County of Los Angeles
INTERNAL SERVICES DEPARTMENT
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"To enrich lives through effective and caring service"

ADOPTED
BOARD OF SUPERVISORS
COUNTY OF LOS ANGELES

18 September 3, 2013

SACHI A. HAMAI
EXECUTIVE OFFICER

September 03, 2013

The Honorable Board of Supervisors
County of Los Angeles
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, California 90012

Dear Supervisors:

REQUEST FOR APPROVAL AND AWARD OF CONSTRUCTION PROJECT MANAGEMENT AND SUPPORT SERVICES CONTRACT (ALL DISTRICTS – 3 VOTES)

SUBJECT

Request approval to award and execute a contract with Vanir Construction Management, Inc. (Vanir) to provide construction project management and support services for various projects.

IT IS RECOMMENDED THAT THE BOARD:

1. Approve and instruct the Chairman to sign the attached contract with Vanir Construction Management, Inc. (Attachment I) to provide construction project management and support services for various projects to Internal Services Department (ISD) Facilities Operations Services (FOS) and County Office of Sustainability (COS), effective October 1, 2013, for an initial term of one (1) year, with four (4) one-year extension options, and six (6) month-to-month extensions for a maximum total contract term of five (5) years and six (6) months, for an annual not-to-exceed fee of $2.5 million.

2. Authorize the Director of ISD, or designee, by written notice to the Contractor, to increase the maximum annual sum by up to ten percent (10%) of the not-to-exceed annual contract amount.

3. Authorize the Director of ISD, or designee, to (i) exercise extensions in accordance with the contract, (ii) make necessary changes which affect the scope of work, term, contract Sum, payments, or any term or condition included under this contract; and (iii) execute amendments should the original contracting entities merge, be acquired, or otherwise have a change of entity.

PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION

ISD continues to provide construction project management and support services related to the County's maintenance, repair and refurbishment projects managed by ISD's Facilities Operations

Services, and energy efficiency and LEED certification projects managed by the County Office of Sustainability. ISD supplements in-house resources with contract project managers to perform these services.

On May 31, 2011, your Board approved a contract for construction project management services with Vanir Construction Management, Inc. On November 13, 2012, your Board approved an increase to the contract expenditure authority for this contract by $1.3 million to meet the immediate and unanticipated project management needs for Fiscal Year (FY) 2012-13. Approval of the recommended actions will provide ISD with resources to supplement project management services for subsequent fiscal years.

Implementation of Strategic Plan Goals

The recommended contract supports the County's Strategic Plan Goals No. 1, Operational Effectiveness by providing timely facilities services, effectively managing County resources and investing in public infrastructure.

FISCAL IMPACT/FINANCING

Funding will be provided by billings to County departments that are requesting ISD project management services and from various grants for energy efficiency projects. Adequate appropriation is available in both the ISD Operating Budget and the Utilities Budget for FY 2013-14.

The approval of the recommended contract does not guarantee the Contractor any minimum amount of business. ISD will only incur project management expenditures to the extent that they are offset through County department billings and within available appropriations. Funding in subsequent fiscal years will be requested on an annual basis. The annual contract value will not exceed $2.5 million.

FACTS AND PROVISIONS/LEGAL REQUIREMENTS

The recommended contract has been approved as to form by County Counsel. The contract contains the Board's required contract provisions including those pertaining to consideration of qualified County employees targeted for layoffs, as well as qualified GAIN/GROW participants for employment openings, compliance with the Jury Service Ordinance, Safely Surrendered Baby Law and the Child Support program.

ISD has determined that the proposed contract is not subject to the County's Living Wage Program. County Code 2.121 does not apply to construction project management services as the contracted work is temporary and intermittent, and highly technical in nature.

The contract rates are fixed for the initial term of the contract. The contract allows for a Cost of Living Adjustment (COLA) increase during the option years, if the option years are exercised by the County and consistent with the Board approved methodology.

The contract is subject to the Mini-Brooks Act which requires, in part, that local public entities negotiate a contract at a fair and reasonable fee after selection of the best qualified contractor.

The Contractor will not be asked to perform services exceeding the approved contract, scope of work, or contract period performance.

ENVIRONMENTAL DOCUMENTATION

The proposed activity is not a project pursuant to the California Environmental Quality Act (CEQA) because it is an activity that is excluded from the definition of a project by Section 15378(b) of the State CEQA Guidelines. The proposed action is an administrative activity of the government which will not result in a direct or indirect change to the environment.

CONTRACTING PROCESS

On February 26 2013, ISD released a Request for Proposals (RFP) for Construction Project Management and Support Services and posted the solicitation and contracting opportunity announcement on the County's "Doing Business with Us" website (Attachment II).

Thirty-three (33) vendors attended the Mandatory Proposer's Conference held on March 18, 2013 (Attachment III). Five (5) proposals were received by the April 9, 2013 deadline and were reviewed for compliance with the minimum requirements set forth in the RFP. All proposals were determined to be in compliance with the minimum requirements and an evaluation committee evaluated the responses in accordance with the evaluation criteria in the RFP. The non-selected proposers received debriefings on June 5 and 6, 2013, and there were no protests received for this solicitation.

A summary of Community Business Enterprise Program information for the recommended vendor is attached (Attachment IV).

IMPACT ON CURRENT SERVICES (OR PROJECTS)

No staff impact will result from the award of the recommended contract, as the requested contract is intended to augment, and not replace County workforce.

CONCLUSION

Approval of the recommended contract will allow ISD to continue providing timely construction project management and support services to client County departments.

Respectfully submitted,

TOM TINDALL

Director

TT:JS:YY

Enclosures

c: Executive Office, Board of Supervisors
Chief Executive Officer
County Counsel

Attachment I

CONTRACT

BY AND BETWEEN

COUNTY OF LOS ANGELES

AND

VANIR CONSTRUCTION MANAGEMENT, INC.

FOR

CONSTRUCTION PROJECT MANAGEMENT AND SUPPORT SERVICES

78026

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CONTRACT BETWEEN
COUNTY OF LOS ANGELES
AND
VANIR CONSTRUCTION MANAGEMENT, INC.
FOR
CONSTRUCTION PROJECT MANAGEMENT AND SUPPORT SERVICES

This Contract and Exhibits is entered into as of September 3, 2013 by and between the County of Los Angeles, a political subdivision of the State of California ("County") and, Vanir Construction Management, Inc. a California corporation ("Contractor"), with reference to the following facts.

RECITALS

WHEREAS, the County may contract with private businesses for Construction Project Management and Support Services when certain requirements are met;

WHEREAS, the Contractor is a private firm specializing in providing Construction Project Management and Support Services;

WHEREAS, this Contract is authorized under California Codes, Government Code Section 31000 which authorizes the Board of Supervisors, Director of Internal Services Department (ISD) to contract for special services;

WHEREAS, California Codes, Government Code Sections 4525 – 4526, authorize the County to select environmental and construction project management firms on the basis of demonstrated competence and on the professional qualifications necessary for the satisfactory performance of the services required;

WHEREAS, California Codes, Government Code Section 4528 authorizes the County to negotiate a contract with the best qualified firm at compensation which it determines to be fair and reasonable to the County;

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants contained herein, and other good and valuable consideration, the parties agree as follows:

The recitals to this Contract No. are incorporated into the body of this Contract No. by this reference.

78026

1.0 APPLICABLE DOCUMENTS

Exhibits A, B, C, D, E, F, G, H, I, J, and K are attached to and form a part of this Contract. In the event of any conflict or inconsistency in the definition or interpretation of any word, responsibility, schedule, or the contents or description of any task, deliverable, goods, service, or other work, or otherwise between the base Contract and the Exhibits, or between Exhibits, such conflict or inconsistency shall be resolved by giving precedence first to the Contract and then to the Exhibits according to the following priority.

Standard Exhibits:

1.1 EXHIBIT A - Statement of Work (SOW)

1.2 EXHIBIT B - Contractor's EEO Certification

1.3 EXHIBIT C - County's Administration

1.4 EXHIBIT D - Contractor's Administration

1.5 EXHIBIT E - Contractor Acknowledgement and Confidentiality Agreement

1.6 EXHIBIT F - Jury Service Ordinance

1.7 EXHIBIT G - Safely Surrendered Baby Law

Unique Exhibits

SB 1262 – Nonprofit Integrity Act of 2004

1.8 EXHIBIT H - Charitable Contributions Certification

Flow-Down Provisions

1.9 EXHIBIT I - California Energy Commission (CEC) Provisions

1.10 EXHIBIT J - U.S. Department of Energy (DOE) Provisions

Pricing

1.11 EXHIBIT K - Pricing Schedule

2.0 DEFINITIONS

The headings herein contained are for convenience and reference only and are not intended to define the scope of any provision thereof. The following words as used herein shall be construed to have the following meaning, unless otherwise apparent from the context in which they are used.

2.1 **Contract**: Agreement executed between County and Contractor. It sets forth the terms and conditions for the issuance and performance of Exhibit A - SOW.

2.2 **Contractor**: The sole proprietor, partnership, or corporation that has entered into a contract with the County to perform or execute the work covered by Exhibit A - SOW.

2.3 **Contract Project Manager**: The individual designated by the Contractor to administer the Contract operations after the Contract award.

2.4 **County Contract Project Monitor**: Person with responsibility to oversee the day to day activities of this Contract. Responsibility for inspections of any and all tasks, deliverables, goods, services and other work provided by the Contractor.

2.5 **County Project Director**: Person designated by the County with authority for the County on contractual or administrative matters relating to this Contract that cannot be resolved by the County's Project Manager.

2.6 **County Project Manager**: Person designated by the County's Project Director to manage the operations under this Contract.

2.7 **Day(s)**: Calendar day(s) unless otherwise specified.

2.8 **Fiscal Year**: The twelve (12) month period beginning July 1st and ending the following June 30th.

3.0 WORK

3.1 Pursuant to the provisions of this Contract, the Contractor shall fully perform, complete and deliver on time, all tasks, deliverables, services and other work as set forth in herein.

3.2 If the Contractor provides any tasks, deliverables, goods, services, or other work to the County, or utilizes other than the County-approved Contractor Personnel, other than as specified in this Contract as originally written or modified in accordance with Sub-paragraph 8.1 - Amendments, these shall be gratuitous efforts on the part of the Contractor for which the Contractor shall have no claim whatsoever against the County.

3.3 As set forth in Exhibit A - SOW, Paragraph 1.0 – Scope of Work, the County does not guarantee a minimum or maximum number of projects per year.

4.0 TERM OF CONTRACT

4.1 The term of this Contract shall be one (1) year commencing after execution by the County's Board of Supervisors, unless sooner terminated or extended, in whole or in part, as provided in this Contract.

4.2 The County shall have the sole option to extend this Contract term for up to four (4) additional one-year periods and six (6) month-to-month extensions, for a maximum total Contract term of five (5) years and six (6) months. Each such option and extension shall be exercised at the sole discretion of the Director of ISD.

The County maintains databases that track/monitor contractor performance history. Information entered into such databases may be used for a variety of purposes, including determining whether the County will exercise a contract term extension option.

4.3 The Contractor shall notify County when this Contract is within six (6) months from the expiration of the term as provided for hereinabove. Upon occurrence of this event, the Contractor shall send written notification to County at the address herein provided in Exhibit C - County's Administration.

5.0 CONTRACT SUM

5.1 The Contractor shall not be entitled to any payment by the County under this Contract except pursuant to validly executed and satisfactorily performed Work. In each year of this Contract, the total of all amounts actually expended by the County hereunder ("maximum annual expenditures") may not exceed $2,500,000. The sum of such annual expenditures for the duration of the Contract is the Contract Sum. The Contract Sum shall not exceed $12,500,000, for the maximum total Contract term stated in Section 4.0. The County may, by written notice to the Contractor, increase the maximum annual compensation by up to 10% of the not-to-exceed fee, or $250,000 annually. The County has sole discretion to expend some, all, or none of such budgeted amounts.

5.2 The Contractor shall not be entitled to payment or reimbursement for any tasks or services performed, nor for any incidental or administrative expenses whatsoever incurred in or incidental to performance hereunder, except as specified herein. Assumption or takeover of any of the Contractor's duties, responsibilities, or obligations, or performance of same by any entity other than the Contractor, whether through assignment, subcontract, delegation, merger, buyout, or any other mechanism, with or without consideration for any reason whatsoever, shall occur only with the County's express prior written approval.

5.3 The Contractor shall maintain a system of record keeping that will allow the Contractor to determine when it has incurred seventy-five percent (75%) of the total contract authorization under this Contract. Upon occurrence of this event, the Contractor shall send written notification to County at the address herein provided in Exhibit C - County's Administration.

5.4 **No Payment for Services Provided Following Expiration/ Termination of Contract**

The Contractor shall have no claim against the County for payment of any money or reimbursement, of any kind whatsoever, for any service provided by the Contractor after the expiration or other termination of this Contract. Should the Contractor receive any such payment it shall immediately notify the County and shall immediately repay all such funds to the County. Payment by the County for services rendered after expiration/termination of this Contract shall not constitute a waiver of County's right to recover such payment from the Contractor. This provision shall survive the expiration or other termination of this Contract.

5.5 **Invoices and Payments**

5.5.1 The Contractor's invoices shall be priced in accordance with Exhibit K - Pricing Schedule. The Contractor shall invoice the County only for providing the tasks, deliverables, goods, services, and other work specified in Exhibit A - SOW and elsewhere hereunder. The Contractor shall prepare invoices, which shall include the charges owed to the Contractor by the County under the terms of this Contract. The Contractor's shall be paid only for the tasks, deliverables, goods, services, and other work approved in writing by the County. If the County does not approve work in writing no payment shall be due to the Contractor for that work.

5.5.2 The Contractor's invoices shall contain the information set forth in Exhibit A - SOW describing the tasks, deliverables, goods, services, work hours, and facility and/or other work for which payment is claimed.

5.5.3 All invoices under this Contract for services provided for FOS shall be submitted in two (2) copies to the following address:

Internal Services Department
Facilities Operations Services
Alterations & Improvements Division
Attention: Project Manager
1100 N Eastern Ave, 1st Fl
Los Angeles, CA 90063

5.5.4 All invoices under this Contract for services provided for COS shall be submitted in two (2) copies to the following address:

Internal Services Department
County Office of Sustainability
Energy Management Division
Attention: Project Manager
1100 N Eastern Ave, 3rd Fl
Los Angeles, CA 90063

5.5.5 **County Approval of Invoices**

All invoices submitted by the Contractor for payment must have the written approval of the County's Project Manager prior to any payment thereof. In no event shall the County be liable or responsible for any payment prior to such written approval. Approval for payment will not be unreasonably withheld

5.5.6 **Local Small Business Enterprises – Prompt Payment Program**

Certified Local SBEs will receive prompt payment for services they provide to County departments. Prompt payment is defined as 15 calendar days after receipt of an undisputed invoice.

5.5.7 **Reimbursable Expense – Vehicle Mileage**

5.5.7.1 The Contractor will be reimbursed for mileage and parking expenses for staff providing services under this Contract. Prior to commencement of the Contract, Contractor must submit a complete listing of staff anticipated to work on the Contract to County's Project Manager. In the event of a change to staff assigned to the Contract, Contractor must submit a revised listing of staff prior to requesting reimbursement.

5.5.7.2 Contractor shall comply with the standards set forth in the County's Fiscal Manual, Section 13.12.0 Mileage, et. seq., for County employees. The County's Fiscal Manual may be obtained on the Auditor-Controller's website at: http://auditorweb.co.la.ca.us/Auditor-Controller/CountyFiscalManual. The County's most current Fiscal Manual and notices shall apply throughout the term of the

Contract. No Contractor markup for mileage and parking shall be applied to Contractor's invoices. Fiscal Manual is provided solely for information purposes related to the process for calculating mileage. Contractor shall comply with Section 8.25, Insurance Coverage of this contract.

5.5.7.3 In no event shall County have any liability associated with Contractor's mileage claim.

5.6 **Cost of Living Adjustments (COLA's)**

The contract (hourly, daily, monthly, etc.) amount may be adjusted annually based on the increase or decrease in the U.S. Department of Labor, Bureau of Labor Statistics Consumer Price Index (CPI) for the Los Angeles-Riverside-Orange County Area for the most recently published percentage change for the 12-month period preceding the contract anniversary date, which shall be the effective date for any cost of living adjustment. However, any increase shall not exceed the general salary movement granted to County employees as determined by the Chief Executive Office as of each July 1 for the prior 12-month period. Furthermore, should fiscal circumstances ultimately prevent the Board from approving any increase in County employee salaries, no cost of living adjustments will be granted. Where the County decides to grant a Cost of Living Adjustment (COLA) pursuant to this paragraph for living wage contracts, it may, in its sole discretion exclude the cost of labor (including the cost of wages and benefits paid to employees providing services under this contract) from the base upon which a COLA is calculated, unless the Contractor can show that his/her labor cost will actually increase.

