



Public Service Commission of Wisconsin

Lon Roberts, Chairperson
Mike Huebsch, Commissioner
Rich Zipperer, Commissioner

4822 Madison Yards Way
P.O. Box 7854
Madison, WI 53707-7854

November 2, 2018

Erick Schambarger, Director of Environmental Sustainability
City of Milwaukee
200 E Wells Street
Milwaukee, WI 53202

Re: 2018 Energy Innovation Grant Award

Dear Erick Schambarger,

On behalf of Chairperson Lon Roberts of the Public Service Commission of Wisconsin (Commission), I am pleased to inform you that **City of Milwaukee** has been selected to receive a 2018 Energy Innovation Grant in the amount of **\$190,436.00**. Your acceptance of this award will support the program objectives of positive changes to energy consumption and its cost to businesses and taxpayers, increased use of renewable energy and transportation technologies, comprehensive energy planning, and bolstered preparedness and resiliency in energy systems.

The project performance period begins on the date the contract is countersigned by the Commission and ends on **December 31, 2019**. *Any project costs incurred prior to the beginning of the project performance period will not be reimbursed.* Please sign and return to OEI@wisconsin.gov by **Friday November 16, 2018**.

Please direct any questions to your project manager, Tom Nowakowski (Tom.Nowakowski@wisconsin.gov), and copy Olivia Shanahan, Energy Grants Manager (Olivia.Shanahan@wisconsin.gov) when possible.

Additional guidance on the reporting requirements, including American Recovery and Reinvestment Act (ARRA) provisions, will be provided.

Thank you again for applying to the inaugural round of the 2018 Energy Innovation Grant Program.

Sincerely,

Theresa Elliott

Administrator
Division of Business & Program Management
Public Service Commission of Wisconsin

cc: Jamie Ferschinger, Environmental Sustainability Coordinator

AGREEMENT

Between the

**PUBLIC SERVICE COMMISSION OF WISCONSIN
OFFICE OF ENERGY INNOVATION**

and

City of Milwaukee

THIS AGREEMENT is made and entered into by and between the Public Service Commission of Wisconsin Office of Energy Innovation (“OEI”), representing the State of Wisconsin, and City of Milwaukee (“Grant Recipient”) (collectively “parties”) from the date this Agreement is signed by a duly designated employee of the Commission and the Grant Recipient, or its representative.

WHEREAS, on behalf of the State, the OEI administers the **Energy Innovation Grant Program** (“Program”) to provide funds for eligible activities; and

WHEREAS, it is the intention of the parties to this Agreement that all activities described herein shall be for their mutual benefit; and

WHEREAS, the OEI has approved an award to the Grant Recipient in the amount of **\$190,436.00** for eligible activities herein described; and

WHEREAS, the terms and conditions herein shall survive the Performance Period and shall continue in full force and effect until the Grant Recipient has completed and is in compliance with all the requirements of this Agreement; and

WHEREAS, this Agreement is mutually exclusive and is distinguished from all previous Agreements between the Grant Recipient and the OEI and contains the entire understanding between the parties;

NOW, THEREFORE, in consideration of the mutual promises and dependent documents, the parties hereto agree as follows:

The following documents are part of this Agreement:

- 1) This Agreement (including all attachments)
- 2) Scope of Work (as accepted by the OEI) (ATTACHMENT A)
- 3) Budget (ATTACHMENT B)
- 4) Grant Recipient Proposal (as accepted by the OEI) (ATTACHMENT C)
- 5) Special Provisions Relating to Work Funded Under American Recovery and Reinvestment Act of 2009 (Mar 2009) (“ARRA Provisions”) (ATTACHMENT D)
- 6) Order, dated October 25, 2018, in docket 9709-FG-2018 awarding grants for the Fiscal Year 2018 ([PSC REF#: 352181](#))

BY: _____
Erick Schambarger

BY: _____
Theresa Elliott

TITLE: Director of Environmental Sustainability

TITLE: Administrator, Division of Business and Program Management

DATE: _____

DATE: _____

GENERAL TERMS AND CONDITIONS**ARTICLE 1. CONTRACT ADMINISTRATION**

The OEI employee responsible for the administration of this Agreement shall be the Division of Business and Program Management Administrator or their designee and who shall represent the OEI's interest in review of quality, quantity, rate of progress, timeliness of services, and related considerations as outlined in this Agreement.

The Grant Recipient's employee responsible for the administration of this Agreement shall be Erik Schambarger, who shall represent the Grant Recipient's interest regarding Agreement performance, financial records and related considerations. The OEI shall be immediately notified of any change of this designee.

