Patent Counsel designated as the service provider for the DOE office that issued the award. The IP Service Providers List is found at [http://www.gc.doe.gov/documents/Intellectual\\_Property\\_\(IP\)\\_Service\\_Providers\\_for\\_Acquisition.pdf](http://www.gc.doe.gov/documents/Intellectual_Property_(IP)_Service_Providers_for_Acquisition.pdf)

**LOBBYING RESTRICTIONS – MANDATORY FLOW DOWN REQUIRED**

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.

**NOTICE REGARDING THE PURCHASE OF AMERICAN-MADE EQUIPMENT AND PRODUCTS -- SENSE OF CONGRESS – MANDATORY FLOW DOWN REQUIRED**

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.

**DECONTAMINATION AND/OR DECOMMISSIONING (D&D) COSTS – MANDATORY FLOW DOWN REQUIRED**

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 this Agreement.

### **HISTORIC PRESERVATION -- MANDATORY FLOW DOWN REQUIRED**

Prior to the expenditure of Federal funds to alter any structure or site, the Recipient is required to comply with the requirements of 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. In order to fulfill the requirements of Section 106, the recipient must contact the State Historic Preservation Officer (SHPO), and, if applicable, 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. Recipients shall avoid taking any action that results in an adverse effect to historic properties pending compliance with Section 106.

Recipients should be aware that the DOE Contracting Officer will consider the recipient in compliance with Section 106 of the NHPA only after the Recipient has submitted adequate background documentation to the SHPO/THPO for its review, and the SHPO/THPO has provided written concurrence to the Recipient that it does not object to its Section 106 finding or determination. Recipient shall provide a copy of this concurrence to the Contracting Officer.

Prescription: This clause must be included in all grants, cooperative agreements and TIAs (new or amended) when funds appropriated under the Recovery Act are obligated to the agreement.

### **SPECIAL PROVISIONS RELATING TO WORK FUNDED UNDER AMERICAN RECOVERY AND REINVESTMENT ACT OF 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 relation 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](http://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](http://www.Recovery.gov), for specific requirements of this section and prescribed language for the notices.)

G. Request for Reimbursement (this version is included in WAP/SEP awards with states)

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 or interest, bribery, gratuity or similar misconduct involving those funds.

I. Information in supporting 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 appropriated under the Recovery Act and obligated to this award are available for reimbursement of costs until September 30, 2015.

Prescription: The following award term shall be used to implement the recipient reporting and registration requirements in the Recovery Act section 1512.

**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 recipients 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.

Prescription: When awarding Recovery Act funds for construction, alteration, maintenance, or repair of a public building or public work and the total project value is estimated less than \$7,443,000, the agency shall use this award term.

**REQUIRED USE OF AMERICAN IRON, STEEL, AND MANUFACTURED GOODS -- SECTION 1605 OF THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009**

(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) and (b)(4) of this section and condition.

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

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[ Award official to list applicable excepted materials or indicate "none" ]

(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.]

Prescription: When awarding Recovery Act funds for construction, alteration, maintenance, or repair of a public building or public work with a total project value over \$7,443,000 that involves iron, steel, and/or manufactured goods materials covered under international agreements, the agency shall use this award term.

**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:

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[ Award official to list applicable excepted materials or indicate "none" ]

(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)*
<i>Item 1:</i>			
Foreign steel, iron, or manufactured good			
Domestic steel, iron, or manufactured good			
<i>Item 2:</i>			
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.]*

Prescription: When issuing announcements or requesting applications for Recovery Act programs or activities that may involve construction, alteration, maintenance, or repair the agency shall use this award term.

## **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.

Prescription: The award term described in this section shall be used by agencies to clarify recipient responsibilities regarding tracking and documenting Recovery Act expenditures.

## **RECOVERY ACT TRANSACTIONS LISTED IN SCHEDULE OF EXPENDITURES OF FEDERAL AWARDS AND RECIPIENT RESPONSIBILITIES FOR INFORMING**

(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.

Prescription: Include for ARRA Awards (other than Weatherization Assistance Program and Loan Program awards) when WAGE RATE REQUIREMENTS UNDER SECTION 1606 OF THE AMERICAN RECOVERY AND REINVESTMENT ACT ("RECOVERY ACT") term is required.