6.0 ADMINISTRATION OF CONTRACT - COUNTY

All County Administration referenced in the following Sub-paragraphs are set forth in Exhibit C - County's Administration. The County shall notify the Contractor in writing of any change in the names or addresses shown.

6.1 COUNTY'S PROJECT DIRECTOR

Responsibilities of the County's Project Director include:

- ensuring that the objectives of this Contract are met; and
- providing direction to the Contractor in the areas relating to the County policy, information requirements, and procedural requirements.

6.2 COUNTY'S PROJECT MANAGER

The responsibilities of the County's Project Manager include:

- meeting with the Contractor's Project Manager on a regular basis; and
- inspecting any and all tasks, deliverables, goods, services, or other work provided by or on behalf of the Contractor.

The County's Project Manager is not authorized to make any changes in any of the terms and conditions of this Contract and is not authorized to further obligate the County in any respect whatsoever.

6.3 COUNTY'S CONTRACT PROJECT MONITOR

The County's Project Monitor is responsible for overseeing the day-to-day administration of this Contract. The Project Monitor reports to the County's Project Manager.

7.0 ADMINISTRATION OF CONTRACT - CONTRACTOR

7.1 CONTRACTOR'S PROJECT MANAGER

7.1.1 The Contractor's Project Manager is designated in Exhibit D - Contractor's Administration. The Contractor shall notify the County in writing of any change in the name or address of the Contractor's Project Manager. Failure to so notify the County in writing may constitute a material breach and the County may, in its sole discretion, terminate the Contract or assess the fees set forth in Exhibit A - SOW, Attachment 2 - Performance Requirements Summary (PRS) Chart.

7.1.2 The Contractor's Project Manager shall be responsible for the Contractor's day-to-day activities as related to this Contract and shall coordinate with County's Project Manager and County's Contract Project Monitor on a regular basis.

7.2 APPROVAL OF THE CONTRACTOR'S STAFF

The County has the absolute right to approve or disapprove all of the Contractor's staff performing work hereunder and any proposed changes in the Contractor's staff, including, but not limited to, the Contractor's Project Manager.

7.3 THE CONTRACTOR'S STAFF IDENTIFICATION

All of Contractor's employees assigned to work on a regular basis at the County facilities are required to have a County Identification (ID) badge on their person. It is in the County Project Director's sole discretion whether a particular employee, or group of employees, will be required to have a County ID badge. If it is decided that a county ID badge is not required, the Contractor's employees assigned to work on the County facilities are required to have a Contractor company-issued ID badge on their person. ID badges must be visible at all times. The Contractor shall bear all expenses involved in providing badges.

7.3.1 The Contractor is responsible for ensuring that employees have obtained a County, or Contractor company-issued, ID badge, as appropriate, before they are assigned to work in a County facility. The Contractor personnel required to present an identification badge may be asked to leave a County facility by a County representative if they do not have the proper ID badge on their person.

7.3.2 The Contractor shall notify the County within one business day when staff is terminated from working under this Contract. The Contractor shall retrieve and return an employee's County-issued ID badge to the County on the next business day after the employee has terminated employment with the Contractor.

7.3.3 If the County requests the removal of Contractor's staff, Contractor shall retrieve and return an employee's County-issued ID badge to the County

on the next business day after the employee has been removed from working on the County's Contract.

7.4 BACKGROUND AND SECURITY INVESTIGATIONS

7.4.1 Each of Contractor's staff performing services under this Contract who is in a designated sensitive position, as determined by the County in County's sole discretion, shall undergo and pass a background investigation to the satisfaction of the County as a condition of beginning and continuing to perform services under this Contract. Such background investigation may include, but shall not be limited to, criminal conviction information obtained through fingerprints submitted to the California Department of Justice. The fees associated with the background investigation shall be at the expense of the Contractor, regardless if the member of the Contractor's staff passes or fails the background investigation.

7.4.2 If a member of Contractor's staff does not pass the background investigation, the County may request that the member of the Contractor's staff be immediately removed from performing services under the Contract at any time during the term of the Contract. The County will not provide to the Contractor or to the Contractor's staff any information obtained through the County's background investigation.

7.4.3 The County, in its sole discretion, may immediately deny or terminate facility access to any member of the Contractor's staff that does not pass such investigation to the satisfaction of the County or whose background or conduct is incompatible with the County facility access.

7.4.4 Disqualification of any member of the Contractor's staff pursuant to this Sub-paragraph 7.4 shall not relieve the Contractor of its obligation to complete all work in accordance with the terms and conditions of this Contract.

7.5 CONFIDENTIALITY

7.5.1 The Contractor shall maintain the confidentiality of all records and information in accordance with all applicable Federal, State and local laws, rules, regulations, ordinances, directives, guidelines, policies and procedures relating to confidentiality, including, without limitation, the County policies concerning information technology security and the protection of confidential records and information.

7.5.2 The Contractor shall indemnify, defend, and hold harmless the County, its officers, employees, and agents, from and against any and all claims, demands, damages, liabilities, losses, costs and expenses, including, without limitation, defense costs and legal, accounting and other expert, consulting, or professional fees, arising from, connected with, or related to any failure by Contractor, its officers, employees, agents, or subcontractors, to comply with this Sub-paragraph 7.5, as determined by the County in its sole judgment. Any legal defense pursuant to the Contractor's indemnification obligations under this Sub-paragraph 7.5 shall be conducted by the Contractor and performed by counsel selected

by the Contractor and approved by the County. Notwithstanding the preceding sentence, the County shall have the right to participate in any such defense at its sole cost and expense, except that in the event the Contractor fails to provide the County with a full and adequate defense, as determined by the County in its sole judgment, the County shall be entitled to retain its own counsel, including, without limitation, County Counsel, and reimbursement from the Contractor for all such costs and expenses incurred by the County in doing so. The Contractor shall not have the right to enter into any settlement, agree to any injunction, or make any admission, in each case, on behalf of the County without the County's prior written approval.

7.5.3 The Contractor shall inform all of its officers, employees, agents and subcontractors providing services hereunder of the confidentiality provisions of this Contract.

7.5.4 The Contractor shall sign and adhere to the provisions of Exhibit E - Contractor Acknowledgement and Confidentiality Agreement.

8.0 STANDARD TERMS AND CONDITIONS

8.1 AMENDMENTS

8.1.1 For any change which affects the scope of work, term, Contract Sum, payments, or any term or condition included under this Contract, an Amendment shall be prepared and executed by the Contractor and by the Director of ISD.

8.1.2 The County's Board of Supervisors or Chief Executive Officer or designee may require the addition and/or change of certain terms and conditions in the Contract during the term of this Contract. The County reserves the right to add and/or change such provisions as required by the County's Board of Supervisors or Chief Executive Officer. To implement such changes, an Amendment to the Contract shall be prepared and executed by the Contractor and by the Director of ISD.

8.1.3 The Director of ISD or designee or Board of Supervisors, may at his/her sole discretion, authorize extensions of time as defined in Paragraph 4.0 - Term of Contract. The Contractor agrees that such extensions of time shall not change any other term or condition of this Contract during the period of such extensions. To implement an extension of time, an Amendment to the Contract shall be prepared and executed by the Contractor and by the Director of ISD.

8.2 ASSIGNMENT AND DELEGATION

8.2.1 The Contractor shall not assign its rights or delegate its duties under this Contract, or both, whether in whole or in part, without the prior written consent of the County, in its discretion, and any attempted assignment or delegation without such consent shall be null and void. For purposes of this Sub-paragraph, the County consent shall require a written amendment to the Contract, which is formally approved and executed by the parties. Any payments by the County to any approved delegate or assignee on any claim under this Contract shall be deductible, at the

County's sole discretion, against the claims, which the Contractor may have against the County.

8.2.2 Shareholders, partners, members, or other equity holders of the Contractor may transfer, sell, exchange, assign, or divest themselves of any interest they may have therein. However, in the event any such sale, transfer, exchange, assignment, or divestment is effected in such a way as to give majority control of the Contractor to any person(s), corporation, partnership, or legal entity other than the majority controlling interest therein at the time of execution of the Contract, such disposition is an assignment requiring the prior written consent of the County in accordance with applicable provisions of this Contract.

8.2.3 Any assumption, assignment, delegation, or takeover of any of the Contractor's duties, responsibilities, obligations, or performance of same by any entity other than the Contractor, whether through assignment, subcontract, delegation, merger, buyout, or any other mechanism, with or without consideration for any reason whatsoever without the County's express prior written approval, shall be a material breach of the Contract which may result in the termination of this Contract. In the event of such termination, the County shall be entitled to pursue the same remedies against the Contractor as it could pursue in the event of default by the Contractor.

8.3 AUTHORIZATION WARRANTY

The Contractor represents and warrants that the person executing this Contract for the Contractor is an authorized agent who has actual authority to bind the Contractor to each and every term, condition, and obligation of this Contract and that all requirements of the Contractor have been fulfilled to provide such actual authority.

8.4 BUDGET REDUCTIONS

In the event that the County's Board of Supervisors adopts, in any fiscal year, a County Budget which provides for reductions in the salaries and benefits paid to the majority of the County employees and imposes similar reductions with respect to the County Contracts, the County reserves the right to reduce its payment obligation under this Contract correspondingly for that fiscal year and any subsequent fiscal year during the term of this Contract (including any extensions), and the services to be provided by the Contractor under this Contract shall also be reduced correspondingly. The County's notice to the Contractor regarding said reduction in payment obligation shall be provided within thirty (30) calendar days of the Board's approval of such actions. Except as set forth in the preceding sentence, the Contractor shall continue to provide all of the services set forth in this Contract.

8.5 COMPLAINTS

The Contractor shall develop, maintain and operate procedures for receiving, investigating and responding to complaints.

8.5.1 Within (15) business days after the Contract effective date, the Contractor shall provide the County with the Contractor's policy for receiving, investigating and responding to user complaints.

8.5.2 The County will review the Contractor's policy and provide the Contractor with approval of said plan or with requested changes.

8.5.3 If the County requests changes in the Contractor's policy, the Contractor shall make such changes and resubmit the plan within (5) business days for County approval.

8.5.4 If, at any time, the Contractor wishes to change the Contractor's policy, the Contractor shall submit proposed changes to the County for approval before implementation.

8.5.5 The Contractor shall preliminarily investigate all complaints and notify the County's Project Manager of the status of the investigation within (5) business days of receiving the complaint.

8.5.6 When complaints cannot be resolved informally, a system of follow-through shall be instituted which adheres to formal plans for specific actions and strict time deadlines.

8.5.7 Copies of all written responses shall be sent to the County's Project Manager within (3) business days of mailing to the complainant.

8.6 COMPLIANCE WITH APPLICABLE LAW

8.6.1 In the performance of this Contract, the Contractor shall comply with all applicable Federal, State and local laws, rules, regulations, ordinances, directives, guidelines, policies and procedures, and all provisions required thereby to be included in this Contract are hereby incorporated herein by reference.

8.6.2 The Contractor shall indemnify, defend, and hold harmless the County, its officers, employees, and agents, from and against any and all claims, demands, damages, liabilities, losses, costs, and expenses, including, without limitation, defense costs and legal, accounting and other expert, consulting or professional fees, arising from, connected with, or related to any failure by the Contractor, its officers, employees, agents, or subcontractors, to comply with any such laws, rules, regulations, ordinances, directives, guidelines, policies, or procedures, as determined by the County in its sole judgment. Any legal defense pursuant to the Contractor's indemnification obligations under this Sub-paragraph 8.6 shall be conducted by the Contractor and performed by counsel selected by the Contractor and approved by the County. Notwithstanding the preceding sentence, the County shall have the right to participate in any such defense at its sole cost and expense, except that in the event the Contractor fails to provide the County with a full and adequate defense, as determined by the County in its sole judgment, the County shall be entitled to retain its own counsel, including, without limitation, County Counsel, and reimbursement from the Contractor for all such costs and expenses incurred by the County in doing so. The Contractor shall not have the right to enter into any settlement, agree to any injunction or

other equitable relief, or make any admission, in each case, on behalf of the County without the County's prior written approval.

8.7 COMPLIANCE WITH CIVIL RIGHTS LAWS

The Contractor hereby assures that it will comply with Subchapter VI of the Civil Rights Act of 1964, 42 USC Sections 2000 (e) (1) through 2000 (e) (17), to the end that no person shall, on the grounds of race, creed, color, sex, religion, ancestry, age, condition of physical handicap, marital status, political affiliation, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under this Contract or under any project, program, or activity supported by this Contract. The Contractor shall comply with Exhibit B - Contractor's EEO Certification.

8.8 COMPLIANCE WITH THE COUNTY'S JURY SERVICE PROGRAM

8.8.1 Jury Service Program:

This Contract is subject to the provisions of the County's ordinance entitled Contractor Employee Jury Service ("Jury Service Program") as codified in Sections 2.203.010 through 2.203.090 of the Los Angeles County Code, a copy of which is attached as Exhibit F and incorporated by reference into and made a part of this Contract.

8.8.2 Written Employee Jury Service Policy.

1. Unless the Contractor has demonstrated to the County's satisfaction either that the Contractor is not a "Contractor" as defined under the Jury Service Program (Section 2.203.020 of the County Code) or that the Contractor qualifies for an exception to the Jury Service Program (Section 2.203.070 of the County Code), the Contractor shall have and adhere to a written policy that provides that its Employees shall receive from the Contractor, on an annual basis, no less than five days of regular pay for actual jury service. The policy may provide that Employees deposit any fees received for such jury service with the Contractor or that the Contractor deduct from the Employee's regular pay the fees received for jury service.

2. For purposes of this Sub-paragraph, "the Contractor" means a person, partnership, corporation or other entity which has a contract with the County or a subcontract with a County Contractor and has received or will receive an aggregate sum of $50,000 or more in any 12-month period under one or more County contracts or subcontracts. "Employee" means any California resident who is a full-time employee of the Contractor. "Full-time" means 40 hours or more worked per week, or a lesser number of hours if: 1) the lesser number is a recognized industry standard as determined by the County, or 2) Contractor has a long-standing practice that defines the lesser number of hours as full-time. Full-time employees providing short-term, temporary services of 90 days or less within a 12-month period are not considered full-time for purposes of the Jury Service Program. If

the Contractor uses any Subcontractor to perform services for the County under the Contract, the Subcontractor shall also be subject to the provisions of this Sub-paragraph. The provisions of this Sub-paragraph shall be inserted into any such subcontract agreement and a copy of the Jury Service Program shall be attached to the agreement.

3. If the Contractor is not required to comply with the Jury Service Program when the Contract commences, the Contractor shall have a continuing obligation to review the applicability of its "exception status" from the Jury Service Program, and the Contractor shall immediately notify the County if the Contractor at any time either comes within the Jury Service Program's definition of "the Contractor" or if the Contractor no longer qualifies for an exception to the Jury Service Program. In either event, the Contractor shall immediately implement a written policy consistent with the Jury Service Program. The County may also require, at any time during the Contract and at its sole discretion, that the Contractor demonstrate, to the County's satisfaction that the Contractor either continues to remain outside of the Jury Service Program's definition of "Contractor" and/or that the Contractor continues to qualify for an exception to the Program.

4. The Contractor's violation of this Sub-paragraph of the Contract may constitute a material breach of the Contract. In the event of such material breach, County may, in its sole discretion, terminate the Contract and/or bar the Contractor from the award of future County contracts for a period of time consistent with the seriousness of the breach.

8.9 CONFLICT OF INTEREST

8.9.1 No County employee whose position with the County enables such employee to influence the award of this Contract or any competing Contract, and no spouse or economic dependent of such employee, shall be employed in any capacity by the Contractor or have any other direct or indirect financial interest in this Contract. No officer or employee of the Contractor who may financially benefit from the performance of work hereunder shall in any way participate in the County's approval, or ongoing evaluation, of such work, or in any way attempt to unlawfully influence the County's approval or ongoing evaluation of such work.

8.9.2 The Contractor shall comply with all conflict of interest laws, ordinances, and regulations now in effect or hereafter to be enacted during the term of this Contract. The Contractor warrants that it is not now aware of any facts that create a conflict of interest. If the Contractor hereafter becomes aware of any facts that might reasonably be expected to create a conflict of interest, it shall immediately make full written disclosure of such facts to the County. Full written disclosure shall include, but is not limited to, identification of all persons implicated and a complete description of all relevant circumstances. Failure to comply with the

provisions of this Sub-paragraph shall be a material breach of this Contract.