ARTICLE 2. APPLICABLE LAW

This Agreement shall be governed by the Laws of the State of Wisconsin and the United States. The Grant Recipient shall at all times comply with and observe all federal, state, and local laws, ordinances, and regulations which are in effect during the Performance Period of this Agreement and which in any manner affect the work or its conduct. In addition, the Grant Recipient pledges to abide by and comply with the following requirements:

1. Contract funds shall not be used to supplant existing funding otherwise budgeted or planned for projects outside of this program whether under local, state or federal law, without the consent of the OEI.
2. The Grant Recipient, its agents and employees shall observe all relevant provisions of the Ethics Code for Public Officials under Wis. Stat. Secs. 19.41 *et seq* and 19.59 *et seq*.

ARTICLE 3. LEGAL RELATIONS AND INDEMNIFICATION

The Grant Recipient shall at all times comply with and observe all federal and state laws and published circulars, local laws, ordinances, and regulations which are in effect during the Performance Period of this Agreement and which in any manner affect the work or its conduct.

In carrying out any provisions of this Agreement or in exercising any power or authority contracted to the Grant Recipient thereby, there shall be no personal liability upon the OEI, it being understood that in such matters the OEI act as agents and representatives of the State.

The Grant Recipient shall indemnify and hold harmless the OEI and all of its officers, agents and employees from all suits, actions or claims of any character brought for or on account of any injuries or damages received by any persons or property resulting from the operations of the Grant Recipient, or of any of its agents or subcontractors, in performing work under this Agreement. The Grant Recipient shall indemnify and hold harmless the OEI and all of its officers, agents and employees from all suits, actions or claims of any character brought for or on account of any obligations arising out of agreements between Grant Recipient and subcontractor(s) to perform services or otherwise supply products or services. The Grant Recipient shall also hold the OEI harmless for any audit disallowance related to the allocation of administrative costs under this Agreement, irrespective of whether the audit is ordered by federal or state agencies or by the courts.

If an audit is required by federal law and if the Grant Recipient is also the recipient of OEI funds under the same or a separate contract program, then the OEI funded programs shall also be included in the scope of the federally required audit.

ARTICLE 4. SCOPE OF WORK

The Grant Recipient shall supply or provide for all the necessary personnel, equipment, and materials (except as may be otherwise provided herein) to accomplish the tasks set forth on the attached Scope of Work and Budget (ATTACHMENTS A and B respectively). In the event of a conflict between the summary in Attachments A and B and the application and/or other supporting documents previously submitted to the State by the Grant Recipient, Attachments A and B shall control. Changes to the Scope of Work shall be by written agreement of both the OEI and the Grant Recipient.

ARTICLE 5. STANDARDS OF PERFORMANCE

The Grant Recipient shall perform the project and activities as set forth in the Grant Recipient Proposal and described herein in accordance with those standards established by statute, administrative rule, the OEI, and any applicable professional standards.

ARTICLE 6. SUBLET OR ASSIGNMENT OF AGREEMENT

The Grant Recipient, its agents, or subcontractors shall not sublet or assign all or any part of the work under this Agreement without prior written approval of the OEI. The OEI reserves the right to reject any subcontractor after notification. The Grant Recipient shall provide the OEI with a copy of any executed subcontract or accepted subcontractor bid for the purpose of administering this Agreement which relates to activities funded and which exceeds the amount shown in ATTACHMENT B. The Grant Recipient shall be responsible for all matters involving any subcontractor engaged under this Agreement, including contract compliance, performance, and dispute resolution between itself and a subcontractor. The OEI bears no responsibility for subcontractor compliance, performance, or dispute resolution hereunder.

ARTICLE 7. DISCLOSURE: STATE PUBLIC OFFICIALS AND EMPLOYEES

If a State public official (as defined in section 19.42, Wis. Stats.) or an organization in which a State public official holds at least a 10% interest is a party to this Agreement, this Agreement shall be voided by the State unless timely, appropriate disclosure is made to the State of Wisconsin Government Accountability Board, 212 East Washington Ave., Third Floor, Madison, Wisconsin 53703.

The Grant Recipient shall not engage the services of any person or persons now employed by the State of Wisconsin, including any department, commission or board thereof, to provide services relating to this Agreement without the prior written consent of the OEI and the employer of such person or persons.

ARTICLE 8. NONDISCRIMINATION IN EMPLOYMENT

The Grant Recipient shall not discriminate against any employee or applicant for employment because of age, race, religion, color, handicap, sex, physical condition, developmental disability as defined in section 51.01(5), Wis. Stats., sexual orientation as defined in s.111.32(13m), Wis. Stats., or national origin. This includes, but is not limited to, employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Except with respect to sexual orientation, the Grant Recipient shall take affirmative action to ensure equal employment opportunities. The Grant Recipient shall post in conspicuous places, available for employees and applicants for employment, notices to be provided by the State of Wisconsin setting forth the provisions of the nondiscrimination clause.