## **DAVIS BACON ACT AND CONTRACT WORK HOURS AND SAFETY STANDARDS ACT**

**Definitions:** For purposes of this article, 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; and
- (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.

#### **From 10 CFR 600.236-Procurement**

(a) States. When procuring property and services under a grant, a State will follow the same policies and procedures it uses for procurements from its non-Federal funds. The State will ensure that every purchase order or other contract includes any clauses required by Federal statutes and executive orders and their implementing regulations. Other grantees and sub-grantees will follow paragraphs (b) through (i) in this section.

Note: 600.236 (i)-Contract provisions. A grantee's and sub-grantee's contracts MUST contain provisions in paragraph (i) of this section (1) through (13).

10 CFR 600.236 -- <http://ecfr.gpoaccess.gov/cgi/t/text/text->

[idx?c=ecfr&sid=1d87da29f6087f0251f78954c8888ff1&rgn=div8&view=text&node=10:4.0.1.3.9.3.20.23&idno=10](http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&sid=1d87da29f6087f0251f78954c8888ff1&rgn=div8&view=text&node=10:4.0.1.3.9.3.20.23&idno=10)

**From 10 CFR 600.237-Subgrants**

Retention and Access Requirements for Records

<http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?type=simple;c=ecfr;cc=ecfr;sid=4c22613d54c8ee557f9dc9d6015ec1c9;idno=10;region=DIV1;q1=600.242;rgn=div8;view=text;node=10%3A4.0.1.3.9.3.20.27>

Conform any advances of grant funds to sub-grantees substantially to the same standards of timing and amount that apply to cash advances by Federal agencies (refer state to 10 CFR 600.221(c)).

*10 CFR 60.221(c) Advances.* Grantees and subgrantees shall be paid in advance, provided they maintain or demonstrate the willingness and ability to maintain procedures to minimize the time elapsing between the transfer of the funds and their disbursement by the grantee or subgrantee.

**DEB Notice 073009 – Revised - American Recovery and Reinvestment Act of 2009**  
Effective 07/30/2009

**Supersedes:**

**DEB Notice 070109 - American Recovery and Reinvestment Act of 2009**  
Effective 07/01/2009

**RE: Construction and Professional Services Manual**  
**Section 301.0, General Policies on Architectural and Engineering Services**

Add the following to the Construction and Professional Services Manual:

**Section 301.5 Job Posting Requirements**

The Virginia Workforce Network shall be used to post all jobs resulting from ARRA-funded project. Posting is not required where an employer, contractor or subcontractor of an ARRA-funded state contract intends to fill the job opening created by ARRA funding with a present employee, a laid-off former employee or a job candidate from a previous recruitment. This requirement is not intended to prevent organizations and companies from also seeking needed employees by other means including industry specific employment programs.

**AND**

**Projects funded wholly or in part by funds provided under the American Recovery and Reinvestment Act of 2009 (ARRA) shall include Supplemental General Condition 52.**

Note that Sections 1 thru 50 are the General Conditions of the Construction Contract (CO-7), and Section 51, Small Businesses and Women-Owned and Minority-Owned (SWAM) Business Procurement Plan, is the first Supplemental General Condition.

Copies of these documents and other forms and formats may be downloaded from the DGS Forms Center (<http://forms.dgs.virginia.gov>). A copy of Supplemental General Condition 52 is also included, for convenience, as pages 2 through 4 of this DEB Notice.

**SUPPLEMENTAL GENERAL CONDITIONS**

The Commonwealth of Virginia General Conditions of the Construction Contract, Form DGS-30-054 (CO-7), are modified and supplemented as hereinafter described.

Add the following Section 52 to the General Conditions of the Construction Contract:

**52. American Recovery and Reinvestment Act of 2009**

The following requirements are incorporated into this contract and shall be incorporated by the General Contractor into all subcontracts. Furthermore, these provisions shall be required for all tiers of subcontracts for this project.

**Sec. 176.50 Award term - Reporting and registration requirements under section 1512 of the Recovery Act.** Agencies are responsible for ensuring that their recipients report information required under the Recovery Act in a timely manner. The following award term shall be used by agencies to implement the recipient reporting and registration requirements in section 1512:

(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 recipients 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.