8.10 CONSIDERATION OF HIRING COUNTY EMPLOYEES TARGETED FOR LAYOFF/OR RE-EMPLOYMENT LIST

Should the Contractor require additional or replacement personnel after the effective date of this Contract to perform the services set forth herein, the Contractor shall give first consideration for such employment openings to qualified, permanent County employees who are targeted for layoff or qualified, former County employees who are on a re-employment list during the life of this Contract.

8.11 CONSIDERATION OF HIRING GAIN/GROW PROGRAM PARTICIPANTS

8.11.1 Should the Contractor require additional or replacement personnel after the effective date of this Contract, the Contractor shall give consideration for any such employment openings to participants in the County„s Department of Public Social Services Greater Avenues for Independence (GAIN) Program or General Relief Opportunity for Work (GROW) Program who meet the Contractor's minimum qualifications for the open position. For this purpose, consideration shall mean that the Contractor will interview qualified candidates. The County will refer GAIN/GROW participants by job category to the Contractor.

8.11.2 In the event that both laid-off County employees and GAIN/GROW participants are available for hiring, the County employees shall be given first priority.

8.12 CONTRACTOR RESPONSIBILITY AND DEBARMENT

8.12.1 Responsible Contractor

A responsible Contractor is a Contractor who has demonstrated the attribute of trustworthiness, as well as quality, fitness, capacity and experience to satisfactorily perform the contract. It is the County's policy to conduct business only with the responsible Contractors.

8.12.2 Chapter 2.202 of the County Code

The Contractor is hereby notified that, in accordance with Chapter 2.202 of the County Code, if the County acquires information concerning the performance of the Contractor on this or other contracts which indicates that the Contractor is not responsible, the County may, in addition to other remedies provided in the Contract, debar the Contractor from bidding or proposing on, or being awarded, and/or performing work on the County contracts for a specified period of time, which generally will not exceed five years but may exceed five years or be permanent if warranted by the circumstances, and terminate any or all existing Contracts the Contractor may have with the County.

8.12.3 Non-responsible Contractor

The County may debar a Contractor if the Board of Supervisors finds, in its discretion, that the Contractor has done any of the following: (1) violated a term of a contract with the County or a nonprofit corporation

created by the County, (2) committed an act or omission which negatively reflects on the Contractor's quality, fitness or capacity to perform a contract with the County, any other public entity, or a nonprofit corporation created by the County, or engaged in a pattern or practice which negatively reflects on same, (3) committed an act or offense which indicates a lack of business integrity or business honesty, or (4) made or submitted a false claim against the County or any other public entity.

8.12.4 **The Contractor Hearing Board**

1. If there is evidence that the Contractor may be subject to debarment, the Department will notify the Contractor in writing of the evidence which is the basis for the proposed debarment and will advise the Contractor of the scheduled date for a debarment hearing before the Contractor Hearing Board.
2. The Contractor Hearing Board will conduct a hearing where evidence on the proposed debarment is presented. The Contractor and/or the Contractor's representative shall be given an opportunity to submit evidence at that hearing. After the hearing, the Contractor Hearing Board shall prepare a tentative proposed decision, which shall contain a recommendation regarding whether the Contractor should be debarred, and, if so, the appropriate length of time of the debarment. The Contractor and the Department shall be provided an opportunity to object to the tentative proposed decision prior to its presentation to the Board of Supervisors.
3. After consideration of any objections, or if no objections are submitted, a record of the hearing, the proposed decision, and any other recommendation of the Contractor Hearing Board shall be presented to the Board of Supervisors. The Board of Supervisors shall have the right to modify, deny, or adopt the proposed decision and recommendation of the Contractor Hearing Board.
4. If a Contractor has been debarred for a period longer than five (5) years, that Contractor may after the debarment has been in effect for at least five (5) years, submit a written request for review of the debarment determination to reduce the period of debarment or terminate the debarment. The County may, in its discretion, reduce the period of debarment or terminate the debarment if it finds that the Contractor has adequately demonstrated one or more of the following: (1) elimination of the grounds for which the debarment was imposed; (2) a bona fide change in ownership or management; (3) material evidence discovered after debarment was imposed; or (4) any other reason that is in the best interests of the County.
5. The Contractor Hearing Board will consider a request for review of a debarment determination only where (1) the Contractor has been debarred for a period longer than five (5) years; (2) the

debarment has been in effect for at least five (5) years; and (3) the request is in writing, states one or more of the grounds for reduction of the debarment period or termination of the debarment, and includes supporting documentation. Upon receiving an appropriate request, the Contractor Hearing Board will provide notice of the hearing on the request. At the hearing, the Contractor Hearing Board shall conduct a hearing where evidence on the proposed reduction of debarment period or termination of debarment is presented. This hearing shall be conducted and the request for review decided by the Contractor Hearing Board pursuant to the same procedures as for a debarment hearing.

6. The Contractor Hearing Board's proposed decision shall contain a recommendation on the request to reduce the period of debarment or terminate the debarment. The Contractor Hearing Board shall present its proposed decision and recommendation to the Board of Supervisors. The Board of Supervisors shall have the right to modify, deny, or adopt the proposed decision and recommendation of the Contractor Hearing Board.

8.12.5 **Subcontractors of the Contractor**

These terms shall also apply to Subcontractors of the County Contractors.

8.13 CONTRACTOR'S ACKNOWLEDGEMENT OF COUNTY'S COMMITMENT TO THE SAFELY SURRENDERED BABY LAW

The Contractor acknowledges that the County places a high priority on the implementation of the Safely Surrendered Baby Law. The Contractor understands that it is the County's policy to encourage all County Contractors to voluntarily post the County's "Safely Surrendered Baby Law" poster in a prominent position at the Contractor's place of business. The Contractor will also encourage its Subcontractors, if any, to post this poster in a prominent position in the Subcontractor's place of business. The County's Department of Children and Family Services will supply the Contractor with the poster to be used. Information on how to receive the poster can be found on the Internet at www.babysafela.org.

8.14 CONTRACTOR'S WARRANTY OF ADHERENCE TO COUNTY'S CHILD SUPPORT COMPLIANCE PROGRAM

8.14.1 The Contractor acknowledges that the County has established a goal of ensuring that all individuals who benefit financially from the County through Contract are in compliance with their court-ordered child, family and spousal support obligations in order to mitigate the economic burden otherwise imposed upon the County and its taxpayers.

8.14.2 As required by the County's Child Support Compliance Program (County Code Chapter 2.200) and without limiting the Contractor's duty under this Contract to comply with all applicable provisions of law, the Contractor warrants that it is now in compliance and shall during the

term of this Contract maintain in compliance with employment and wage reporting requirements as required by the Federal Social Security Act (42 USC Section 653a) and California Unemployment Insurance Code Section 1088.5, and shall implement all lawfully served Wage and Earnings Withholding Orders or Child Support Services Department Notices of Wage and Earnings Assignment for Child, Family or Spousal Support, pursuant to Code of Civil Procedure Section 706.031 and Family Code Section 5246(b).

8.15 COUNTY'S QUALITY ASSURANCE PLAN

The County or its agent will evaluate the Contractor's performance under this Contract on not less than an annual basis. Such evaluation will include assessing the Contractor's compliance with all the Contract terms and conditions and performance standards. The Contractor deficiencies which the County determines are severe or continuing and that may place performance of the Contract in jeopardy if not corrected will be reported to the Board of Supervisors.

The report will include improvement/corrective action measures taken by the County and the Contractor. If improvement does not occur consistent with the corrective action measures, the County may terminate this Contract or impose other penalties as specified in this Contract.

8.16 DAMAGE TO COUNTY FACILITIES, BUILDINGS OR GROUNDS

8.16.1 The Contractor shall repair, or cause to be repaired, at its own cost, any and all damage to County facilities, buildings, or grounds caused by the Contractor or employees or agents of the Contractor. Such repairs shall be made immediately after the Contractor has become aware of such damage, but in no event later than thirty (30) days after the occurrence.

8.16.2 If the Contractor fails to make timely repairs, the County may make any necessary repairs. All costs incurred by the County, as determined by the County, for such repairs shall be repaid by the Contractor by cash payment upon demand.

8.17 EMPLOYMENT ELIGIBILITY VERIFICATION

8.17.1 The Contractor warrants that it fully complies with all Federal and State statutes and regulations regarding the employment of aliens and others and that all its employees performing work under this Contract meet the citizenship or alien status requirements set forth in Federal and State statutes and regulations. The Contractor shall obtain, from all employees performing work hereunder, all verification and other documentation of employment eligibility status required by Federal and State statutes and regulations including, but not limited to, the Immigration Reform and Control Act of 1986, (P.L. 99-603), or as they currently exist and as they may be hereafter amended. The Contractor shall retain all such documentation for all covered employees for the period prescribed by law.

8.17.2 The Contractor shall indemnify, defend, and hold harmless, the County, its agents, officers, and employees from employer sanctions and any other liability which may be assessed against the Contractor or the

County or both in connection with any alleged violation of any Federal or State statutes or regulations pertaining to the eligibility for employment of any persons performing work under this Contract.

8.18 FACSIMILE REPRESENTATIONS

The County and the Contractor hereby agree to regard facsimile representations of original signatures of authorized officers of each party, when appearing in appropriate places on the Amendments prepared pursuant to Sub-paragraph 8.1, and received via communications facilities, as legally sufficient evidence that such original signatures have been affixed to Amendments to this Contract, such that the parties need not follow up facsimile transmissions of such documents with subsequent (non-facsimile) transmission of “original” versions of such documents.

8.19 FAIR LABOR STANDARDS

The Contractor shall comply with all applicable provisions of the Federal Fair Labor Standards Act and shall indemnify, defend, and hold harmless the County and its agents, officers, and employees from any and all liability, including, but not limited to, wages, overtime pay, liquidated damages, penalties, court costs, and attorneys' fees arising under any wage and hour law, including, but not limited to, the Federal Fair Labor Standards Act, for work performed by the Contractor’s employees for which the County may be found jointly or solely liable.

8.20 FORCE MAJEURE

8.20.1 Neither party shall be liable for such party's failure to perform its obligations under and in accordance with this Contract, if such failure arises out of fires, floods, epidemics, quarantine restrictions, other natural occurrences, strikes, lockouts (other than a lockout by such party or any of such party's subcontractors), freight embargoes, or other similar events to those described above, but in every such case the failure to perform must be totally beyond the control and without any fault or negligence of such party (such events are referred to in this Sub-paragraph as "force majeure events").

8.20.2 Notwithstanding the foregoing, a default by a subcontractor of the Contractor shall not constitute a force majeure event, unless such default arises out of causes beyond the control of both the Contractor and such subcontractor, and without any fault or negligence of either of them. In such case, the Contractor shall not be liable for failure to perform, unless the goods or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit the Contractor to meet the required performance schedule. As used in this Sub-paragraph, the term “subcontractor” and “subcontractors” mean subcontractors at any tier.

8.20.3 In the event the Contractor's failure to perform arises out of a force majeure event, the Contractor agrees to use commercially reasonable best efforts to obtain goods or services from other sources, if applicable, and to otherwise mitigate the damages and reduce the delay caused by such force majeure event.

8.21 GOVERNING LAW, JURISDICTION, AND VENUE

This Contract shall be governed by, and construed in accordance with, the laws of the State of California. The Contractor agrees and consents to the exclusive jurisdiction of the courts of the State of California for all purposes regarding this Contract and further agrees and consents that venue of any action brought hereunder shall be exclusively in the County of Los Angeles.

8.22 INDEPENDENT CONTRACTOR STATUS

8.22.1 This Contract is by and between the County and the Contractor and is not intended, and shall not be construed, to create the relationship of agent, servant, employee, partnership, joint venture, or association, as between the County and the Contractor. The employees and agents of one party shall not be, or be construed to be, the employees or agents of the other party for any purpose whatsoever.

8.22.2 The Contractor shall be solely liable and responsible for providing to, or on behalf of, all persons performing work pursuant to this Contract all compensation and benefits. The County shall have no liability or responsibility for the payment of any salaries, wages, unemployment benefits, disability benefits, Federal, State, or local taxes, or other compensation, benefits, or taxes for any personnel provided by or on behalf of the Contractor.

8.22.3 The Contractor understands and agrees that all persons performing work pursuant to this Contract are, for purposes of Workers' Compensation liability, solely employees of the Contractor and not employees of the County. The Contractor shall be solely liable and responsible for furnishing any and all Workers' Compensation benefits to any person as a result of any injuries arising from or connected with any work performed by or on behalf of the Contractor pursuant to this Contract.

8.22.4 The Contractor shall adhere to the provisions stated in Sub-paragraph 7.5 - Confidentiality.

8.23 INDEMNIFICATION

The Contractor shall indemnify, defend and hold harmless the County, its Special Districts, elected and appointed officers, employees, and agents ("County Indemnitees") from and against any and all liability, including but not limited to demands, claims, actions, fees, costs, and expenses (including attorney and expert witness fees), arising from or connected with the Contractor's acts and/or omissions arising from and/or relating to this Contract, except for such loss or damage arising from the sole negligence or willful misconduct of the County Indemnitees.

8.24 GENERAL PROVISIONS FOR ALL INSURANCE COVERAGE

Without limiting Contractor's indemnification of County, and in the performance of this Contract and until all of its obligations pursuant to this Contract have been met, the Contractor shall provide and maintain at its own expense insurance coverage satisfying the requirements specified in Sections 8.24 and 8.25 of this Contract. These minimum insurance coverage terms, types and limits (the

"Required Insurance") also are in addition to and separate from any other contractual obligation imposed upon the Contractor pursuant to this Contract. The County in no way warrants that the Required Insurance is sufficient to protect the Contractor for liabilities which may arise from or relate to this Contract.

8.24.1 **Evidence of Coverage and Notice to County**

A. Certificate(s) of insurance coverage (Certificate) satisfactory to the County, and a copy of an Additional Insured endorsement confirming the County and its Agents (defined below) has been given Insured status under the Contractor's General Liability policy, shall be delivered to the County at the address shown below and provided prior to commencing services under this Contract.

B. Renewal Certificates shall be provided to the County not less than 10 days prior to the Contractor's policy expiration dates. The County reserves the right to obtain complete, certified copies of any required Contractor and/or Sub-Contractor insurance policies at any time.

C. Certificates shall identify all Required Insurance coverage types and limits specified herein, reference this Contract by name or number, and be signed by an authorized representative of the insurer(s). The Insured party named on the Certificate shall match the name of the Contractor identified as the contracting party in this Contract. Certificates shall provide the full name of each insurer providing coverage, its NAIC (National Association of Insurance Commissioners) identification number, its financial rating, the amounts of any policy deductibles or self-insured retentions exceeding fifty thousand ($50,000.00) dollars, and list any County required endorsement forms.

D. Neither the County's failure to obtain, nor the County's receipt of, or failure to object to a non-complying insurance certificate or endorsement, or any other insurance documentation or information provided by the Contractor, its insurance broker(s) and/or insurer(s), shall be construed as a waiver of any of the Required Insurance provisions.

Certificates and copies of any required endorsements shall be sent to:

Internal Services Department
Contracting Division / Contracts Section
Attn: Tatiana Menendez, CPM
1100 N Eastern Ave
Los Angeles, CA 90063

The Contractor also shall promptly report to the County any injury or property damage accident or incident, including any injury to a Contractor employee occurring on the County property, and any loss, disappearance, destruction, misuse, or theft of the County property,

monies or securities entrusted to the Contractor. The Contractor also shall promptly notify the County of any third party claim or suit filed against the Contractor or any of its Sub-Contractors which arises from or relates to this Contract, and could result in the filing of a claim or lawsuit against the Contractor and/or the County.

8.24.2 **Additional Insured Status and Scope of Coverage**

The County of Los Angeles, its Special Districts, Elected Officials, Officers, Agents, Employees and Volunteers (collectively County and its Agents) shall be provided additional insured status under Contractor's General Liability policy with respect to liability arising out of the Contractor's ongoing and completed operations performed on behalf of the County. The County and its Agents additional insured status shall apply with respect to liability and defense of suits arising out of the Contractor's acts or omissions, whether such liability is attributable to the Contractor or to the County. The full policy limits and scope of protection also shall apply to the County and its Agents as an additional insured, even if they exceed the County's minimum Required Insurance specifications herein. Use of an automatic additional insured endorsement form is acceptable providing it satisfies the Required Insurance provisions herein.