Contracts estimated to be over fifty thousand dollars (\$50,000) require the submission of a written affirmative action plan by the Grant Recipient. An exemption occurs from this requirement if the Grant Recipient has a workforce of less than fifty (50).

Within fifteen (15) working days after this Agreement is executed, the Grant Recipient shall submit the Affirmative Action Plan/exemption statement to the Public Service Commission of Wisconsin, P.O. Box 7854, Madison, Wisconsin 53707-7854 and the OEI, unless compliance eligibility is current. No extensions of this deadline shall be granted.

Failure to comply with the conditions of this clause may result in the declaration of Grant Recipient ineligibility, the termination of this Agreement, or the withholding of funds.

ARTICLE 9. SMALL BUSINESS AND MINORITY-OWNED BUSINESSES

The Grant Recipient shall make positive efforts to utilize small business and minority-owned business sources of supplies and services. Such efforts should allow these sources the maximum feasible opportunity to compete for contracts or subcontracts to be performed utilizing state or federal funds.

ARTICLE 10. TERMINATION OF AGREEMENT

The OEI may terminate this Agreement at any time with or without cause by delivering written notice to the Grant Recipient by Certified Mail, Return Receipt Requested, not less than 10 days prior to the effective date of termination. The postmark date of the written notice the OEI causes to be delivered to the Grant Recipient by Certified Mail, Return Receipt Requested, shall be the effective date of notice of termination. Upon termination, the OEI's liability shall be limited to the actual costs incurred in carrying out the project as of the date of termination plus any termination expenses having prior written approval of the OEI.

The Grant Recipient may terminate this Agreement at any time with or without cause by delivering written notice to the OEI by Certified Mail, Return Receipt Requested, not less than 10 days prior to effective date of termination. The postmark date of the written notice the Grant Recipient causes to be delivered to the OEI by Certified Mail, Return Receipt Requested, shall be the effective date of notice of termination. Upon receipt of termination notice, the Grant Recipient shall make available to the OEI program records, equipment, and any other programmatic materials. In the event the Agreement is terminated by either party, for any reason whatsoever, the Grant Recipient shall refund to the OEI within forty-five (45) days of the effective date of notice of termination any payment made by the OEI to the Grant Recipient which exceeds actual approved costs incurred in carrying out the project as of the date of termination.

ARTICLE 11. TERMINATION FOR NON-APPROPRIATION

The OEI reserves the right to terminate this Agreement in whole or in part without penalty due to non-appropriation of necessary funds.

ARTICLE 12. FAILURE TO PERFORM

The OEI reserves the right to suspend payment of funds if required reports are not provided by the Grant Recipient to the OEI on a timely basis or if performance of contracted activities is not evidenced. The OEI further reserves the right to suspend payment of funds under this Agreement if there are deficiencies related to the required reports or if performance of contracted activities is not evidenced on other contracts between the OEI and the Grant Recipient in whole or in part.

The Grant Recipient's management and financial capability including, but not limited to, audit results and performance may be taken into consideration in any or all future determinations by the OEI and may be a factor in a decision to withhold payment and may be cause for termination of this Agreement.

ARTICLE 13. PUBLICATIONS

The Grant Recipient may publish materials produced under this Agreement subject to the following conditions:

- a) All materials produced under this Agreement shall become the property of the Public Service Commission of Wisconsin, Office of Energy Innovation, and may be copyrighted in its name. The Grant Recipient reserves a royalty-free, nonexclusive and irrevocable license to reproduce, publish, otherwise use, and to authorize others to use such materials for governmental purposes.
- b) The following notation shall be carried on all articles, reports, publications or other documents resulting from this Agreement.

Acknowledgment: "This material is based upon work supported by the by the Public Service Commission of Wisconsin, Office of Energy Innovation and the Department of Energy, Office of Energy Efficiency and Renewable Energy (EERE), under the State Energy Program Award Number DE-EE0000163."

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.”

ARTICLE 14. AMENDMENT

This Agreement may be amended at any time by mutual consent of the parties hereto. Amendments shall be documented by written, signed and dated addenda.

ARTICLE 15. SEVERABILITY

If any provision of this Agreement shall be adjudged to be unlawful or contrary to public policy, then that provision shall be deemed null and void and severable from the remaining provisions, and shall in no way affect the validity of this Agreement.

ARTICLE 16. WAIVER

Failure or delay on the part of either party to exercise any right, power, privilege or remedy hereunder shall not constitute a waiver thereof. A waiver of any default shall not operate as a waiver of any other default or of the same type of default on a future occasion.