**Subpart B - Buy American Requirement Under Section 1605 of the American Recovery and Reinvestment Act of 2009**

**Sec. 176.60 Statutory requirement**

Section 1605 of the Recovery Act prohibits use of recovery funds for a project for the construction, alteration, maintenance, or repair of a public building or public work unless all of the iron, steel, and manufactured goods used in the project are produced in the United States. The law requires that this prohibition be applied in a manner consistent with U.S. obligations under international agreements, and it provides for waiver under three circumstances:

(a) Iron, steel, or relevant manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality;

- (b) Inclusion of iron, steel, or manufactured goods produced in the United States will increase the cost of the overall project by more than 25 percent; or
- (c) Applying the domestic preference would be inconsistent with the public interest.

**Sec. 176.190 Award term - Wage Rate Requirements under Section 1606 of the Recovery Act**

When issuing announcements or requesting applications for Recovery Act programs or activities that may involve construction, alteration, maintenance, or repair the agency shall use the award term described in the following paragraphs:

(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.

**Sec. 176.210 Award term - Recovery Act Transactions listed in Schedule of Expenditures of Federal Awards and Recipient Responsibilities for Informing Subrecipients**

The award term described in this section shall be used by agencies to clarify recipient responsibilities regarding tracking and documenting Recovery Act expenditures:

(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.

#### **Job Posting Requirements**

The Virginia Workforce Network shall be used to post all jobs resulting from this ARRA-funded project. Posting is not required where an employer, contractor or subcontractor of an ARRA-funded state contract intends to fill the job opening created by ARRA funding with a present employee, a laid-off former employee or a job candidate from a previous recruitment. This requirement is not intended to prevent organizations and companies from also seeking needed employees by other means including industry specific employment programs.

#### **Reporting Requirements**

Reporting shall be performed in accord with the criteria established by the Department of Accounts.

August 5, 2009

**SPECIAL TERMS AND CONDITIONS TO BE INCLUDED IN CONTRACTS FUNDED IN WHOLE OR IN PART  
BY THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009**

The following are Special Terms and Conditions to be used for procurements funded by the American Recovery and Reinvestment Act of 2009. Other special terms and conditions may be developed and included when appropriate or as required by the Federal granting agency.

1. **GENERAL:** This contract is governed by the provisions of the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5 (the "Recovery Act" or "ARRA") and Federal Regulations and other guidance from the federal government implementing the Recovery Act (collectively, "Recovery Act Requirements" or "ARRA Requirements"), and the Contractor agrees that it will comply with all Recovery Act Requirements applicable to this contract. In the event of a conflict between the terms of this contract and the Recovery Act Requirements, the provisions of the Recovery Act Requirements shall be controlling. The Contractor acknowledges that these Special Terms and Conditions may require changes due to future revisions of the Recovery Act Requirements, and Contractor agrees that it shall comply with any such changes upon receipt of written notification from the Commonwealth of such changes. Such changes will become a material part of the contract without the necessity of either party executing an amendment to this contract. Contractor also agrees that it will provide all information and documentation required by the Commonwealth in order to comply with the Recovery Act Requirements. Contractor agrees that, to the extent ARRA Requirements conflict with Commonwealth of Virginia requirements, the ARRA Requirements shall control.
2. **D-U-N-S® NUMBER:** All Contractors are required to provide the Commonwealth of Virginia with their unique Dun & Bradstreet Data Universal Numbering System D-U-N-S® number prior to award.
3. **JOB CREATION AND RETENTION:** The Contractor shall provide to the Commonwealth an estimate of the number of new positions created and filled, positions retained, or previously existing unfilled positions that are filled or retained as a result of this Contract. The estimated number shall be expressed as full-time equivalent (FTE), calculated cumulatively as all hours worked divided by the total number of hours in a full-time schedule, as defined by the Contractor. The Contractor shall update the information regarding jobs creation and retention on a quarterly basis, and shall provide each updated report to the Commonwealth no later than ten business days before the end of each calendar quarter.

The Contractor shall provide a brief description of the types of jobs created or jobs retained in the United States and outlying areas. This description may rely on job titles, broader labor categories, or the Contractor's existing practice for describing jobs provided the terms are widely understood and describe the general nature of the work.