8.24.3 **Cancellation of or Changes in Insurance**

The Contractor shall provide the County with, or the Contractor's insurance policies shall contain a provision that the County shall receive, written notice of cancellation or any change in Required Insurance, including insurer, limits of coverage, term of coverage or policy period. The written notice shall be provided to the County at least ten (10) days in advance of cancellation for non-payment of premium and thirty (30) days in advance for any other cancellation or policy change. Failure to provide written notice of cancellation or any change in Required Insurance may constitute a material breach of the Contract, in the sole discretion of the County, upon which the County may suspend or terminate this Contract.

8.24.4 **Failure to Maintain Insurance**

The Contractor's failure to maintain or to provide acceptable evidence that it maintains the Required Insurance shall constitute a material breach of the Contract, upon which the County immediately may withhold payments due to the Contractor, and/or suspend or terminate this Contract. The County, at its sole discretion, may obtain damages from the Contractor resulting from said breach. Alternatively, the County may purchase the Required Insurance, and without further notice to the Contractor, deduct the premium cost from sums due to the Contractor or pursue the Contractor reimbursement.

8.24.5 **Insurer Financial Ratings**

Coverage shall be placed with insurers acceptable to the County with A.M. Best ratings of not less than A:VII unless otherwise approved by County.

8.24.6 **Contractor's Insurance Shall Be Primary**

The Contractor's insurance policies, with respect to any claims related to this Contract, shall be primary with respect to all other sources of coverage available to the Contractor. Any County maintained insurance or self-insurance coverage shall be in excess of and not contribute to any Contractor coverage.

8.24.7 **Waivers of Subrogation**

To the fullest extent permitted by law, the Contractor hereby waives its rights and its insurer(s)' rights of recovery against County under all the Required Insurance for any loss arising from or relating to this Contract. The Contractor shall require its insurers to execute any waiver of subrogation endorsements which may be necessary to effect such waiver.

8.24.8 **Sub-Contractor Insurance Coverage Requirements**

The Contractor shall include all Sub-Contractors as insureds under the Contractor's own policies, or shall provide the County with each Sub-Contractor's separate evidence of insurance coverage. The Contractor shall be responsible for verifying each Sub-Contractor complies with the Required Insurance provisions herein, and shall require that each Sub-Contractor name the County and Contractor as additional insureds on the Sub-Contractor's General Liability policy. The Contractor shall obtain County's prior review and approval of any Sub-Contractor request for modification of the Required Insurance.

8.24.9 **Deductibles and Self-Insured Retentions (SIRs)**

The Contractor's policies shall not obligate the County to pay any portion of any Contractor deductible or SIR. The County retains the right to require the Contractor to reduce or eliminate policy deductibles and SIRs as respects the County, or to provide a bond guaranteeing the Contractor's payment of all deductibles and SIRs, including all related claims investigation, administration and defense expenses. Such bond shall be executed by a corporate surety licensed to transact business in the State of California.

8.24.10 **Claims Made Coverage**

If any part of the Required Insurance is written on a claims-made basis, any policy retroactive date shall precede the effective date of this Contract. The Contractor understands and agrees it shall maintain such coverage for a period of not less than three (3) years following the Contract expiration, termination or cancellation.

8.24.11 **Application of Excess Liability Coverage**

The Contractors may use a combination of primary, and excess insurance policies which provide coverage as broad as ("follow form" over) the underlying primary policies, to satisfy the Required Insurance provisions.

8.24.12 **Separation of Insureds**

All liability policies shall provide cross-liability coverage as would be afforded by the standard ISO (Insurance Services Office, Inc.) separation of insureds provision with no insured versus insured exclusions or limitations.

8.24.13 **Alternative Risk Financing Programs**

The County reserves the right to review, and then approve, Contractor use of self-insurance, risk retention groups, risk purchasing groups, pooling arrangements and captive insurance to satisfy the Required Insurance provisions. The County and its Agents shall be designated as an Additional Covered Party under any approved program.

8.24.14 **County Review and Approval of Insurance Requirements**

The County reserves the right to review and adjust the Required Insurance provisions, conditioned upon the County's determination of changes in risk exposures.

8.25 INSURANCE COVERAGE

8.25.1 Commercial General Liability insurance (providing scope of coverage equivalent to ISO policy form CG 00 01), naming County and its Agents as an additional insured, with limits of not less than:

General Aggregate:	$2 million
Products/Completed Operations Aggregate:	$1 million
Personal and Advertising Injury:	$1 million
Each Occurrence:	$1 million

8.25.2 Automobile Liability insurance (providing scope of coverage equivalent to ISO policy form CA 00 01) with limits of not less than $1 million for bodily injury and property damage, in combined or equivalent split limits, for each single accident. Insurance shall cover liability arising out of the Contractor's use of autos pursuant to this Contract, including owned, leased, hired, and/or non-owned autos, as each may be applicable.

8.25.3 Workers Compensation and Employers' Liability insurance or qualified self-insurance satisfying statutory requirements, which includes Employers' Liability coverage with limits of not less than $1 million per accident. If the Contractor will provide leased employees, or, is an employee leasing or temporary staffing firm or a professional employer organization (PEO), coverage also shall include an Alternate Employer Endorsement (providing scope of coverage equivalent to ISO policy form WC 00 03 01 A) naming the County as the Alternate Employer, and the endorsement form shall be modified to provide that the County will receive not less than thirty (30) days advance written notice of cancellation of this coverage provision. If applicable to the Contractor's operations, coverage also shall be arranged to satisfy the requirements of any federal workers or workmen's compensation law or any federal occupational disease law.

8.25.4 Professional Liability/Errors and Omissions insurance covering the Contractor's liability arising from or related to this Contract, with limits of not less than $1 million per claim and $2 million aggregate. Further, the Contractor understands and agrees it shall maintain such coverage for a period of not less than three (3) years following this Agreement's expiration, termination or cancellation.

8.26 LIQUIDATED DAMAGES

8.26.1 If, in the judgment of the Department Head, or his/her designee, the Contractor is deemed to be non-compliant with the terms and obligations assumed hereby, the Department Head, or his/her designee, at his/her option, in addition to, or in lieu of, other remedies provided herein, may withhold the entire monthly payment or deduct pro rata from the Contractor's invoice for work not performed. A description of the work not performed and the amount to be withheld or deducted from payments to the Contractor from the County, will be forwarded to the Contractor by the Department Head, or his/her designee, in a written notice describing the reasons for said action.

8.26.2 If the Department Head, or his/her designee, determines that there are deficiencies in the performance of this Contract that the Department Head, or his/her designee, deems are correctable by the Contractor over a certain time span, the Department Head, or his/her designee, will provide a written notice to the Contractor to correct the deficiency within specified time frames. Should the Contractor fail to correct deficiencies within said time frame, the Department Head, or his/her designee, may: (a) Deduct from the Contractor's payment, pro rata, those applicable portions of the Monthly Contract Sum; and/or (b) Deduct liquidated damages. The parties agree that it will be impracticable or extremely difficult to fix the extent of actual damages resulting from the failure of the Contractor to correct a deficiency within the specified time frame. The parties hereby agree that under the current circumstances a reasonable estimate of such damages is One Hundred Dollars ($100) per day per infraction, or as specified in Exhibit A – SOW, Attachment 2 – PRS Chart, hereunder, and that the Contractor shall be liable to the

County for liquidated damages in said amount. Said amount shall be deducted from the County's payment to the Contractor; and/or (c) Upon giving five (5) days notice to the Contractor for failure to correct the deficiencies, the County may correct any and all deficiencies and the total costs incurred by the County for completion of the work by an alternate source, whether it be County forces or separate private contractor, will be deducted and forfeited from the payment to the Contractor from the County, as determined by the County.

8.26.3 The action noted in Sub-paragraph 8.26.2 shall not be construed as a penalty, but as adjustment of payment to the Contractor to recover the County cost due to the failure of the Contractor to complete or comply with the provisions of this Contract.

8.26.4 This Sub-paragraph shall not, in any manner, restrict or limit the County's right to damages for any breach of this Contract provided by law or as specified in the PRS or Sub-paragraph 8.26.2, and shall not, in any manner, restrict or limit the County's right to terminate this Contract as agreed to herein.

8.27 MOST FAVORED PUBLIC ENTITY

If the Contractor's prices decline, or should the Contractor at any time during the term of this Contract provide the same goods or services under similar quantity and delivery conditions to the State of California or any county, municipality, or district of the State at prices below those set forth in this Contract, then such lower prices shall be immediately extended to the County.

8.28 NONDISCRIMINATION AND AFFIRMATIVE ACTION

8.28.1 The Contractor certifies and agrees that all persons employed by it, its affiliates, subsidiaries, or holding companies are and shall be treated equally without regard to or because of race, color, religion, ancestry, national origin, sex, age, physical or mental disability, marital status, or political affiliation, in compliance with all applicable Federal and State anti discrimination laws and regulations.

8.28.2 The Contractor shall certify to, and comply with, the provisions of Exhibit B - Contractor's EEO Certification.

8.28.3 The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to race, color, religion, ancestry, national origin, sex, age, physical or mental disability, marital status, or political affiliation, in compliance with all applicable Federal and State anti-discrimination laws and regulations. Such action shall include, but is not limited to: employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

8.28.4 The Contractor certifies and agrees that it will deal with its subcontractors, bidders, or vendors without regard to or because of race, color, religion, ancestry, national origin, sex, age, physical or mental disability, marital status, or political affiliation.

8.28.5 The Contractor certifies and agrees that it, its affiliates, subsidiaries, or holding companies shall comply with all applicable Federal and State laws and regulations to the end that no person shall, on the grounds of race, color, religion, ancestry, national origin, sex, age, physical or mental disability, marital status, or political affiliation, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under this Contract or under any project, program, or activity supported by this Contract.

8.28.6 The Contractor shall allow the County representatives access to the Contractor's employment records during regular business hours to verify compliance with the provisions of this Sub-paragraph 8.28 when so requested by the County.

8.28.7 If the County finds that any provisions of this Sub-paragraph 8.28 have been violated, such violation shall constitute a material breach of this Contract upon which the County may terminate or suspend this Contract. While the County reserves the right to determine independently that the anti-discrimination provisions of this Contract have been violated, in addition, a determination by the California Fair Employment Practices Commission or the Federal Equal Employment Opportunity Commission that the Contractor has violated Federal or State anti-discrimination laws or regulations shall constitute a finding by the County that the Contractor has violated the anti-discrimination provisions of this Contract.

8.28.8 The parties agree that in the event the Contractor violates any of the anti discrimination provisions of this Contract, the County shall, at its sole option, be entitled to the sum of Five Hundred Dollars ($500) for each such violation pursuant to California Civil Code Section 1671 as liquidated damages in lieu of terminating or suspending this Contract.

8.29 NON EXCLUSIVITY

Nothing herein is intended nor shall be construed as creating any exclusive arrangement with the Contractor. This Contract shall not restrict County from acquiring similar, equal or like goods and/or services from other entities or sources.

8.30 NOTICE OF DELAYS

Except as otherwise provided under this Contract, when either party has knowledge that any actual or potential situation is delaying or threatens to delay the timely performance of this Contract, that party shall, within one (1) business day, give notice thereof, including all relevant information with respect thereto, to the other party.

8.31 NOTICE OF DISPUTES

The Contractor shall bring to the attention of the County's Project Manager and/or County's Project Director any dispute between the County and the Contractor regarding the performance of services as stated in this Contract. If the County's Project Manager or County's Project Director is not able to resolve the dispute, Director of ISD or designee shall resolve it.

8.32 NOTICE TO EMPLOYEES REGARDING THE FEDERAL EARNED INCOME CREDIT

The Contractor shall notify its employees, and shall require each Subcontractor to notify its employees, that they may be eligible for the Federal Earned Income Credit under the federal income tax laws. Such notice shall be provided in accordance with the requirements set forth in Internal Revenue Service Notice No. 1015.

8.33 NOTICE TO EMPLOYEES REGARDING THE SAFELY SURRENDERED BABY LAW

The Contractor shall notify and provide to its employees, and shall require each Subcontractor to notify and provide to its employees, a fact sheet regarding the Safely Surrendered Baby Law, its implementation in Los Angeles County, and where and how to safely surrender a baby. The fact sheet is set forth in Exhibit G of this Contract and is also available on the Internet at www.babysafela.org for printing purposes.

8.34 NOTICES

All notices or demands required or permitted to be given or made under this Contract shall be in writing and shall be hand delivered with signed receipt or mailed by first class registered or certified mail, postage prepaid, addressed to the parties as identified in Exhibit C - County's Administration, and Exhibit D - Contractor's Administration. Addresses may be changed by either party giving ten (10) days' prior written notice thereof to the other party. The Director of ISD or designee) shall have the authority to issue all notices or demands required or permitted by the County under this Contract.

8.35 PROHIBITION AGAINST INDUCEMENT OR PERSUASION

Notwithstanding the above, the Contractor and the County agree that, during the term of this Contract and for a period of one year thereafter, neither party shall in any way intentionally induce or persuade any employee of one party to become an employee or agent of the other party. No bar exists against any hiring action initiated through a public announcement.

8.36 PUBLIC RECORDS ACT

8.36.1 Any documents submitted by the Contractor; all information obtained in connection with the County's right to audit and inspect the Contractor's documents, books, and accounting records pursuant to Sub-paragraph 8.38 - Record Retention and Inspection/Audit Settlement of this Contract; as well as those documents which were required to be submitted in response to the Request for Proposals (RFP) used in the solicitation process for this Contract, become the exclusive property of the County. All such documents become a matter of public record and shall be regarded as public records. Exceptions will be those elements in the California Government Code Section 6250 et seq. (Public Records Act) and which are marked "trade secret", "confidential", or "proprietary". The County shall not in any way be liable or responsible for the disclosure of any such records including, without limitation, those so

marked, if disclosure is required by law, or by an order issued by a court of competent jurisdiction.

8.36.2 In the event the County is required to defend an action on a Public Records Act request for any of the aforementioned documents, information, books, records, and/or contents of a proposal marked "trade secret", "confidential", or "proprietary", the Contractor agrees to defend and indemnify the County from all costs and expenses, including reasonable attorney's fees, in action or liability arising under the Public Records Act.

8.37 PUBLICITY

8.37.1 The Contractor shall not disclose any details in connection with this Contract to any person or entity except as may be otherwise provided hereunder or required by law. However, in recognizing the Contractor's need to identify its services and related clients to sustain itself, the County shall not inhibit the Contractor from publishing its role under this Contract within the following conditions:

A. The Contractor shall develop all publicity material in a professional manner; and

B. During the term of this Contract, the Contractor shall not, and shall not authorize another to, publish or disseminate any commercial advertisements, press releases, feature articles, or other materials using the name of the County without the prior written consent of the County's Project Director. The County shall not unreasonably withhold written consent.

8.37.2 The Contractor may, without the prior written consent of the County, indicate in its proposals and sales materials that it has been awarded this Contract with the County of Los Angeles, provided that the requirements of this Sub-paragraph 8.37 shall apply.

8.38 RECORD RETENTION AND INSPECTION/AUDIT SETTLEMENT

The Contractor shall maintain accurate and complete financial records of its activities and operations relating to this Contract in accordance with generally accepted accounting principles. The Contractor shall also maintain accurate and complete employment and other records relating to its performance of this Contract. The Contractor agrees that the County, or its authorized representatives, shall have access to and the right to examine, audit, excerpt, copy, or transcribe any pertinent transaction, activity, or record relating to this Contract. All such material, including, but not limited to, all financial records, bank statements, cancelled checks or other proof of payment, timecards, sign-in/sign-out sheets and other time and employment records, and proprietary data and information, shall be kept and maintained by the Contractor and shall be made available to the County during the term of this Contract and for a period of five (5) years thereafter unless the County's written permission is given to dispose of any such material prior to such time. All such material shall be maintained by the Contractor at a location in Los Angeles County, provided that if any such material is located outside Los Angeles County, then, at the County's

option, the Contractor shall pay the County for travel, per diem, and other costs incurred by the County to examine, audit, excerpt, copy, or transcribe such material at such other location.

8.38.1 In the event that an audit of the Contractor is conducted specifically regarding this Contract by any Federal or State auditor, or by any auditor or accountant employed by the Contractor or otherwise, then the Contractor shall file a copy of such audit report with the County's Auditor Controller within thirty (30) days of the Contractor's receipt thereof, unless otherwise provided by applicable Federal or State law or under this Contract. Subject to applicable law, the County shall make a reasonable effort to maintain the confidentiality of such audit report(s).