ARTICLE 17. FORCE MAJEURE

Either party's performance of any part of this Agreement shall be excused to the extent that it is hindered, delayed or otherwise made impractical by reason of flood, riot, fire, explosion, war, acts or omissions of the other party or any other cause, whether similar or dissimilar to those listed, beyond the reasonable control of that party. If any such event occurs, the non-performing party shall make reasonable efforts to notify the other party of the nature of such condition and the extent of the delay and shall make reasonable, good faith efforts to resume performance as soon as possible.

ARTICLE 18. EXTRA WORK

If the OEI desires to have the Grant Recipient perform work or render services other than provided for by the expressed intent of this Agreement such work shall be considered as Extra Work, subject to written amendment to this Agreement setting forth the nature and scope thereof and the compensation therefor as determined by mutual agreement between the OEI and the Grant Recipient. Work under such amendment shall not proceed unless and until so authorized by the OEI.

FISCAL TERMS AND CONDITIONS

ARTICLE 19. AVAILABILITY OF FUNDS

The appropriation from which payments are to be made is authorized under Sections 16.54 (*federal fund spending authority*).

ARTICLE 20. VARIANCES

Contract variances may be permissible. A variance shall not be used to authorize a revision of the amount awarded or a change in the Performance Period. Such changes shall be made by amendment to the Agreement.

ARTICLE 21. LIMITATION ON COSTS AND REBUDGETING

The OEI's contribution to the total cost, both direct and indirect, of performing the tasks under this Agreement shall not exceed **\$190,436.00** for eligible costs (see Budget attached as ATTACHMENT B). Changes to this Agreement that do not affect the Budget total may be made by written agreement of both the OEI and the Grant Recipient.

The Grant Recipient is required to notify the OEI of any transfer of funds among cost categories, direct or indirect, which exceed or are expected to exceed ten percent of the approved Total Project Cost in the Budget. Transfers of more than ten percent of funds between cost categories requires prior written approval in an amendment to this Agreement. The Grant Recipient shall submit a written request to the OEI for an amendment to the approved Budget and the amendment must be executed by both Grant Recipient and the OEI prior to the transfer.

The Grant Recipient is required to notify the OEI if the Total Project Cost is expected to increase or decrease by ten percent or more of the Total Project Cost approved in the Budget.

ARTICLE 22. ELIGIBLE COSTS

Eligible costs are those costs which can be audited and which are directly attributable to contracted activities and identified and approved in the Grant Recipient Proposal.

1. No eligible costs subject to reimbursement by this Agreement may be incurred prior to the execution of this Agreement unless previously approved in writing by the OEI.
2. Costs only as identified in the Budget and described in the Scope of Work are allowed. A Grant Recipient may request from the OEI an amendment to the budget summary of its Grant Recipient Proposal to add to or revise the list of purchases, expenses, and other activities eligible for reimbursement.
3. All methods of charging expenses against this Agreement shall be submitted for review and approval by the OEI.

ARTICLE 23. REIMBURSEMENT OF FUNDS

The Grant Recipient shall return to the OEI or other appropriate governmental agency or entity any funds paid to the Grant Recipient in excess of the allowable eligible costs under this Agreement. If the Grant Recipient fails to return excess funds, the OEI may deduct the appropriate amount from subsequent payments due to the Grant Recipient from the OEI. The OEI also reserves the right to recover such funds by any other legal means including litigation if necessary. The Grant Recipient shall indemnify and hold harmless the OEI for all suits, actions, claims and the reasonable attorneys' fees and legal expenses incurring in recovering such funds, irrespective of whether the funds are recovered.

The Grant Recipient shall be responsible for reimbursement to the OEI for any disbursed funds, which are determined by the OEI to have been misused or misappropriated. The OEI may also require reimbursement of funds if the OEI determines that any provision of this Agreement has been violated. Any reimbursement of funds which is required by the OEI, with or without termination, shall be due within forty-five (45) days after giving written notice to the Grant Recipient.

ARTICLE 24. LIMITED USE OF PROGRAM FUNDS

This Agreement is a mutually exclusive Agreement. The Grant Recipient shall not apply funds authorized pursuant to other program agreements toward the activities for which funding is authorized by this Agreement nor shall funding authorized by this Agreement be used toward the activities authorized pursuant to other program agreements. The word "funds" as used in this Article does not include Program income.

ARTICLE 25. FINANCIAL MANAGEMENT

The Grant Recipient agrees to maintain a financial management system that complies with the rules and regulations required by the Program funding source described in ATTACHMENT A and with standards established by the OEI to assure funds are spent in accordance with law and to assure that accounting records for funds received under this Agreement are sufficiently segregated from other Agreements, programs, and/or projects.

ARTICLE 26. REQUESTS FOR PAYMENT

Payments are to be used exclusively for eligible costs incurred during the Performance Period. The OEI shall make a single reimbursement payment to the Grant Recipient upon project completion and receipt of a request for payment with satisfactory documentation.