DESCRIPTION OF THE TYPES OF JOBS CREATED OR RETAINED

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4. **AUDITING:** The Contractor shall retain all books, records, and other documents to this contract for five (5) years after final payment. Section 902 of the American Recovery and Reinvestment Act of 2009 provides the U.S. Comptroller General and his representatives with the authority to:
  - (1) examine any records of the Contractor or any of its subcontractors, or any State or local agency administering such contract, that directly pertain to, and involve transactions relating to, the contract or any subcontract; and
  - (2) interview any officer or employee of the Contractor or any of its subcontractors, or of any State or local government agency administering the contract, regarding such transactions.

Accordingly, the Comptroller General and his representatives shall have the authority and rights as provided under Section 902 of the Recovery Act with respect to this contract, which is funded with funds made available under the Recovery Act. Section 902 further states that nothing in this section shall be interpreted to limit or restrict in any way any existing authority of the Comptroller General.

Additionally, Section 1515(a) of the Recovery Act provides authority for any representatives of an appropriate inspector general appointed under Section 3 or 8G of the Inspector General Act of 1978 to examine any records or interview any employee or officers of the Contractor or its subcontractors working on this contract. The Contractor is advised that any representatives of an appropriate Inspector General appointed under Section 3 or 8G of the Inspector General Act of 1978 have the authority to examine any record and interview any employee or officer of the Contractor, its subcontractors or other firms working on this contract. This right of examination shall also include inspection at all reasonable times of the Contractor's plants, or parts of them, engaged in performing the contract. Section 1515(b) further provides that nothing in this section shall be interpreted to limit or restrict in any way any existing authority of an Inspector General.

The Commonwealth's contracting officer and other representatives of the Commonwealth shall have, in addition to any other audit or inspection right in this contract, all the audit and inspection rights contained in this section.

5. **BUY AMERICAN:** Section 1605 of the Recovery Act prohibits use of recovery funds for a project for the construction, alteration, maintenance, or repair of a public building or public work unless all of the iron, steel, and manufactured goods used in the project are produced in the United States. The law requires that this prohibition be applied in a manner consistent with U.S. obligations under international agreements, and it provides for waiver by the head of the federal agency awarding the ARRA funds under three circumstances:

- (a) Iron, steel, or relevant manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality;
- (b) Inclusion of iron, steel, or manufactured goods produced in the United States will increase the cost of the overall project by more than 25 percent; or
- (c) Applying the domestic preference would be inconsistent with the public interest.

6. **WAGE RATE REQUIREMENTS:**

(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. The standard Davis-Bacon contract clauses found in 29 CFR 5.5(a) are incorporated into this contract and any subcontracts that are in excess of \$2,000 for construction, alteration or repair (including painting and decorating).

(b) Inquiries concerning the application of Davis-Bacon requirements to a particular federally assisted project should be directed to the Federal agency funding the project. The Secretary of Labor retains final coverage authority under Reorganization Plan Number 14.

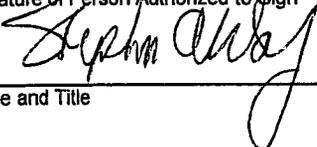
7. **REPORTING REQUIREMENTS:** Pursuant to Section 1512 of the ARRA, state agencies receiving ARRA funds must submit a report to the federal government containing information on the use of ARRA funds no later than ten (10) calendar days after the end of each calendar quarter. Accordingly, Contractor agrees to provide the Commonwealth of Virginia with such information, no later than five (5) calendar days after the end of each calendar quarter, as is required by the Commonwealth of Virginia to comply with ARRA reporting requirements. Section 1512 of ARRA, its implementing regulations (2 CFR §176.50), guidance provided by the White House Office of Management and Budget and the terms of the ARRA grant that provides funds for this contract provide guidance on what information must be reported.

8. **SUBCONTRACTOR FLOW-DOWN REQUIREMENTS:** Contractor agrees that it shall include these supplemental terms and conditions, including this requirement, in any of its subcontracts in connection with projects funded in whole or in part with funds available under the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5.

9. **INDEMNITY:** Contractor must include the following Indemnity provision in any for-profit sub-award(s), at any tier.  
The recipient shall indemnify the Commonwealth of Virginia and its officers, agents, or employees for any and all liability, including litigation expenses and attorneys' fees, arising from suits, actions, or claims of any character for death, bodily injury, or loss of or damage to property or to the environment, resulting from the project, except to the extent that such liability results from the direct fault or negligence of state officers, agents or employees, or to the extent such liability may be covered by applicable allowable costs provisions.