8.38.2 Failure on the part of the Contractor to comply with any of the provisions of this Sub-paragraph 8.38 shall constitute a material breach of this Contract upon which the County may terminate, or suspend this Contract, or assess the fees set forth in Exhibit A – SOW, Attachment 2 – PRS Chart.

8.38.3 If, at any time during the term of this Contract or within five (5) years after the expiration or termination of this Contract, representatives of the County conduct an audit of the Contractor regarding the work performed under this Contract, and if such audit finds that the County's dollar liability for any such work is less than payments made by the County to the Contractor, then the difference shall be either: a) repaid by the Contractor to the County by cash payment upon demand or b) at the sole option of the County's Auditor-Controller, deducted from any amounts due to the Contractor from the County, whether under this Contract or otherwise. If such audit finds that the County's dollar liability for such work is more than the payments made by the County to the Contractor, then the difference shall be paid to the Contractor by the County by cash payment, provided that in no event shall the County's maximum obligation for this Contract exceed the funds appropriated by the County for the purpose of this Contract.

8.39 RECYCLED BOND PAPER

Consistent with the Board of Supervisors' policy to reduce the amount of solid waste deposited at the County landfills, the Contractor agrees to use recycled-content paper to the maximum extent possible on this Contract.

8.40 SUBCONTRACTING

8.40.1 The requirements of this Contract may not be subcontracted by the Contractor without the advance approval of the County. Any attempt by the Contractor to subcontract **without the prior consent of the County** may be deemed a material breach of this Contract. Failure to obtain the advance approval of the County prior to subcontracting may subject the Contractor to contract termination or assessment of the fees set forth in Exhibit A – SOW, Attachment 2 – PRS Chart.

8.40.2 If the Contractor desires to subcontract, the Contractor shall provide the following information promptly at the County's request:

A. A description of the work to be performed by the Subcontractor; and

B. A draft copy of the proposed subcontract; and

C. Other pertinent information and/or certifications requested by the County.

8.40.3 The Contractor shall indemnify and hold the County harmless with respect to the activities of each and every Subcontractor in the same manner and to the same degree as if such Subcontractor(s) were the Contractor employees.

8.40.4 The Contractor shall remain fully responsible for all performances required of it under this Contract, including those that the Contractor has determined to subcontract, notwithstanding the County's approval of the Contractor's proposed subcontract.

8.40.5 The County's consent to subcontract shall not waive the County's right to prior and continuing approval of any and all personnel, including Subcontractor employees, providing services under this Contract. The Contractor is responsible to notify its Subcontractors of this County right.

8.40.6 The County's Project Director is authorized to act for and on behalf of the County with respect to approval of any subcontract and Subcontractor employees. After approval of the subcontract by the County, Contractor shall forward a fully executed subcontract to the County for their files.

8.40.7 The Contractor shall be solely liable and responsible for all payments or other compensation to all Subcontractors and their officers, employees, agents, and successors in interest arising through services performed hereunder, notwithstanding the County's consent to subcontract.

8.40.8 The Contractor shall obtain certificates of insurance, which establish that the Subcontractor maintains all the programs of insurance required by the County from each approved Subcontractor. The Contractor shall ensure delivery of all such documents to:

Internal Services Department
Contracting Division / Contracts Section
Attn: Angela Wu
1100 N Eastern Ave
Los Angeles, CA 90063

before any Subcontractor employee may perform any work hereunder.

8.41 TERMINATION FOR BREACH OF WARRANTY TO MAINTAIN COMPLIANCE WITH COUNTY'S CHILD SUPPORT COMPLIANCE PROGRAM

Failure of the Contractor to maintain compliance with the requirements set forth in Sub-paragraph 8.14 - Contractor's Warranty of Adherence to County's Child Support Compliance Program, shall constitute default under this Contract. Without limiting the rights and remedies available to the County under any other provision of this Contract, failure of the Contractor to cure such default within ninety (90) calendar days of written notice shall be grounds upon which the

County may terminate this Contract pursuant to Sub-paragraph 8.43 - Termination for Default and pursue debarment of the Contractor, pursuant to the County Code Chapter 2.202.

8.42 TERMINATION FOR CONVENIENCE

8.42.1 This Contract may be terminated, in whole or in part by the County at anytime without any liability to the County, when such action is deemed by the County, in its sole discretion, to be in its best interest. Termination of work hereunder shall be effected by notice of termination to the Contractor specifying the extent to which performance of work is terminated and the date upon which such termination becomes effective. The date upon which such termination becomes effective shall be no less than ten (10) days after the notice is sent.

8.42.2 After receipt of a notice of termination and except as otherwise directed by the County, the Contractor shall:

A. Stop work under this Contract on the date and to the extent specified in such notice, and

B. Complete performance of such part of the work as shall not have been terminated by such notice.

8.42.3 All material including books, records, documents, or other evidence bearing on the costs and expenses of the Contractor under this Contract shall be maintained by the Contractor in accordance with Sub-paragraph 8.38 - Record Retention and Inspection/Audit Settlement.

8.43 TERMINATION FOR DEFAULT

8.43.1 The County may, by written notice to the Contractor, terminate the whole or any part of this Contract, if, in the judgment of County's Project Director:

A. The Contractor has materially breached this Contract; or

B. The Contractor fails to timely provide and/or satisfactorily perform any task, deliverable, service, or other work required either under this Contract; or

C. The Contractor fails to demonstrate a high probability of timely fulfillment of performance requirements under this Contract, or of any obligations of this Contract and in either case, fails to demonstrate convincing progress toward a cure within five (5) working days (or such longer period as the County may authorize in writing) after receipt of written notice from the County specifying such failure.

8.43.2 In the event that the County terminates this Contract in whole or in part as provided in Sub-paragraph 8.43.1, the County may procure, upon such terms and in such manner as the County may deem appropriate, goods and services similar to those so terminated. The Contractor shall be liable to the County for any and all excess costs incurred by the County, as determined by the County, for such similar goods and

services. The Contractor shall continue the performance of this Contract to the extent not terminated under the provisions of this Sub-paragraph.

8.43.3 Except with respect to defaults of any Subcontractor, the Contractor shall not be liable for any such excess costs of the type identified in Sub-paragraph 8.43.2 if its failure to perform this Contract arises out of causes beyond the control and without the fault or negligence of the Contractor. Such causes may include, but are not limited to: acts of God or of the public enemy, acts of the County in either its sovereign or contractual capacity, acts of Federal or State governments in their sovereign capacities, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather; but in every case, the failure to perform must be beyond the control and without the fault or negligence of the Contractor. If the failure to perform is caused by the default of a Subcontractor, and if such default arises out of causes beyond the control of both the Contractor and Subcontractor, and without the fault or negligence of either of them, the Contractor shall not be liable for any such excess costs for failure to perform, unless the goods or services to be furnished by the Subcontractor were obtainable from other sources in sufficient time to permit the Contractor to meet the required performance schedule. As used in this Sub-paragraph, the term "Subcontractor(s)" means Subcontractor(s) at any tier.

8.43.4 If, after the County has given notice of termination under the provisions of this Sub-paragraph 8.43, it is determined by the County that the Contractor was not in default under the provisions of this Sub-paragraph 8.43, or that the default was excusable under the provisions of Sub-paragraph 8.43.3, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to Sub-paragraph 8.42 - Termination for Convenience.

8.43.5 The rights and remedies of the County provided in this Sub-paragraph 8.43 shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.

8.44 TERMINATION FOR IMPROPER CONSIDERATION

8.44.1 The County may, by written notice to the Contractor, immediately terminate the right of the Contractor to proceed under this Contract if it is found that consideration, in any form, was offered or given by the Contractor, either directly or through an intermediary, to any County officer, employee, or agent with the intent of securing this Contract or securing favorable treatment with respect to the award, amendment, or extension of this Contract or the making of any determinations with respect to the Contractor’s performance pursuant to this Contract. In the event of such termination, the County shall be entitled to pursue the same remedies against the Contractor as it could pursue in the event of default by the Contractor.

8.44.2 The Contractor shall immediately report any attempt by a County officer or employee to solicit such improper consideration. The report shall be made either to the County manager charged with the supervision of the

employee or to the County Auditor-Controller's Employee Fraud Hotline at (800) 544-6861.

8.44.3 Among other items, such improper consideration may take the form of cash, discounts, service, the provision of travel or entertainment, or tangible gifts.

8.45 TERMINATION FOR INSOLVENCY

8.45.1 The County may terminate this Contract forthwith in the event of the occurrence of any of the following:

A. Insolvency of the Contractor. The Contractor shall be deemed to be insolvent if it has ceased to pay its debts for at least sixty (60) days in the ordinary course of business or cannot pay its debts as they become due, whether or not a petition has been filed under the Federal Bankruptcy Code and whether or not the Contractor is insolvent within the meaning of the Federal Bankruptcy Code;

B. The filing of a voluntary or involuntary petition regarding the Contractor under the Federal Bankruptcy Code;

C. The appointment of a Receiver or Trustee for the Contractor; or

D. The execution by the Contractor of a general assignment for the benefit of creditors.

8.45.2 The rights and remedies of the County provided in this Sub-paragraph 8.45 shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.

8.46 TERMINATION FOR NON-ADHERENCE OF COUNTY LOBBYIST ORDINANCE

The Contractor, and each County Lobbyist or County Lobbying firm as defined in County Code Section 2.160.010 retained by the Contractor, shall fully comply with the County's Lobbyist Ordinance, County Code Chapter 2.160. Failure on the part of the Contractor or any County Lobbyist or County Lobbying firm retained by the Contractor to fully comply with the County's Lobbyist Ordinance shall constitute a material breach of this Contract, upon which the County may in its sole discretion, immediately terminate or suspend this Contract.

8.47 TERMINATION FOR NON APPROPRIATION OF FUNDS

Notwithstanding any other provision of this Contract, the County shall not be obligated for the Contractor's performance hereunder or by any provision of this Contract during any of the County's future fiscal years unless and until the County's Board of Supervisors appropriates funds for this Contract in the County's Budget for each such future fiscal year. In the event that funds are not appropriated for this Contract, then this Contract shall terminate as of June 30 of the last fiscal year for which funds were appropriated. The County shall notify the Contractor in writing of any such non-allocation of funds at the earliest possible date.

8.48 VALIDITY

If any provision of this Contract or the application thereof to any person or circumstance is held invalid, the remainder of this Contract and the application of such provision to other persons or circumstances shall not be affected thereby.

8.49 WAIVER

No waiver by the County of any breach of any provision of this Contract shall constitute a waiver of any other breach or of such provision. Failure of the County to enforce at any time, or from time to time, any provision of this Contract shall not be construed as a waiver thereof. The rights and remedies set forth in this Sub-paragraph 8.49 shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.

8.50 WARRANTY AGAINST CONTINGENT FEES

8.50.1 The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this Contract upon any Contract or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business.

8.50.2 For breach of this warranty, the County shall have the right to terminate this Contract and, at its sole discretion, deduct from the Contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

8.51 WARRANTY OF COMPLIANCE WITH COUNTY'S DEFAULTED PROPERTY TAX REDUCTION PROGRAM

Contractor acknowledges that County has established a goal of ensuring that all individuals and businesses that benefit financially from the County through contract are current in paying their property tax obligations (secured and unsecured roll) in order to mitigate the economic burden otherwise imposed upon the County and its taxpayers.

Unless the Contractor qualifies for an exemption or exclusion, Contractor warrants and certifies that to the best of its knowledge it is now in compliance, and during the term of this contract will maintain compliance, with Los Angeles County Code Chapter 2.206.

8.52 TERMINATION FOR BREACH OF WARRANTY TO MAINTAIN COMPLIANCE WITH COUNTY'S DEFAULTED PROPERTY TAX REDUCTION PROGRAM

Failure of Contractor to maintain compliance with the requirements set forth in Sub-paragraph 8.51 - Warranty of Compliance with County's Defaulted Property Tax Reduction Program shall constitute default under this contract. Without limiting the rights and remedies available to County under any other provision of this contract, failure of Contractor to cure such default within 10 days of notice shall be grounds upon which County may terminate this contract and/or pursue debarment of Contractor, pursuant to County Code Chapter 2.206.

9.0 UNIQUE TERMS AND CONDITIONS

9.1 CONTRACTOR'S OBLIGATIONS AS A NON-BUSINESS ASSOCIATE UNDER THE HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996 ("HIPAA")

The Contractor expressly acknowledges and agrees that the provision of services under this Agreement does not require or permit access by Contractor or any of its officers, employees, or agents, to any patient medical records. Accordingly, The Contractor shall instruct its officers, employees, and agents that they are not to pursue or gain access to patient medical records for any reason whatsoever.

Notwithstanding the foregoing, the parties acknowledge that, in the course of the provision of services hereunder, the Contractor or its officers, employees, or agents, may have inadvertent access to patient medical records. The Contractor understands and agrees that Contractor, its officers, employees, and agents shall not take advantage of such access for any purpose whatsoever. Additionally, in the event of such inadvertent access, the Contractor and its officers, employees, and agents shall maintain the confidentiality of any information obtained and shall immediately, or upon the first reasonable opportunity to do so, notify DPH management personnel that such access has been gained.

In the event of any access, whether inadvertent or intentional, the Contractor shall indemnify, defend, and hold harmless County, its officers, employees, and agents from and against any and all liability, including but not limited to, demands, claims, actions, fees, costs, and expenses (including attorney and expert witness fees) arising from or connected with the Contractor's or its officers, employees' or agents' access to patient medical records. Contractor agrees to provide appropriate training to its officers, employees, and agents, regarding their obligation in this regard.

9.2 LOCAL SMALL BUSINESS ENTERPRISE (SBE) PREFERENCE PROGRAM

This Contract is subject to the provisions of the County's ordinance entitled Local Small Business Enterprise Preference Program, as codified in Chapter 2.204 of the Los Angeles County Code.

9.2.1 The Contractor shall not knowingly and with the intent to defraud, fraudulently obtain, retain, attempt to obtain or retain, or aid another in fraudulently obtaining or retaining or attempting to obtain or retain certification as a Local Small Business Enterprise.

9.2.2 The Contractor shall not willfully and knowingly make a false statement with the intent to defraud, whether by affidavit, report, or other representation, to a County official or employee for the purpose of influencing the certification or denial of certification of any entity as a Local Small Business Enterprise.

9.2.3 If the Contractor has obtained certification as a Local Small Business Enterprise by reason of having furnished incorrect supporting information or by reason of having withheld information, and which knew, or should have known, the information furnished was incorrect or the information withheld was relevant to its request for certification, and which by reason

of such certification has been awarded this contract to which it would not otherwise have been entitled, shall:

A. Pay to the County any difference between the contract amount and what the County's costs would have been if the contract had been properly awarded;

B. In addition to the amount described in subdivision (1), be assessed a penalty in an amount of not more than 10 percent of the amount of the contract; and

C. Be subject to the provisions of Chapter 2.202 of the Los Angeles County Code (Determinations of Contractor Non-responsibility and Contractor Debarment).

The above penalties shall also apply to any business that has previously obtained proper certification, however, as a result of a change in their status would no longer be eligible for certification, and fails to notify the state and of this information prior to responding to a solicitation or accepting a contract award.

9.3 TRANSITIONAL JOB OPPORTUNITIES PREFERENCE PROGRAM

9.3.1 This Contract is subject to the provisions of the County's ordinance entitles Transitional Job Opportunities Preference Program, as codified in Chapter 2.205 of the Los Angeles County Code.

9.3.2 The Contractor shall not knowingly and with the intent to defraud, fraudulently obtain, retain, attempt to obtain or retain, or aid another in fraudulently obtaining or retaining or attempting to obtain or retain certification as a Transitional Job Opportunity vendor.

9.3.3 The Contractor shall not willfully and knowingly make a false statement with the intent to defraud, whether by affidavit, report, or other representation, to a County official or employee for the purpose of influencing the certification or denial of certification of any entity as a Transitional Job Opportunity vendor.

9.3.4 If Contractor has obtained County certification as a Transitional Job Opportunity vendor by reason of having furnished incorrect supporting information or by reason of having withheld information, and which knew, or should have known, the information furnished was incorrect or the information withheld was relevant to its request for certification, and which by reason of such certification has been awarded this contract to which it would not otherwise have been entitled, shall:

A. Pay to the County any difference between the contract amount and what the County's costs would have been if the contract had been properly awarded;

B. In addition to the amount described in subdivision (1), be assessed a penalty in an amount of not more than 10 percent (10%) of the amount of the contract; and

C. Be subject to the provisions of Chapter 2.202 of the Los Angeles County Code (Determinations of Contractor Non-responsibility and Contractor Debarment).