- 1) No payments will be issued by the OEI to the Grant Recipient without a request for payment.
- 2) The Grant Recipient shall draft and submit to the OEI a request for payment. The OEI may determine the format of a request for payment.
- 3) Each request for payment must include a copy of an invoice for each eligible cost item for which reimbursement is requested.
 - a) The invoice will be used to document the actual purchase price of the eligible cost item. Invoices must be accompanied by written support of eligible costs, as appropriate. This includes receipts, invoices, and internal accounting records. A request for payment must provide an independent and auditable basis for the actual purchase price of each eligible cost item.
 - b) For eligible cost items that do not have a transaction invoice, such as labor expense, the Grant Recipient shall provide a statement of the labor contributed by each employee that worked on the project and the total labor expense. The Grant Recipient shall provide each employee's name, job class, total hours worked, hourly wage, and if applicable, fringe rate. This documentation is separate from the documentation of wage rates required of some Grant Recipients by ARRA Provisions.
 - c) The OEI may delay reimbursement of a request for payment until sufficient documentation of costs, as determined by the OEI, is provided by the Grant Recipient.
- 4) The Grant Recipient shall submit a request for payment to the OEI no later than **March 31, 2020**, unless authorized by the OEI.
- 5) Each request for payment must include a statement of the match contributed by the Grant Recipient and other project partners. The reimbursement due to the Grant Recipient is the amount of actual purchase price of each eligible cost item up to the total contract amount. In no event shall the total reimbursement exceed **\$190,436.00**.
- 6) Requests for payment must be submitted as an e-mail attachment to OEI@wisconsin.gov.

ADMINISTRATIVE TERMS AND CONDITIONS

ARTICLE 27. ANNUAL INDEPENDENT AUDIT REQUIREMENT

A non-Federal entity that expends less than \$750,000 during the non-Federal entity's fiscal year in Federal awards is exempt from Federal audit requirements for that year, but records must be available for review or audit in accordance with the Wisconsin State Single Audit Guideline requirements upon request of appropriate officials of the U.S. Department of Energy, OEI, or Government Accountability Office (GAO).

Single Audit and Compliance Audit Requirements

Governmental Grant Recipients, or their assignees, that **expend** \$750,000 or more during their fiscal year in Federal awards shall comply with the Wisconsin State Single Audit Guidelines issued by the Wisconsin Department of Administration and 2 CFR 200.500 through .521. Audit reports are due to the OEI within 180 days of the close of the entity's fiscal year.

For-profit Grant Recipients, or their assignees, that **expend** \$750,000 or more during their fiscal year in U.S. Department of Energy awards must have a compliance audit conducted for that year in accordance with the provisions of 2 CFR 910.500 through .521. Audit reports are due to the OEI within 180 days of the close of the entity's fiscal year.

Submit To:

One (1) copy of the Audit shall be submitted to the email address listed below. Responses and corrective action to be taken by management shall be included for any findings or comments issued by the auditor.

If the combined total **expended** from all funding originating from Federal Government sources is less than \$750,000 in a single year, the Grant Recipient, or its assignee, shall confirm in writing that the above audit requirements are not applicable. This confirmation shall be submitted to the address listed below.

Send one copy of the Audit **or** the letter confirming that the audit requirements are not applicable via email to: OEI@wisconsin.gov.

ARTICLE 28. EXAMINATION OF RECORDS

The OEI, any of its authorized representatives and the U.S. Government shall have access to and the right at any time to examine, audit, excerpt, transcribe and copy on the Grant Recipient's premises any directly pertinent records and computer files of the Grant Recipient involving transactions relating to this Agreement. Similarly, the OEI shall have access at any time to examine, audit, test and analyze any and all physical projects subject to this Agreement. If the material is held in an automated format, the Grant Recipient shall provide copies of these materials in the automated format or such computer file as may be requested by the OEI. Such material shall be retained for three years by the Grant Recipient following final payment on the Agreement.

This provision shall also apply in the event of cancellation or termination of this Agreement. The Grant Recipient shall notify the OEI in writing of any planned conversion or destruction of these materials at least 90 days prior to such action. Any charges for copies provided by the Grant Recipient of books, documents, papers, records, computer files or computer printouts shall not exceed the actual cost thereof to the Grant Recipient and shall be reimbursed by the OEI.

The minimum acceptable financial records for the project consist of: 1) Documentation of employee time; 2) Documentation of all equipment, materials, supplies and travel expenses; 3) Inventory records and supporting documentation for allowable equipment purchased to carry out the project scope; 4) Documentation and justification of methodology used in any in-kind contributions; 5) Rationale supporting allocation of space charges; 6) Rationale and documentation of any indirect costs (submitted with initial invoice); 7) Documentation of Agreement Services and Materials; and 8) Any other records which support charges to project funds. The Grant Recipient shall maintain sufficient segregation of project accounting records from other projects or programs.