*Must meet to all  
JMU's Subs*

## ASSISTANCE AGREEMENT

1. Award No. DE-EE0002172		2. Modification No. 001	3. Effective Date 12/07/2009	4. CFDA No. 81.086	
5. Awarded To MINES MINERALS AND ENERGY, VIRGINIA DEPARTME Attn: STEVEN K. COONEY P.O. DRAWER 900 BIG STONE GAP VA 242190900		6. Sponsoring Office U.S. DOE/NETL Morgantown Campus 3610 Collins Ferry Road PO Box 880 Morgantown WV 26507-0880		7. Period of Performance 12/07/2009 through 12/06/2013	
8. Type of Agreement <input checked="" type="checkbox"/> Grant <input type="checkbox"/> Cooperative Agreement <input type="checkbox"/> Other	9. Authority 31 USC 6304, See also Page 2 10 USC 2358		10. Purchase Request or Funding Document No.		
11. Remittance Address MINES MINERALS AND ENERGY, VIRGINIA DEPARTME Attn: STEVEN K. COONEY P.O. DRAWER 900 BIG STONE GAP VA 242190900		12. Total Amount Govt. Share: \$8,605,100.00  Cost Share : \$10,449,184.00  Total : \$19,054,284.00		13. Funds Obligated This action: \$0.00  Total : \$8,355,100.00	
14. Principal Investigator Stephen Walz, 804-692-3211 steve.walz@dmmme.virginia.gov		15. Program Manager STEVEN W. RICHARDSON Phone: 304-285-4185		16. Administrator U.S. DOE/NETL Morgantown Campus 3610 Collins Ferry Road PO Box 880 Morgantown WV 26507-0880	
17. Submit Payment Requests To Payment - Direct Payment from U.S. Dept of Treasury		18. Paying Office		19. Submit Reports To See Reporting Requirements Checklist	
20. Accounting and Appropriation Data See Schedule					
21. Research Title and/or Description of Project RECOVERY ACT - PROPANE CORRIDOR DEVELOPMENT PROGRAM					
For the Recipient			For the United States of America		
22. Signature of Person Authorized to Sign 			25. Signature of Grants/Agreements Officer Signature on File		
23. Name and Title		24. Date Signed 2/9/2010	26. Name of Officer RAYMOND R. JARR		27. Date Signed 02/05/2010

CONTINUATION SHEET

REFERENCE NO. OF DOCUMENT BEING CONTINUED  
DE-EE0002172/001

PAGE OF  
2 | 3

NAME OF OFFEROR OR CONTRACTOR  
MINES MINERALS AND ENERGY, VIRGINIA DEPARTMENT OF

ITEM NO. (A)	SUPPLIES/SERVICES (B)	QUANTITY (C)	UNIT (D)	UNIT PRICE (E)	AMOUNT (F)
	<p>DUNS Number: 137397605 Project Period: 12/07/2009 - 12/06/2013 Budget Period: 12/07/2009 - 12/06/2013</p> <p>The administrative office (administrative contracting activity) for this award/modification/amendment is 02605.</p> <p>The administrative office (administrative contracting activity) code is needed by the contractor/recipient for reporting to FederalReporting.gov concerning awards made with funding from the American Recovery and Reinvestment Act of 2009 (AARA or Recovery Act).</p> <p>Block 9 Authority: PL 95-91 DOE Organization Act and PL 111-5 American Recovery and Reinvestment Act of 2009</p> <p>DOE Award Administrator: Angela Bosley 304-285-4149/Angela.Bosley@netl.doe.gov</p> <p>Recipient Business Point of Contact: Barbara Simcoe, 804-692-3218 barbara.simcoe@dmme.virginia.gov ASAP: Yes Extent Competed: COMPETED Davis-Bacon Act: YES Payment: Payment - Direct Payment from U.S. Dept of Treasury</p>				

The purpose of this amendment is to revise the terms and conditions and to correct an error in the reporting instructions contained in the Attachment 3, Federal Assistance Reporting Requirements Checklist and Instructions. Accordingly, the agreement is amended as follows:

1. As a result, the “Special Terms and Conditions for Use in Most Grants and Cooperative Agreements” are hereby deleted in their entirety and replaced with the revised Special Terms and Conditions for Use in Most Grants & Cooperative Agreements attached to this amendment. A summary of the changes are as follows:
  - A revised Indemnity provision is hereby incorporated into the agreement.
  - A “Note” is hereby incorporated into the Reporting Requirements provision.
2. The instructions for the American Recovery and Reinvestment Act of 2009 (Recovery Act) Report is hereby incorporated into the reporting instructions. As a result, Attachment 3, Federal Assistance Reporting Requirements Checklist and Instructions, is deleted in its entirety and replaced with the revised Reporting Requirements Checklist and Instructions attached to this amendment.
3. Except as provided herein, all other terms and conditions remain the same and in full force and effect.

**End of Amendment 001**

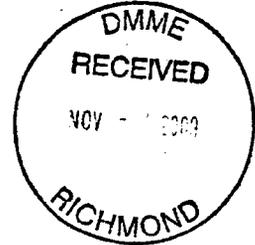


**NATIONAL ENERGY TECHNOLOGY LABORATORY**  
Albany, OR • Morgantown, WV • Pittsburgh, PA



October 22, 2009

Commonwealth of Virginia  
Department of Mines, Minerals, and Energy  
Attn: Al Christopher  
Washington Building, 8<sup>th</sup> Floor  
1100 Bank Street  
Richmond, VA 23219-3237



Dear Mr. Christopher:

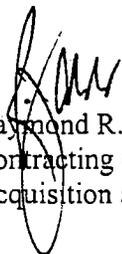
Reference is made to your proposal entitled "Propane Corridor Development Program."  
Authorization is hereby granted for the incurrence of preaward costs.

A preaward cost authorization does not create an obligation of Government funds. Rather, the authorization creates a prior understanding that, if an award is made, the specified costs will be considered eligible for reimbursement. Should the award not be made, DOE has no obligation to reimburse or otherwise recognize the preaward costs.

Furthermore, you are restricted from taking any action using preaward costs for this project that would have an adverse effect on the environment or limit the choice of reasonable alternatives prior to DOE providing a final National Environmental Policy Act (NEPA) determination. If you incur preaward costs that would have an adverse effect on the environment or limit the choice of reasonable alternatives in advance of a final NEPA determination, you are doing so at risk and such costs may not be recognized as allowable cost share.

If any questions arise concerning this authorization, please contact the Contract Specialist, Angela Bosley at 304-285-4149 or via e-mail at [Angela.Bosley@netl.doe.gov](mailto:Angela.Bosley@netl.doe.gov).

Sincerely,

  
Raymond R. Jarr  
Contracting Officer  
Acquisition and Assistance Division

cc: Award File

## U.S. Department of Energy - SEP Quarterly Program Status Report Instructions

A separate SEP Quarterly Program Report should be submitted for each SEP Narrative Activity Information Worksheet that is part of the approved State Plan.

Item	Explanation
1 Activity title	State name of activity as shown on the Activity Information Worksheet
2 State	Self-explanatory
3 Program Year	Program year (PY) corresponding to this budget period
4 Status	Indicate status of the activity, and the percentage of the work that has been completed to date. If the activity was dropped, indicate reasons in the remarks section.
5 Outlays by quarter	Enter starting and ending dates of the quarter reported.
a) SEP grant outlays	Total grant outlays (DOE/SEP, State match, PVE, etc.) for the activity this reporting period.
b) Leveraged fund outlays	Leveraged fund outlays, by source, for the activity this reporting period. This information is not required, however it helps DOE justify the SEP budget.
6 Subgrantee Outlays	Provide outlays by reporting period for each subgrantee that has incurred costs related to this activity. Each subgrantee listed in this section must also be included in a Subgrantee Information Worksheet in order to provide address, contact information, and areas served.
7 Activity milestone status	List milestones included in the activity worksheet and indicate how many were delivered/performed during this reporting quarter.
8 Standard Metrics	Report actual accomplishments for each of the standard metrics listed. See grant guidance for details regarding the metrics.
9 Specific Metric Activity	List the Specific Metric Activity (e.g., Building Codes and Standards, Building Retrofits, Clean Energy Policy, etc.), and the associated Metrics from the activity worksheet and indicate actual accomplishments for each metric. See grant guidance for details regarding the metrics.
10 User Specified Metrics	List User Specified Metric Activities (e.g., Building Codes and Standards, Building Retrofits, Clean Energy Policy, etc.), and the associated Metrics from the activity worksheet and indicate actual accomplishments for each metric. See grant guidance for details regarding the metrics.
11 Critical Annual Metrics	For annual reporting, indicate actual accomplishments for each applicable Critical Annual Metric. See grant guidance for details regarding the metrics.
12 Infrastructure Investment	Identify with Yes or No if this activity contains an infrastructure investment. If the activity contains an infrastructure investment, provide the justification for funding the investment.
13 Remarks	This is the place to mention problems, issues, variances from plan or, if an activity was dropped, describe the circumstances.
14 Accomplishments	Describe here accomplishments, good news, and publicity about SEP