The above penalties shall also apply to any entity that has previously obtained proper certification, however, as a result of a change in their status would no longer be eligible for certification, and fails to notify the certifying Internal Services Department of this information prior to responding to a solicitation or accepting a contract award.

9.4 COMPLIANCE WITH CALIFORNIA ENERGY COMMISSION (CEC) PROVISIONS

The Contractor shall comply with flow-down provisions from Contract Agreement Number 400-09-024 – Retrofit LA - between the County and the State Energy Resources Conservation and Development Commission (Energy Commission/CEC) as attached in Exhibit I - California Energy Commission (CEC) Provisions. Exhibit I is applicable only as it relates to its personnel and service(s) rendered to the County actually reimbursed by the CEC.

9.5 COMPLIANCE WITH U.S. DEPARTMENT OF ENERGY (DOE) PROVISIONS

The Contractor and the County shall comply with flow-down provisions set forth by the United States Department of Energy (DOE) as attached in Exhibit J - U.S. Department of Energy (DOE) Provisions. Exhibit J is applicable only as it relates to its personnel and service(s) rendered to the County actually reimbursed by the DOE.

10.0 REPRESENTATIONS AND WARRANTIES

The Contractor represents and warrants on behalf of itself that the person executing this Contract on behalf of such entity is an authorized agent for such entity who has actual authority to bind such entity to each and every term, condition and obligation of this Contract, and that all requirements of such entity have been fulfilled to provide such actual authority.

IN WITNESS WHEREOF, Contractor has executed this Contract, or caused it to be duly executed and the County of Los Angeles, by order of its Board of Supervisors has caused this Contract to be executed on its behalf by the Chair of said Board and attested by the Executive Officer-Clerk of the Board of Supervisors thereof, the day and year first above written.

VANIR CONSTRUCTION MANAGEMENT, INC.

By _____

Name

President and CEO

Title

COUNTY OF LOS ANGELES

By _____

Chairman, Board of Supervisors

I hereby certify that pursuant to Section 25103 of the Government Code, delivery of this document has been made

SACHI A. HAMAI
Executive Officer
Clerk of the Board of Supervisors

By _____
Deputy

ATTEST:

SACHI HAMAI

Executive Officer-Clerk
of the Board of Supervisors

By _____

APPROVED AS TO FORM:

John Krattli
County Counsel

By _____

Deputy County Counsel

ADOPTED
BOARD OF SUPERVISORS

18 SEP 03 2013

SACHI A. HAMAI
EXECUTIVE OFFICER

78026

IN WITNESS WHEREOF, Contractor has executed this Contract, or caused it to be duly executed and the County of Los Angeles, by order of its Board of Supervisors has caused this Contract to be executed on its behalf by the Chair of said Board and attested by the Executive Officer-Clerk of the Board of Supervisors thereof, the day and year first above written.

VANIR CONSTRUCTION MANAGEMENT, INC.

By _____

Name

Senior Vice President/Chief Financial Officer

Title

COUNTY OF LOS ANGELES

ORIGINAL SIGNED

By _____

Chairman, Board of Supervisors

ATTEST:

SACHI HAMAI

Executive Officer-Clerk
of the Board of Supervisors

ORIGINAL SIGNED

By _____

APPROVED AS TO FORM:

John Krattli
County Counsel

ORIGINAL SIGNED

By _____

Deputy County Counsel

CONTRACT

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STATEMENT OF WORK

1.0 SCOPE OF WORK

Contractor shall provide construction project management services to Internal Services Department (ISD) Facilities Operations Services (FOS) and County Office of Sustainability (COS).

Contractor shall augment FOS and COS staff, and provide, on a temporary and "as-needed" basis, construction/project management services including, but not limited to, estimating and scheduling support, cost control, document control, and management of information to ensure timely and cost-effective construction projects.

Contractor shall provide staff as required by County only after County has issued a Notice to Proceed (NTP). County may issue an NTP at any time after Contract execution.

Due to the fluctuating nature of the construction industry, County does not guarantee a minimum or maximum number of projects per year.

1.1 FOS Alterations & Improvements Division (A&I)

FOS A&I is estimated to have 200 to 300 projects per year over the next five years, with an average value of $50,000 to $75,000 each.

1.2 COS Energy Management Division (EMD)

On average, EMD completes approximately $5 to $7 million in energy retrofit projects per year.

Contractor shall be able to identify, assess, propose and manage energy retrofit projects.

Efforts in support of energy retrofit work shall also include management and administration of residential and non-residential building retrofits throughout the Countywide region under investor-owned utility and municipal utility programs.

Contractor shall manage projects consisting of the repair, maintenance, and refurbishment of County-owned, and/or leased facilities, and provide management of energy retrofit projects.

Additionally, efforts in support of energy retrofit work shall include design, analysis, and construction management services related to the application of current technology to improve energy efficiency in existing facilities owned and/or operated by County.

2.0 ADDITION AND/OR DELETION OF FACILITIES, SPECIFIC TASKS AND/OR WORK HOURS

All changes must be made in accordance with Contract, Sub-paragraph 8.1 - Amendments.

3.0 QUALITY CONTROL

The Contractor shall establish and utilize a comprehensive Quality Control Plan to assure the County a consistently high level of service throughout the term of the

Contract. The Plan shall be submitted to the County Contract Project Monitor for review. The plan shall include, but may not be limited to the following:

3.1 Method of monitoring to ensure that Contract requirements are being met.

3.2 A record of all inspections conducted by the Contractor, any corrective action taken, the time a problem was first identified, a clear description of the problem, and the time elapsed between identification and completed corrective action, shall be provided to the County upon request.

3.3 Available training, or other resources, for assuring that it's Project Director and Project Managers assigned to the work required by the resulting Contract arrive at project completion on schedule and within budget.

4.0 QUALITY ASSURANCE PLAN

County will evaluate Contractor's performance under this Contract using the quality assurance procedures as defined in this Contract, Paragraph 8.0 - Standard Terms and Conditions, Sub-paragraph 8.15 - County's Quality Assurance Plan.

4.1 Monthly Meetings

Contractor is required to attend one scheduled monthly meeting.

4.2 Contract Discrepancy Report

Verbal notification of a Contract discrepancy will be made to the Contract Project Monitor as soon as possible whenever a Contract discrepancy is identified. The problem shall be resolved within a time period mutually agreed upon by the County and the Contractor.

The County Contract Project Monitor will determine whether a formal Contract Discrepancy Report (CDR) (Attachment 1) shall be issued. Upon receipt of this document, the Contractor is required to respond in writing to the County Contract Project Monitor within five (5) workdays, acknowledging the reported discrepancies or presenting contrary evidence. A plan for correction of all deficiencies identified in the Contract Discrepancy Report shall be submitted to the County Contract Project Monitor within eight (8) workdays of receipt of the CDR.

4.3 County Observations

In addition to departmental contracting staff, other County personnel may observe performance, activities, and review documents relevant to this Contract at any time during normal business hours. However, these personnel may not unreasonably interfere with the Contractor's performance.

5.0 DEFINITIONS

5.1 Business Days: Monday thru Friday excluding County Holidays.

5.2 Business Hours: 8:00 a.m. through 5:00 p.m. on Business Days.

5.3 County Holidays: The following days of the year:

- New Year's Day (January 1)
- Martin Luther King's Birthday (Third Monday in January)

- Presidents Day (Third Monday in February)
- Memorial Day, (Last Monday in May)
- Independence Day (July 4)
- Labor Day (First Monday in September)
- Columbus Day (Second Monday in October)
- Veterans Day (November 11)
- Thanksgiving Day (Fourth Thursday in November)
- Day after Thanksgiving (Friday after Thanksgiving)
- Christmas Day (December 25)

5.4 County's Project Director: The meaning set forth in Contract, Sub-paragraph 6.1 - County's Project Director.

5.5 County's Project Manager: The meaning set forth in Contract, Sub-paragraph 6.2 - County's Project Manager.

6.0 COUNTY RESPONSIBILITIES

County's responsibilities are as follows:

6.1 Personnel

County will administer the Contract according to Contract, Paragraph 6.0 - Administration of Contract - County. Specific duties will include:

6.1.1 Monitoring Contractor's performance in the daily operation of this Contract.

6.1.2 Providing direction to Contractor in areas relating to County and Departmental policy information, and procedural requirements.

6.1.3 Preparing Amendments in accordance with the Contract, Paragraph 8.0, Standard Terms and Conditions, Sub-paragraph 8.1 Amendments.

6.2 Furnished Items

County will make available a work area, and all necessary equipment and supplies used in the performance of the required services.

7.0 CONTRACTOR RESPONSIBILITIES

Contractor's responsibilities are as follows:

7.1 Project Director

7.1.1 Contractor shall provide a full-time Project Director or designated alternate to act as a central point of contact with the County. County must have access to the Project Manager during all hours, 365 days per year. Contractor shall provide a telephone number where the Project Director may be reached during a 24 hour per day basis.

7.1.2 Project Director/alternate shall have full authority to act for Contractor on all matters relating to the daily operation of the Contract.

7.1.3 Project Director/alternate shall be able to effectively communicate, in English, both orally and in writing.

7.2 Personnel

7.2.1 Contractor shall assign a sufficient number of employees to perform the required work. At least one employee on site shall be authorized to act for Contractor in every detail and must speak and understand English.

7.2.2 Contractor shall perform a background check on each of their employees as set forth in the Contract, Sub-paragraph 7.4 – Background and Security Investigations.

7.2.3 Contractor shall provide the following categories of employees for Alterations & Improvements Division (A&I):

A. Contractor's Project Director/Alternate

B. Contractor's Project Manager(s)

C. Contractor's Senior/Assistant Project Manager(s)

D. Contractor's Scheduler(s)

E. Contractor's Estimator(s)

F. Contractor's Senior Estimator(s)

G. Contractor's Document Control Analyst(s)

7.2.4 Contractor shall provide the following categories of employees for Energy Management Division (EMD):

A. Contractor's Project Director/Alternate

B. Contractor's Project Manager(s)

C. Contractor's Senior/Assistant Project Manager(s)

D. Contractor's Resource Manager(s)/Data Analyst(s)

E. Contractor's Scheduler(s)

F. Contractor's Document Control Analyst(s)

G. Contractor's LEED Project Manager(s)

H. Contractor's Marketing Specialist(s)

7.3 Identification Badges

Contractor shall ensure that its employees are appropriately identified as set forth in Contract, Sub-paragraph 7.3 – Contractor's Staff Identification.

7.4 Training

7.4.1 Contractor shall provide training programs for all new employees and continuing in-service training for all employees.

7.4.2 All employees shall be trained in their assigned tasks and in the safe handling of equipment. All equipment shall be checked daily for safety.

All employees must wear safety and protective gear according to OSHA standards.

7.5 Contractor's Office

Contractor shall maintain an office with a telephone in the company's name where Contractor conducts business. The office shall be staffed during the hours of 8:00 a.m. to 5:00 p.m., Monday through Friday, by at least one employee who can respond to inquiries and complaints which may be received about the Contractor's performance of the Contract. When the office is closed, an answering service shall be provided to receive calls. The Contractor shall respond to calls received by the answering service within two (2) hours of receipt of the call.

8.0 WORK SCHEDULES

The Contractor shall be required to provide project management and related services on a straight time 40-hour workweek. The majority of the construction and maintenance work performed takes place in the evenings, at night, on weekends, and occasionally on holidays. Contractor shall provide construction/project management services during hours when work is taking place. Therefore, Contractor must be flexible and willing to adjust its 40-hour workweek as needed.

9.0 UNSCHEDULED WORK

9.1 The County Project Manager or his designee may authorize the Contractor to perform unscheduled work, including, but not limited to, repairs and replacements when the need for such work arises out of extraordinary incidents such as vandalism, acts of God, and third party negligence; or to add to, modify or refurbish existing facilities.

9.2 Prior to performing any unscheduled work, the Contractor shall prepare and submit a written description of the work with an estimate of labor and materials. If the unscheduled work exceeds the Contractor's estimate, the County Project Director or his designee must approve the excess cost. In any case, no unscheduled work shall commence without written authorization.

9.3 When a condition exists wherein there is imminent danger of injury to the public or damage to property, Contractor shall contact County's Project Director for approval before beginning the work. A written estimate shall be sent within twenty-four (24) hours for approval. Contractor shall submit an invoice to County's Project Director within five (5) working days after completion of the work.

9.4 All unscheduled work shall commence on the established specified date. Contractor shall proceed diligently to complete said work within the time allotted.

9.5 The County reserves the right to perform unscheduled work itself or assign the work to another Contractor.

10.0 FOS ALTERATIONS & IMPROVEMENTS DIVISION (A&I) REQUIREMENTS

FOS A&I Requirements are as follows:

10.1 Types of Projects

Contractor shall manage and bring to fruition the following types of maintenance, refurbishment and repair projects, among others:

Projects	Description and/or Examples
A ADA Projects	ramps, entrance doors, elevators, restrooms, parking lots
B Hazardous Material Remediation Projects	hazardous material survey and testing, asbestos abatement or encapsulation, lead-based paint abatement or encapsulation
C HVAC Projects	chillers, cooling towers, air handlers, pumps, duct cleaning, environmental controls, hot/chilled water lines
D Electrical Projects	service changes, sub panels, state of the art energy efficiency lighting retrofits, electrical outlets, fire alarms, CCTV, security systems, key card access, duress alarms
E Tenant improvement Projects	office remodels and renovations, paint, flooring, millwork, window coverings, ceilings, wall and door relocations
F Telecommunication Projects	telephone cabling, data cabling, conduit runs, main computer rooms, telephone rooms

10.2 Experience

A. <u>Contractor's Project Director</u>

- Contractor's Project Director must have at least five (5) years experience, within the last ten (10) years, providing construction/project management consulting services, including at least four (4) years of relevant project experience in the repair, maintenance or refurbishment of existing governmental and institutional-type facilities.
- Contractor's Project Director shall demonstrate previous experience in the management of work requirements similar in size, complexity, and responsibility as required herein.

B. <u>Contractor's Project Manager(s)</u>

- Contractor's Project Manager must have at least five (5) years experience, within the last ten (10) years, providing construction/project management consulting services, including at least four (4) years of relevant project experience in the repair,

maintenance or refurbishment of existing governmental and institutional-type facilities

C. Contractor's Assistant Project Manager(s)

- Contractor's Assistant Project Manager must have at least three (3) years experience, within the last seven (7) years, providing construction/project management consulting services, including at least three (3) years of relevant project experience in the energy industry, or services equivalent or similar to the Services identified in the SOW, attached herein

D. Contractor's Scheduler(s)

- Contractor's Scheduler must have at least three (3) years of experience, within the last seven (7) years, providing construction/project management related services in their respective fields

E. Contractor's Estimator(s)

- Contractor's Estimator must have at least three (3) years of experience, within the last seven (7) years, providing construction/project management related services in their respective fields

F. Contractor's Document Control Analyst(s)

- Contractor's Document Control Analyst must have at least three (3) years of experience, within the last seven (7) years, providing document control services.

10.3 Tasks

Contractor's staff assigned to provide services under this Contract shall:

10.3.1 Project Management

A. Prepare and maintain comprehensive, detailed schedules on projects using an automated network analysis system and the Critical Path Method techniques. The schedule shall be "banded or stratified" to include separate and distinct groups of activities for the various phases of the project(s) and/or for activities accomplished by different proponents or agencies. The organization and coding of all activities shall be done in accordance with established work breakdown structure and chart of accounts. Contractor shall update the schedules, prepare recommendations on remedial actions required to recover or alter the schedule and provide "what if" analysis to assess the impact of changes. Contractor shall be prepared to maintain and process County Project Manager schedules for contractors using County or Contractor provided software and equipment. Contractor shall obtain the County's approval of the software, which it plans to use prior to proceeding with the work;

B. Provide other project management functions as necessary.

10.3.2 Project Development

A. Coordinate programming, design, and construction of projects;

B. Meet with customers, as well as architect/engineer as necessary, and identify and develop project scope of work;

C. Manage design reviews and obtain plan approvals;

D. Identify potential problems, take corrective action, and notify the proper level of authority at County;

E. Prepare authorization documentation, including all contract-related correspondence, for designated County management signature;

F. Prepare and maintain project budgets and schedules;

10.3.3 Project Implementation

A. Assist with and coordinate project bidding process;

B. Review and make recommendations on contractor submittals;

C. Evaluate and make recommendations on changes in scope of work on individual Work Orders issued to Job Order Contract (JOC) contractors;

D. Prepare requests for change orders and modifications;

E. Coordinate County project close-out activities;

F. Interface with other County departments, courts, and agencies to resolve problems and coordinate planning;

G. Interface with Division support staff to ensure compliance with administrative and regulatory requirements;

H. Assist with project management controls systems development, implementation and system maintenance;

10.3.4 Research & Analysis

A. Provide pre-construction site analysis and planning, including considerations for temporary utilities and structures; construction sequencing; construction site coordination, site infrastructure; construction-related traffic analysis;

B. Lead field engineering investigations, and provide assessments, and reports;

C. Lead special engineering studies;

D. Conduct surveys of industry suppliers and vendors;

E. Provide claims analysis and consulting;

F. Provide analysis and recommendation in the area of sustainability for existing County facilities and new construction;

10.3.5 Document Control

Maintain a document control system to manage and store all project-related information. The current system is an Access-based documents control management system. Contractor shall be responsible for input and logging of all documents, records, reviews, writings and studies, shop drawings, Requests for Proposals, Board letters, etc., tracking of all documentation and disbursement of mail, faxes, etc.