ARTICLE 29. PERFORMANCE REPORTS

The Grant Recipient shall submit periodic performance reports to the OEI on the schedule provided in the Scope of Work. The OEI may determine the format of a performance report. The performance reports shall be submitted to the OEI via the Public Service Commission of Wisconsin's Electronic Records Filing System at: psc.wi.gov.

SPECIAL TERMS AND CONDITIONS

ARTICLE 30. AMERICAN RECOVERY AND REINVESTMENT ACT REPORTS

The Grant Recipient shall submit the necessary documentation to comply with the applicable special provisions of the American Recovery and Reinvestment Act (ARRA) (See ATTACHMENT D).

ARTICLE 31. COMPETITIVE PROCUREMENT PRACTICES

The Grant Recipient shall utilize State of Wisconsin competitive procurement practices for products and services purchased as a result of this award. Where state and local procurement practices differ, state rules, standards, policies and practices shall take precedence.

ARTICLE 32. REASONABLE COSTS

The Grant Recipient shall control unit costs for products and services procured as a result of this Agreement.

ARTICLE 33. AUDITS

The Grant Recipient shall perform an “Agreed upon Procedures Audit” on request. This audit shall consist of procedures and questions agreed upon by the OEI and the Auditor and shall expand beyond the scope of that provided for under the Wisconsin State Single Audit Guideline requirements.

ARTICLE 34. EQUIPMENT ACCOUNTABILITY

Title to equipment purchased or improved with funds provided under this Agreement shall vest in the Grant Recipient’s name, unless otherwise specified by an attachment. Disposition of any equipment shall be in accordance with applicable property disposal procedures in 2 CFR 200.313.

ARTICLE 35. PATENT INFRINGEMENT

The Grant Recipient selling to the OEI or State of Wisconsin any articles described herein guarantees the articles were manufactured or produced in accordance with applicable federal labor laws. Further that the sale or use of any articles described herein shall not infringe any United States patent. The Grant Recipient covenants that it shall, at its own expense, defend every suit which shall be brought against the OEI or State of Wisconsin (provided that such Grant Recipient is promptly notified of such suit, and all papers therein are delivered to it) for any alleged infringement of any patent by reason of the sale or use of such articles and agrees that it shall pay all costs, damages, and profits recoverable in any such suit.

ARTICLE 36. PROGRAM INCOME

Program income means gross income received by the Grant Recipient that is directly generated from the use of the Agreement award, including but not limited to repayments of funds that had been previously provided to eligible beneficiaries; interest earned on any or all Agreement funds obtained from the OEI; proceeds derived after the Agreement close out from the disposition of real property acquired with any or all funds provided under this Agreement or interest earned on Program income pending its disposition.

All Program income shall be recorded and used in accordance with the rules and regulations of the Program funding source described herein. If at any time changes in the use of Program income are considered, the Grant Recipient shall submit a plan detailing the proposed uses of Program income to the OEI for approval. Should the Grant Recipient decide following Agreement close out to discontinue using Program income for such purposes, the Grant Recipient shall return the Program income balance and any additional Program income accrued to the OEI by January 31 of the following year.

ARTICLE 37. TRAINING – WORKSHOPS – SEMINARS – EXHIBIT SPACE

If any portion of the funds shall be used to support training, workshops, seminars, exhibit space, etc., the OEI shall receive complimentary registrations and/or exhibit/booth space, if requested.

ARTICLE 38. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY, AND VOLUNTARY EXCLUSION

The Grant Recipient certifies that to the best of its knowledge and belief, that it and its principals:

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

Where the prospective primary participant is unable to certify to any of the statements in this article, such prospective participant shall attach an explanation to this proposal.

ATTACHEMENT A SCOPE OF WORK

In the event of conflict between the provisions of the Terms and Conditions and the Scope of Work and Budget, the provisions in the Scope of Work and Budget shall take precedent.

Summary:

The scope of the project is that set forth in the application of City of Milwaukee, which is herein incorporated into this Agreement as Attachment C – Grant Recipient Proposal.