Updated (06-09)

activities.

15 Performance outcome data  
collected

If performance outcome data are collected on this activity, describe.

16 Submitted by

Signature, date, name, and phone number of authorized person signing  
and submitting the program report.

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U.S. Department of Energy – SEP Quarterly Program Status Report

(Grant Number: \_\_\_\_\_)

Report Period: ( \_\_\_\_\_ )

1. Activity title \_\_\_\_\_ 2. State \_\_\_\_\_ 3. PY \_\_\_\_\_

4. Status:  Active  Completed  Dropped % of Work Complete: \_\_\_\_\_

5. Outlays by quarter

	/ - /	/ - /	/ - /	/ - /	
Source	Q1	Q2	Q3	Q4	Total to Date
a. SEP grant (all sources)	\$	\$	\$	\$	\$
	\$	\$	\$	\$	\$
	\$	\$	\$	\$	\$
	\$	\$	\$	\$	\$
b. Leveraged fund outlays by source*					
	\$	\$	\$	\$	\$
	\$	\$	\$	\$	\$
	\$	\$	\$	\$	\$

6. Subgrantee Outlays

	/ - /	/ - /	/ - /	/ - /	
Subgrantee*	Q1	Q2	Q3	Q4	Total to Date
	\$	\$	\$	\$	\$
	\$	\$	\$	\$	\$
	\$	\$	\$	\$	\$
	\$	\$	\$	\$	\$
	\$	\$	\$	\$	\$

7. Activity milestone status\*

Milestone	Planned (number)	Completed				
		Q1	Q2	Q3	Q4	%
1						
2						
3						
4						
5						
6						
7						
8						



11. Critical Annual Metrics (required for annual reporting)

METRIC ACTIVITY	METRICS	UNIT	TOTALS TO DATE
Energy Savings	Annual Reduction in natural gas consumption, by sector*		
	Sector:	mmcf	
	Sector:	mmcf	
	Annual Reduction in electricity consumption, by sector*		
	Sector:	MWh	
	Sector:	MWh	
	Annual Reduction in electricity demand, by sector*		
	Sector:	MW	
	Sector:	MW	
	Annual Reduction in fuel oil consumption, by sector*		
	Sector:	gallons	
	Sector:	gallons	
	Annual Reduction in propane consumption, by sector*		
	Sector:	gallons	
	Sector:	gallons	
	Annual Reduction in gasoline and diesel fuel consumption, by sector*		
	Sector:	gallons	
	Sector:	gallons	

Renewable Energy Capacity and Generation	Amount of wind-powered electric generating capacity installed	MW	
	Amount of electricity generated from wind systems	MWh	
	Amount of photovoltaic generating capacity installed	MW	
	Amount of electricity generated from photovoltaic systems	MWh	
	Amount of electric generating capacity from other renewable sources installed	MW	
	Amount of electricity generated from other renewable sources	MWh	
Emissions Reductions	Amount of green house gases reduced	tons	
	Amount of criteria air pollutants reduced	tons	

12. Infrastructure Investment

Does this activity contain an infrastructure investment? (Y/N):

If yes, rationale for funding the infrastructure investment:

13. Remarks (problems, issues, variance from plan)\*

14. Accomplishments, publicity, good news\*

15. Performance outcome data collected\*

16. Submitted by: \_\_\_\_\_ Date: \_\_\_\_\_  
Quarter: \_\_\_\_\_  
Typed name: \_\_\_\_\_  
Phone: \_\_\_\_\_

*\*Please use additional pages if more space is needed.*

DOE/SEP-PSR, 1/02