10.3.6 Administration

A. Routinely (at least monthly) update the established County project schedule maintained centrally by the County using the open plan network analysis system;

B. Administer and maintain project contract files;

C. Coordinate schedules with customer department, contractors, other departments and agencies for all assigned projects;

D. Provide estimating services including reviewing and verifying estimates submitted by contractors and other consultants;

E. Develop, maintain and assist with implementation of procedures, policies, and technical documents;

11.0 COS ENERGY MANAGEMENT DIVISION (EMD) REQUIREMENTS

COS EMD Requirements are as follows:

11.1 Types of Projects

Contractor shall manage and bring to fruition the following types of energy efficiency projects, among others:

Projects	Description and/or Examples
A HVAC Projects	chillers, variable frequency drives, cooling towers, air handlers, pumps, duct cleaning, environmental controls, energy management systems and equipment
B Electrical Projects	state of the art energy efficiency lighting retrofit projects
C Retro-commissioning Projects	site surveys, identification of retro-commissioning opportunities
D Retrofitting Projects	residential and non-residential buildings throughout the Countywide region under investor-owned utility and municipal utility programs, municipal buildings of other cities or public agencies
E Environmental and Energy Management Services Projects	provision of a variety of services to County departments and other municipalities or public agencies

11.2 Avoidance or Mitigation of Claims

Contractor shall monitor, coordinate, and evaluate all key project activities to ensure optimum scope and configuration control, cost and schedule compliance, and quality assurance and control of project designs, specifications, contracting strategies and contractor performance to avoid or mitigate claims.

11.3 Experience and Certifications

A. Contractor's Project Director

- Contractor's Project Director shall have at least five (5) years experience, within the last ten (10) years, providing construction/ project management consulting services, including at least four (4) years of relevant project experience in the energy industry or services equivalent or similar to the Services identified herein.
- Contractor's Project Director shall demonstrate previous experience in the management of work requirements similar in size, complexity, and responsibility as required herein.

B. Contractor's Project Manager(s)

- Contractor's Project Manager shall have at least five (5) years experience, within the last 10 years, providing construction/ project management consulting services, including at least four (4) years of relevant project experience in the energy industry or services equivalent or similar to the Services identified herein
- Contractor's Project Manager shall have at least three (3) years experience within the past seven (7) years, in the management and/or oversight of retro-commissioning type of projects including retro-commissioning of control systems (both pneumatic and electronic type control systems)
- Contractor's Project Manager shall be familiar with and be able to use the McKinstry's (formerly ITRON) EEM Suite energy management information system utilized by Southern California Edison (SCE), the Los Angeles Department of Water and Power (DWP), and County, including data monitoring, data collection, and report generation using fifteen minute pulse data from utility metering and sub-metering;
- Contractor's Project Manager must be fluent in Microsoft Excel and Word.
- Desirable qualifications for Contractor's Project Manager are:
    1. Registered California Professional Engineer in Mechanical or Electrical Engineering;
    2. American Association of Energy Engineers (AEE) Certified Energy Manager (CEM);
    3. Leadership in Energy Efficient Management (LEED) trained or certified.

C. Contractor's Assistant Project Manager(s)

- Contractor's Assistant Project Manager must have at least three (3) years experience, within the last seven (7) years, providing construction/project management consulting services, including at least one (1) year of relevant project experience in the energy industry, or services equivalent or similar to the Services identified in SOW - Section 11.0.
- Contractor's Assistant Project Manager must be fluent in Microsoft Excel and Word.

D. Contractor's Resource Manager/Data Analyst

- Contractor's Resource Manager/Data Analyst shall have at least five (5) years experience, within the last 10 years, providing construction/ project management consulting services, including at least four (4) years of relevant project experience in the energy industry or services equivalent or similar to the Services identified herein

E. Contractor's Scheduler(s)

- Contractor's Scheduler must have at least three (3) years of experience, within the last seven (7) years, providing construction/project management related services in their respective fields.

F. Contractor's Document Control Analyst(s)

- Contractor's Document Control Analyst must have at least three (3) years of experience, within the last seven (7) years, providing document control services.

11.4 Tasks

Contractor's staff assigned to provide services under this Contract shall:

11.4.1 Project Management

A. Manage elements of existing building retrofit programs for the Countywide community under the State of California's Long Term Energy Efficiency Strategic Plan through the California Public Utility Commission and the California Energy Commission.

B. Manage and administer American Recovery and Reinvestment Act (ARRA) grants and other grants awarded to the County.

C. Manage grant administration activities between ISD organizations, County organizations, grant contractors, and grant partners.

D. Work with other local state, federal, private, governmental, and non-profit agencies to obtain resources for the County. Resources shall include direct project funding through financing, grants, rebates, other incentives, technical support, marketing and outreach, and administrative support. Agencies shall include local

utilities, other governmental energy management organizations, and other established energy resources (e.g., U.S. Department of Energy, California Energy Commission, etc).

E. Provide other project management functions as necessary.

11.4.2 Project Development

A. Coordinate programming, design, and construction of projects;

B. Manage design reviews and obtain plan approvals;

C. Identify potential problems, take corrective action, and notify the proper level of authority;

11.4.3 Project Implementation

A. Coordinate the identification, audits, design and installation of energy efficiency projects throughout the County and Regional Energy Network areas, in part by reviewing third party designs and engineering calculations;

B. Maintain and update the County's Master Plan for energy retrofits utilizing the existing Access database;

C. Provide complete reports categorizing retrofit status of each facility;

11.4.4 Research & Analysis

A. Provide technical assessment and testing of new and emerging technologies;

B. Provide technical assessments of various County facilities to identify LEED certification potential. Provide assessments of prerequisites and potential LEED points and the associated costs. Assist in coordination and implementation of various projects/subprojects that would result in obtaining LEED points. Coordinate the completion and uploading of various LEED templates and LEED applications;

C. Conduct research and application of emerging energy management software tools and programs;

D. Conduct research and application of energy project funding from various governmental, regulatory and industry sources;

E. Conduct research and application of other types of technical, financial, or resource assistance from private and public energy organizations;

F. Conduct analyses and prepare reports concerning all schedules submitted by consultants and contractors. Analyses/reports shall be prepared on a routine or as required basis. Analyses shall include, but not be limited to, validation of activity relationships and duration, resource loading, time and cost impact assessment, impacts on related activities/resources, requirements of outside

agencies/entities in support of activities, etc. Reports shall be supported by fragmentary networks tabular data, and other sketches/documentation as required;

G. Provide analysis of engineering audits and baseline energy usage calculations, design reviews and value engineering of work performed by others;

11.4.5 Resource Manager/Data Analyst

Provide a Resource Manager/Data Analyst to track the energy savings projects. The Resource Manager/Data Analyst shall prepare and submit quarterly reports of all energy savings projects indicating project costs, baseline date and annual energy savings. The Resource Manager/Data Analyst shall conduct ongoing review and analysis of the projects and provide exception reports to the Project Managers as necessary.

11.4.6 Document Control

Maintain a document control system to manage and store all project-related information. The current system is an Access-based documents control management system. Contractor shall be responsible for input and logging of all documents, records, reviews, writings and studies, shop drawings, Requests for Proposals, Board letters, etc., tracking of all documentation and disbursement of mail, faxes, etc.

11.4.7 Auditing

A. Provide a preliminary audit of potential retrofit sites;

B. Audit facilities for identification and development of building re-commissioning and “whole building tune-up” projects;

11.4.8 Marketing

A. Provide marketing and outreach support for various energy and environmental programs. Provide customer service at events, workshops, County environmental centers.

B. Assist and manage the various federal, state, and local grant requirements. Grant requirements may be compliance with Davis Bacon, state historic preservation office project requirement, American Made, waste management plans, and any other grant reporting requirements.

11.4.9 Administration

A. Prepare and maintain project budgets and schedules;

B. Administer and maintain project contract files;

C. Review and make recommendations on contractor submittals;

D. Coordinate County project close-out activities;

E. Interface with other County departments, Superior Courts, identified stakeholders, and agencies to resolve problems and coordinate planning;

F. Provide claims analysis and consulting;

G. Assess potential energy savings on energy retrofit work, calculate financial savings impacts, and develop cost/benefit proposals for energy projects;

12.0 GREEN INITIATIVES

12.1 Contractor shall use reasonable efforts to initiate "green" practices for environmental and energy conservation benefits.

12.2 Contractor shall notify County's Project Manager of Contractor's new green initiatives prior to the contract commencement.

13.0 PERFORMANCE REQUIREMENTS SUMMARY

A Performance Requirements Summary (PRS) chart, Attachment 2, listing required services that will be monitored by the County during the term of this Contract is an important monitoring tool for the County. The chart should:

- reference section of the contract
- list required services
- indicate method of monitoring
- indicate the deductions/fees to be assessed for each service that is not satisfactory

All listings of services used in the Performance Requirements Summary (PRS) are intended to be completely consistent with the Contract and the SOW, and are not meant in any case to create, extend, revise, or expand any obligation of Contractor beyond that defined in the Contract and the SOW. In any case of apparent inconsistency between services as stated in the Contract and the SOW and this PRS, the meaning apparent in the Contract and the SOW will prevail. If any service seems to be created in this PRS which is not clearly and forthrightly set forth in the Contract and the SOW, that apparent service will be null and void and place no requirement on Contractor.

14.0 DELIVERABLES

Contractor shall provide deliverables in accordance with this SOW. Contractor shall submit all deliverables to the below addresses as appropriate:

Internal Services Department
Facilities Operations Services
Alterations and Improvements Division
Attention: County Project Manager
1100 N. Eastern Ave, 1st Fl
Los Angeles, CA 90063

AND

Internal Services Department
County Office of Sustainability
Energy Management Division
Attention: County Project Manager
1100 N. Eastern Ave, 3rd Fl
Los Angeles, CA 90063

CONTRACT DISCREPANCY REPORT (CDR)

TO:	
FROM:	
DATES:	Prepared:
	Returned by Contractor:
	Action Completed:

Discrepancy Problems:	
COUNTY REPRESENTATIVE SIGNATURE	DATE

Contractor Response (Cause and Corrective Action):	
CONTRACTOR REPRESENTATIVE SIGNATURE	DATE

County Evaluation of Contractor Response:	
CONTRACTOR REPRESENTATIVE SIGNATURE	DATE

County Actions:

Contractor Notified of Action:	
COUNTY REPRESENTATIVE SIGNATURE	DATE
CONTRACTOR REPRESENTATIVE SIGNATURE	DATE

PERFORMANCE REQUIREMENTS SUMMARY (PRS) CHART

Revision Date: February 21, 2013

Contract

Specific Performance Reference		Standard of Performance	Monitoring Method	Deductions/Fees to Be Assessed
7.0	Administration of Contract - Contractor	Contractor shall notify the County in writing of any change in name or address of the Contractor's Project Manager	Inspection & Observation	$100 per occurrence; possible termination for default of contract
8.38	Record Retention & Inspection/Audit Settlement	Contractor to maintain all required documents as specified in Sub-paragraph 8.38	Inspection of files	$100 per occurrence; possible termination for default of contract
8.40	Subcontracting	Contractor shall obtain County's written approval prior to subcontracting any work.	Inspection & Observation	$100 per occurrence; possible termination for default of contract

Statement of Work

Specific Performance Reference		Standard of Performance	Monitoring Method	Deductions/Fees to Be Assessed
4.1	Monthly Meetings	Contractor's representative to attend monthly meeting.	Attendance	$100 per occurrence

CONTRACTOR'S EEO CERTIFICATION

Vanir Construction Management, Inc.
Contractor Name

4540 Duckhorn Drive, Suite 300, Sacramento, California 95834
Address

95-3614238
Internal Revenue Service Employer Identification Number

GENERAL CERTIFICATION

In accordance with Section 4.32.010 of the Code of the County of Los Angeles, the contractor, supplier, or vendor certifies and agrees that all persons employed by such firm, its affiliates, subsidiaries, or holding companies are and will be treated equally by the firm without regard to or because of race, religion, ancestry, national origin, or sex and in compliance with all anti-discrimination laws of the United States of America and the State of California.

CONTRACTOR'S SPECIFIC CERTIFICATIONS	YES	NO
1. The Contractor has a written policy statement prohibiting discrimination in all phases of employment.	☒	☐
2. The Contractor periodically conducts a self analysis or utilization analysis of its work force.	☒	☐
3. The Contractor has a system for determining if its employment practices are discriminatory against protected groups.	☒	☐
4. Where problem areas are identified in employment practices, the Contractor has a system for taking reasonable corrective action, to include establishment of goals or timetables.	☒	☐

Mansour Aliabadi, President and CEO
Authorized Official's Printed Name and Title

Authorized Official's Signature

August 16, 2013
Date

COUNTY'S ADMINISTRATION

CONTRACT NO. _____

FACILITIES OPERATIONS SERVICES (FOS) ALTERATIONS & IMPROVEMENTS DIVISION (A&I)

COUNTY PROJECT DIRECTOR – FOS A&I

Name:	Anthony Eng
Title:	Section Manager
Address:	1100 N Eastern Ave
	Los Angeles, CA 90063
Telephone:	(323) 267-2251
Facsimile:	(323) 260-5256
E-mail Address:	aeng@isd.lacounty.gov

COUNTY PROJECT MANAGER (CPM) – FOS A&I

Name:	Various
Title:	
Address:	
Telephone:	
Facsimile:	
E-mail Address:	

COUNTY CONTRACT PROJECT MONITOR – FOS A&I

Name:	Sue Chang
Title:	Contract Administrator
Address:	1100 N Eastern Ave
	Los Angeles, CA 90063
Telephone:	(323) 267-3129
Facsimile:	(323) 415-0895
E-mail Address:	sue.chang@isd.lacounty.gov

Name:	Jane Lee
Title:	Contractor Administrator
Address:	1100 N Eastern Ave
	Los Angeles, CA 90063
Telephone:	(323) 267-2243
Facsimile:	(323) 415-0895
E-mail Address:	jane.lee@isd.lacounty.gov

COUNTY'S ADMINISTRATION

CONTRACT NO. _____

COUNTY OFFICE OF SUSTAINABILITY (COS) ENERGY MANAGEMENT DIVISION (EMD)

COUNTY PROJECT DIRECTOR – COS EMD

Name:	Nora Hernandez
Title:	Section Manager
Address:	1100 N Eastern Ave
	Los Angeles, CA 90063
Telephone:	(323) 881-3949
Facsimile:	(323) 260-5237
E-mail Address:	nhernandez@isd.lacounty.gov

COUNTY PROJECT MANAGER (CPM) – COS EMD

Name:	Various
Title:	
Address:	
Telephone:	
Facsimile:	
E-mail Address:	

COUNTY CONTRACT PROJECT MONITOR – COS EMD

Name:	Nora Hernandez
Title:	Section Manager
Address:	1100 N Eastern Ave
	Los Angeles, CA 90063
Telephone:	(323) 881-3949
Facsimile:	(323) 260-5237
E-mail Address:	nhernandez@isd.lacounty.gov

CONTRACTOR'S ADMINISTRATION

VANIR CONSTRUCTION MANAGEMENT
CONTRACTOR'S NAME

CONTRACT NO. _____

CONTRACTOR'S PROJECT DIRECTOR:

Name:	Jeff Mumford	
Title:	Title:	Area Manager
Address:	Address:	Vanir CM c/o County of Los Angeles Internal Services Department,
		1100 North Eastern Avenue, Los Angeles, CA 90063
Telephone:	Telephone:	(323) 383-8218
Facsimile:	Facsimile:	(323) 260-5256
E-mail Address:	jeff.mumford@vanir.com	

CONTRACTOR'S AUTHORIZED OFFICIALS:

Name:	Mansour Aliabadi	
Title:	Title:	President
Address:	Address:	4540 Duckhorn Drive, Suite 300
		Sacramento, CA 95834
Telephone:	Telephone:	(916) 575-8888
Facsimile:	Facsimile:	(916) 575-8887
E-mail Address:	Mansour.aliabadi@vanir.com	

Name:	John Kuprenas	
Title:	Title:	Vice President/Southern California Regional Manager
Address:	Address:	600 Wilshire Boulevard, Suite 870
		Los Angeles, CA 90017
Telephone:	Telephone:	(213) 627-7371
Facsimile:	Facsimile:	(213) 683-9710
E-mail Address:	john.kuprenas@vanir.com	

Notices to Contractor shall be sent to the following address:

Name:	Mansour Aliabadi	
Title:	Title:	President
Address:	Address:	4540 Duckhorn Drive, Suite 300
		Sacramento, CA 95834
Telephone:	Telephone:	(916) 575-8888
Facsimile:	Facsimile:	(916) 575-8887
E-mail Address:	Mansour.aliabadi@vanir.com	

CONTRACTOR ACKNOWLEDGEMENT AND CONFIDENTIALITY AGREEMENT

(Note: This certification is to be executed and returned to County with Contractor's executed Purchase Order. Work cannot begin on the Purchase Order until County receives this executed document.)