Specific Deliverables and Milestones:

1. Complete a comprehensive energy plan that addresses the following:
 - a. Identification and engagement of stakeholders.
 - b. Conduct investment grade audits of high energy consuming buildings and sites for optimization.
 - c. Complete assessment of the City’s vehicle fleet portfolio for alternative fuel and vehicle efficiency. The fleet audit will identify additional potential energy saving improvements by using clean vehicle technologies, optimizing policies and procedures and identifying specialized vehicle technologies, which can reduce total fuel use and decrease greenhouse gas emissions.
 - d. Assessment for onsite renewable opportunities.
 - e. Risk, price and execution strategy for onsite and offsite renewable energy procurement
 - f. An outline to develop the underpinnings of a “Set of Guiding Principles” for Energy Practices and Cultural Distinctions for Conservation.
2. Complete additional assessments that address:
 - a. Energy purchasing including an overview and options for green energy procurement as a cost-effective means to achieve carbon neutrality.
 - b. Feasibility of new and alternative energy and storage technologies that may be incorporated into the operations at municipal sites.
 - a. Development of the initial philosophy for a future Cultural Action Plan for Social Responsibility and Outreach.

Additional Deliverables. The Grant Recipient shall:

1. Submit complete documentation along with a request for payment.
2. Comply with and submit timely reports related to the program.
3. Comply with applicable federal, state, and municipal laws, codes, and regulations for work performed under this award.

Funding:

Funding in the amount up to **\$190,436.00** is provided using funds granted by the U.S. Department of Energy to cover the project costs as detailed in the budget section below. Match amount of **\$48,636.00** is required.

Invoicing:

Payments will be distributed by OEI to the Grant Recipient upon project completion and receipt of a request for payment with satisfactory documentation. The Grant Recipient shall submit a final request for payment to the OEI no later than **May 31, 2020**, unless authorized by the OEI.

Site Visits:

U.S. Department of Energy, its authorized representatives, and OEI 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. The Grant Recipient must 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.

Performance Period:

This Agreement becomes effective on the date it is signed by the OEI and the performance period ends on **December 31, 2019.**

Publications:

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 by the Public Service Commission of Wisconsin, Office of Energy Innovation and the Department of Energy, Office of Energy Efficiency and Renewable Energy (EERE), under the State Energy Program Award Number DE-EE0000163."

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."

Reporting Requirements:

QUARTERLY PERFORMANCE REPORT:

The Contractor shall provide OEI with quarterly reports, as dated in the table below, during the term of this Agreement. The OEI may determine the format of a quarterly report. The reports shall include:

1. Summary of work completed to date and status of each of the deliverables described in the Scope of Work.
2. Project planned and unexpected costs.
3. Copies of materials produced and press related to the project.
4. Lessons learned and continuous improvement efforts.

The reports shall be submitted to the Electronic Records Filing System on the Public Service Commission of Wisconsin’s website: <https://psc.wi.gov>.

The timeline for these reports is specified below:

Quarterly Reporting Period	Quarterly Report Due
Project Start Date - December 31, 2018	January 15, 2019
January 1 – March 31, 2019	April 15, 2019
April 1 – June 30, 2019	July 15, 2019
July 1 – September 30	October 15, 2019
October 1 – December 31, 2019	January 15, 2020

OTHER REPORTING:

Final versions of any publications including but not limited to, guidelines, checklists, media and outreach must be provided to the OEI in an electronic format.

ARRA PROVISION REPORTING:

The Grant Recipient shall submit the necessary reports to comply with the applicable special provisions of the American Recovery and Reinvestment Act (ARRA) (See ATTACHMENT D).

FINAL PERFORMANCE REPORT:

A final report is due 90 days after the Agreement terminates. The OEI may determine the format of a final report. The report shall be submitted to the OEI via the Electronic Records Filing System on the Public Service Commission of Wisconsin’s website: psc.wi.gov.

PROPERTY DISPOSITION REPORTING:

Title to equipment purchased or improved with funds provided under this Agreement shall vest in the Grant Recipient's name, unless otherwise specified by an attachment. Disposition of any equipment shall be in accordance with applicable property disposal procedures in 2 CFR 200.313.

**ATTACHMENT B
BUDGET**

In the event of conflict between the provisions of the Terms and Conditions and the Scope of Work and Budget, the provisions in the Scope of Work and Budget shall take precedent.

Category	<u>Contract Amount</u>	<u>Match</u>	<u>Total Project Cost</u>
1) Personnel	\$ 20,025.00	\$ 20,025.00	\$ 40,050.00
2) Fringe Benefits	\$ 9,011.00	\$ 9,011.00	\$ 18,022.00
3) Equipment	\$ 0.00	\$ 0.00	\$ 0.00
4) Supplies	\$ 500.00	\$ 0.00	\$ 500.00
5) Contractual	\$ 160,900.00	\$ 19,600.00	\$ 180,500.00
6) Other	\$ 0.00	\$ 0.00	\$ 0.00
Total Direct Costs:	\$ 190,436.00	\$ 48,636.00	\$ 239,072.00
7) Indirect	\$ 0.00	\$ 0.00	\$ 0.00
TOTALS:	\$ 190,436.00	\$ 48,636.00	\$ 239,072.00

**ATTACHMENT C
GRANT RECIPIENT PROPOSAL**

The grant recipient proposal, as filed on the Commission's Electronic Records Filing system, is herein incorporated into this Agreement.

Public Filing(s): [PSC REF#: 347436](#)

ATTACHMENT D

SPECIAL PROVISIONS RELATING TO WORK FUNDED UNDER AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009 (MAR 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 term, Covered Funds means funds expended or obligated from appropriations under the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5. Covered Funds will have special accounting codes and will be identified as Recovery Act funds in the grant, cooperative agreement or TIA and/or modification using Recovery Act funds. Covered Funds must be reimbursed by September 30,

2015.

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

Recipient means any entity that receives Recovery Act funds directly from the Federal government (including Recovery Act funds received through grant, loan, or contract) other than an individual and includes a State that receives Recovery Act Funds.

Special Provisions

A. Flow Down Requirement

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

B. Segregation of Costs

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

C. Prohibition on Use of Funds

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

D. Access to Records

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

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

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

E. Publication

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

Notice of Restriction on Disclosure and Use of Data

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

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

E. 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, for specific requirements of this section and prescribed language for the notices.)

E. Request for Reimbursement

RESERVED

F. 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.

G. Information in Support of Recovery Act Reporting

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

H. Availability of Funds

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

I. 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.

J. 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.

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, Chinese Taipei (Taiwan), 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);

(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; or

(4) An Agreement between Canada and the United States of America on Government Procurement country (Canada).

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. As of January 1, 2010, this obligation shall only apply to projects with an estimated value of \$7,804,000 or more.

(1) 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.

(2) 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:

none

(3) 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.

(ii) 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.

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

Foreign and Domestic Items Cost Comparison

Description	Unit of measure	Quantity	Cost (dollars)*
Item 1:			
Foreign steel, iron, or manufactured good	_____	_____	_____
Domestic steel, iron, or manufactured good	_____	_____	_____
Item 2:			
Foreign steel, iron, or manufactured good	_____	_____	_____
Domestic steel, iron, or manufactured good	_____	_____	_____

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

[Include other applicable supporting information.]

[*Include all delivery costs to the construction site.]

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).

(a) 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.

HISTORIC PRESERVATION

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.

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.

(B) 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.

(1) 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.

(2) 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.

- (i) (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.

(B) 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.

(C) 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.

(i) 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.

(3) 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.

(i) 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.

(ii) 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.

(4) 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.

(5) 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.

(6) 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.

(7) 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.

(8) 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.

(1) 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) This delegation of Department of Energy (DOE) functions to the Recipient applies only to DBA effort performed by Subrecipients and Contractors under this award. Those functions are not delegated to the Recipient for any DBA effort performed by employees of the Recipient under this award. 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.

FOR INFORMATIONAL PURPOSES ONLY

2 CFR 200.331(1) Federal Award Identification.	
(i) Subrecipient name (which must match the name associated with its unique entity identifier);	City of Milwaukee
(ii) Subrecipient's unique entity identifier;	DUNS Number or CAGE Code:006434211
(iii) Federal Award Identification Number (FAIN);	
(iv) Federal Award Date (see §200.39 Federal award date) of award to the recipient by the Federal agency;	July 27, 2009
(v) Subaward Period of Performance Start and End Date;	Project Start Date through December 31, 2019
(vi) Amount of Federal Funds Obligated by this action by the pass-through entity to the subrecipient;	\$190,436.00
(vii) Total Amount of Federal Funds Obligated to the subrecipient by the pass-through entity including the current obligation;	\$190,436.00
(viii) Total Amount of the Federal Award committed to the subrecipient by the pass-through entity;	\$190,436.00
(ix) Federal award project description, as required to be responsive to the Federal Funding Accountability and Transparency Act (FFATA);	Recovery Act – State Energy Program Formula Grant
(x) Name of Federal awarding agency, pass-through entity, and contact information for awarding official of the Pass-through entity;	Federal Awarding Agency: United States Department of Energy Pass-Through Entity: Public Service Commission of Wisconsin Pass-Through Entity Contact Information: Theresa Elliott, Administrator Division of Business and Program Support email: Theresa.Elliott@wisconsin.gov phone: (608)-266-3587
(xi) CFDA Number and Name; the pass-through entity must identify the dollar amount made available under each Federal award and the CFDA number at time of disbursement;	CFDA Number and Name: 81.041 – “Recovery Act – State Energy Program Formula Grant” Dollar Amount Made Available: \$55,488,000.00
(xii) Identification of whether the award is R&D; and	This award does not support research and development (R&D).
(xiii) Indirect cost rate for the Federal award (including if the de minimis rate is charged per §200.414 Indirect (F&A) costs).	4.66%