Contractor Name _____ Contract No. _____

GENERAL INFORMATION:
The Contractor referenced above has entered into a contract with the County of Los Angeles to provide certain services to the County. The County requires the Corporation to sign this Contractor Acknowledgement and Confidentiality Agreement.

CONTRACTOR ACKNOWLEDGEMENT:
Contractor understands and agrees that the Contractor employees, consultants, Outsourced Vendors and independent contractors (Contractor's Staff) that will provide services in the above referenced agreement are Contractor's sole responsibility. Contractor understands and agrees that Contractor's Staff must rely exclusively upon Contractor for payment of salary and any and all other benefits payable by virtue of Contractor's Staff's performance of work under the above-referenced contract.

Contractor understands and agrees that Contractor's Staff are not employees of the County of Los Angeles for any purpose whatsoever and that Contractor's Staff do not have and will not acquire any rights or benefits of any kind from the County of Los Angeles by virtue of my performance of work under the above-referenced contract. Contractor understands and agrees that Contractor's Staff will not acquire any rights or benefits from the County of Los Angeles pursuant to any agreement between any person or entity and the County of Los Angeles.

CONFIDENTIALITY AGREEMENT:
Contractor and Contractor's Staff may be involved with work pertaining to services provided by the County of Los Angeles and, if so, Contractor and Contractor's Staff may have access to confidential data and information pertaining to persons and/or entities receiving services from the County. In addition, Contractor and Contractor's Staff may also have access to proprietary information supplied by other vendors doing business with the County of Los Angeles. The County has a legal obligation to protect all such confidential data and information in its possession, especially data and information concerning health, criminal, and welfare recipient records. Contractor and Contractor's Staff understand that if they are involved in County work, the County must ensure that Contractor and Contractor's Staff, will protect the confidentiality of such data and information. Consequently, Contractor must sign this Confidentiality Agreement as a condition of work to be provided by Contractor's Staff for the County.

Contractor and Contractor's Staff hereby agrees that they will not divulge to any unauthorized person any data or information obtained while performing work pursuant to the above-referenced contract between Contractor and the County of Los Angeles. Contractor and Contractor's Staff agree to forward all requests for the release of any data or information received to County's Project Manager.

Contractor and Contractor's Staff agree to keep confidential all health, criminal, and welfare recipient records and all data and information pertaining to persons and/or entities receiving services from the County, design concepts, algorithms, programs, formats, documentation, Contractor proprietary information and all other original materials produced, created, or provided to Contractor and Contractor's Staff under the above-referenced contract. Contractor and Contractor's Staff agree to protect these confidential materials against disclosure to other than Contractor or County employees who have a need to know the information. Contractor and Contractor's Staff agree that if proprietary information supplied by other County vendors is provided to me during this employment, Contractor and Contractor's Staff shall keep such information confidential.

Contractor and Contractor's Staff agree to report any and all violations of this agreement by Contractor and Contractor's Staff and/or by any other person of whom Contractor and Contractor's Staff become aware.

Contractor and Contractor's Staff acknowledge that violation of this agreement may subject Contractor and Contractor's Staff to civil and/or criminal action and that the County of Los Angeles may seek all possible legal redress.

SIGNATURE: _____ DATE: _____/_____/_____

PRINTED NAME: _____

POSITION: _____

Title 2 ADMINISTRATION
Chapter 2.203.010 through 2.203.090
CONTRACTOR EMPLOYEE JURY SERVICE

2.203.010 Findings.

The board of supervisors makes the following findings. The county of Los Angeles allows its permanent, full-time employees unlimited jury service at their regular pay. Unfortunately, many businesses do not offer or are reducing or even eliminating compensation to employees who serve on juries. This creates a potential financial hardship for employees who do not receive their pay when called to jury service, and those employees often seek to be excused from having to serve. Although changes in the court rules make it more difficult to excuse a potential juror on grounds of financial hardship, potential jurors continue to be excused on this basis, especially from longer trials. This reduces the number of potential jurors and increases the burden on those employers, such as the county of Los Angeles, who pay their permanent, full-time employees while on juror duty. For these reasons, the county of Los Angeles has determined that it is appropriate to require that the businesses with which the county contracts possess reasonable jury service policies. (Ord. 2002-0015 § 1 (part), 2002)

2.203.020 Definitions.

The following definitions shall be applicable to this chapter:

A. “Contractor” means a person, partnership, corporation or other entity which has a contract with the county or a subcontract with a county contractor and has received or will receive an aggregate sum of $50,000 or more in any 12-month period under one or more such contracts or subcontracts.

B. “Employee” means any California resident who is a full-time employee of a contractor under the laws of California.

C. “Contract” means any agreement to provide goods to, or perform services for or on behalf of, the county but does not include:

1. A contract where the board finds that special circumstances exist that justify a waiver of the requirements of this chapter; or

2. A contract where federal or state law or a condition of a federal or state program mandates the use of a particular contractor; or

3. A purchase made through a state or federal contract; or

4. A monopoly purchase that is exclusive and proprietary to a specific manufacturer, distributor, or reseller, and must match and inter-member with existing supplies, equipment or systems maintained by the county pursuant to the Los Angeles County Purchasing Policy and Procedures Manual, Section P-3700 or a successor provision; or

5. A revolving fund (petty cash) purchase pursuant to the Los Angeles County Fiscal Manual, Section 4.4.0 or a successor provision; or

6. A purchase card purchase pursuant to the Los Angeles County Purchasing Policy and Procedures Manual, Section P-2810 or a successor provision; or

7. A non-agreement purchase with a value of less than $5,000 pursuant to the Los Angeles County Purchasing Policy and Procedures Manual, Section A-0300 or a successor provision; or

8. A bona fide emergency purchase pursuant to the Los Angeles County Purchasing Policy and Procedures Manual, Section PP-1100 or a successor provision.

D. "Full time" means 40 hours or more worked per week, or a lesser number of hours if:

1. The lesser number is a recognized industry standard as determined by the chief administrative officer, or

2. The contractor has a long-standing practice that defines the lesser number of hours as full time.

E. "County" means the county of Los Angeles or any public entities for which the board of supervisors is the governing body. (Ord. 2002-0040 § 1, 2002: Ord. 2002-0015 § 1 (part), 2002)

2.203.030 Applicability.

This chapter shall apply to contractors who enter into contracts that commence after July 11, 2002. This chapter shall also apply to contractors with existing contracts which are extended into option years that commence after July 11, 2002. Contracts that commence after May 28, 2002, but before July 11, 2002, shall be subject to the provisions of this chapter only if the solicitations for such contracts stated that the chapter would be applicable. (Ord. 2002-0040 § 2, 2002: Ord. 2002-0015 § 1 (part), 2002)

2.203.040 Contractor Jury Service Policy.

A contractor shall have and adhere to a written policy that provides that its employees shall receive from the contractor, on an annual basis, no less than five days of regular pay for actual jury service. The policy may provide that employees deposit any fees received for such jury service with the contractor or that the contractor deduct from the employees' regular pay the fees received for jury service. (Ord. 2002-0015 § 1 (part), 2002)
2.203.050 Other Provisions.

A. Administration. The chief administrative officer shall be responsible for the administration of this chapter. The chief administrative officer may, with the advice of county counsel, issue interpretations of the provisions of this chapter and shall issue written instructions on the implementation and ongoing administration of this chapter. Such instructions may provide for the delegation of functions to other county departments.

B. Compliance Certification. At the time of seeking a contract, a contractor shall certify to the county that it has and adheres to a policy consistent with this chapter or will have and adhere to such a policy prior to award of the contract. (Ord. 2002-0015 § 1 (part), 2002)

2.203.060 Enforcement and Remedies.

For a contractor's violation of any provision of this chapter, the county department head responsible for administering the contract may do one or more of the following:

1. Recommend to the board of supervisors the termination of the contract; and/or,

2. Pursuant to chapter 2.202, seek the debarment of the contractor. (Ord. 2002-0015 § 1 (part), 2002)

Title 2 ADMINISTRATION
Chapter 2.203.010 through 2.203.090
CONTRACTOR EMPLOYEE JURY SERVICE

2.203.070. Exceptions.

A. Other Laws. This chapter shall not be interpreted or applied to any contractor or to any employee in a manner inconsistent with the laws of the United States or California.

B. Collective Bargaining Agreements. This chapter shall be superseded by a collective bargaining agreement that expressly so provides.

C. Small Business. This chapter shall not be applied to any contractor that meets all of the following:

1. Has ten or fewer employees during the contract period; and,

2. Has annual gross revenues in the preceding twelve months which, if added to the annual amount of the contract awarded, are less than $500,000; and,

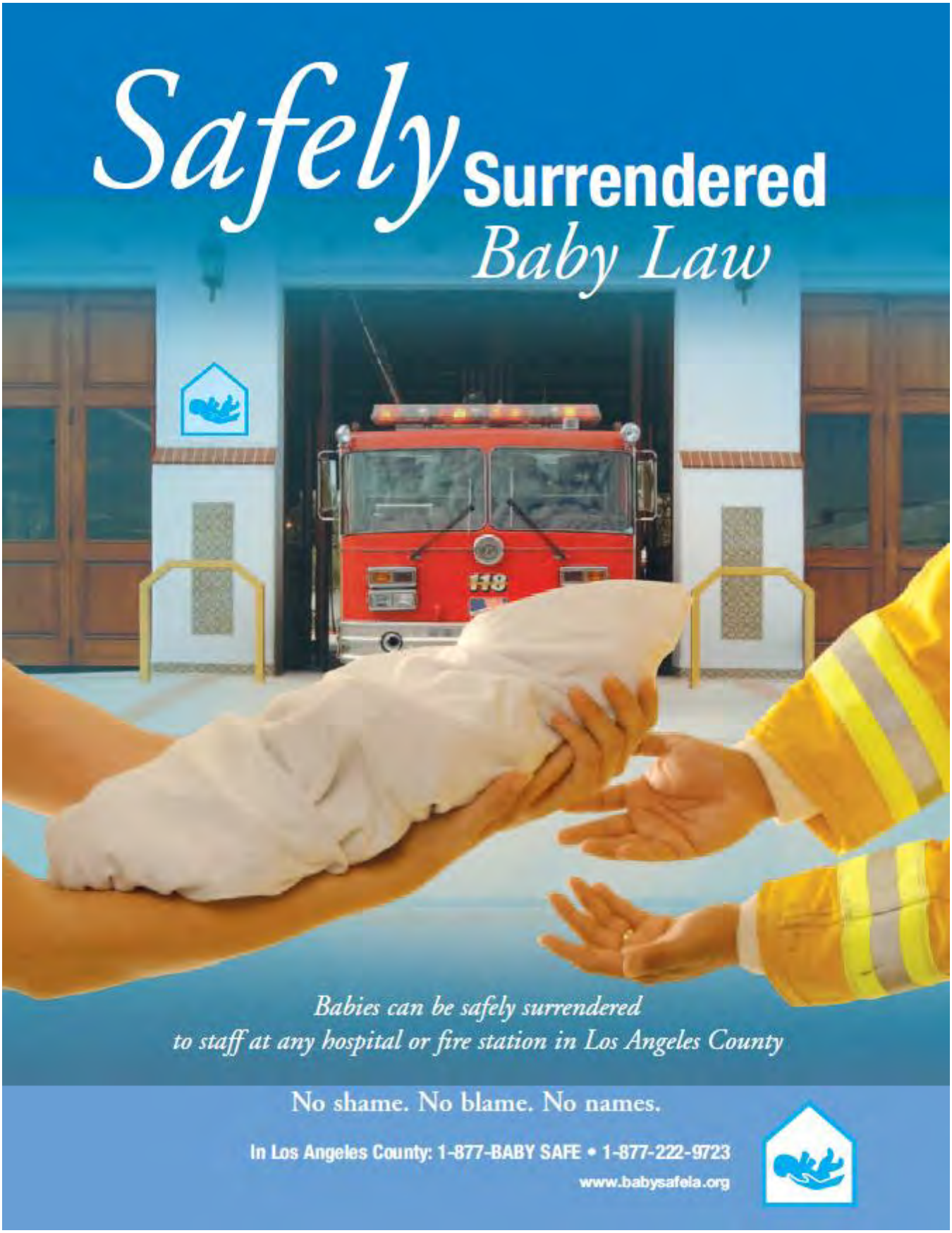
3. Is not an affiliate or subsidiary of a business dominant in its field of operation.

“Dominant in its field of operation” means having more than ten employees and annual gross revenues in the preceding twelve months which, if added to the annual amount of the contract awarded, exceed $500,000.

“Affiliate or subsidiary of a business dominant in its field of operation” means a business which is at least 20 percent owned by a business dominant in its field of operation, or by partners, officers, directors, majority stockholders, or their equivalent, of a business dominant in that field of operation. (Ord. 2002-0015 § 1 (part), 2002)

2.203.090. Severability.

If any provision of this chapter is found invalid by a court of competent jurisdiction, the remaining provisions shall remain in full force and effect. (Ord. 2002-0015 § 1 (part), 2002)


Safely Surrendered
Baby Law
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Babies can be safely surrendered
to staff at any hospital or fire station in Los Angeles County
No shame. No blame. No names.
In Los Angeles County: 1-877-BABY SAFE • 1-877-222-9723
www.babysafela.org

In Los Angeles County: 1-877-BABY SAFE • 1-877-222-9723
www.babysafela.org

Safely Surrendered Baby Law

What is the Safely Surrendered Baby Law?

California's Safely Surrendered Baby Law allows parents or other persons, with lawful custody, which means anyone to whom the parent has given permission to confidentially surrender a baby. As long as the baby is three days (72 hours) of age or younger and has not been abused or neglected, the baby may be surrendered without fear of arrest or prosecution.

Every baby deserves a chance for a healthy life. If someone you know is considering abandoning a baby, let her know there are other options. For three days (72 hours) after birth, a baby can be surrendered to staff at any hospital or fire station in Los Angeles County.

How does it work?

A distressed parent who is unable or unwilling to care for a baby can legally, confidentially, and safely surrender a baby within three days (72 hours) of birth. The baby must be handed to an employee at a hospital or fire station in Los Angeles County. As long as the baby shows no sign of abuse or neglect, no name or other information is required. In case the parent changes his or her mind at a later date and wants the baby back, staff will use bracelets to help connect them to each other. One bracelet will be placed on the baby, and a matching bracelet will be given to the parent or other surrendering adult.

What if a parent wants the baby back?

Parents who change their minds can begin the process of reclaiming their baby within 14 days. These parents should call the Los Angeles County Department of Children and Family Services at 1-800-540-4000.

Can only a parent bring in the baby?

No. While in most cases a parent will bring in the baby, the Law allows other people to bring in the baby if they have lawful custody.

Does the parent or surrendering adult have to call before bringing in the baby?

No. A parent or surrendering adult can bring in a baby anytime, 24 hours a day, 7 days a week, as long as the parent or surrendering adult surrenders the baby to someone who works at the hospital or fire station.

Does the parent or surrendering adult have to tell anything to the people taking the baby?

No. However, hospital or fire station personnel will ask the surrendering party to fill out a questionnaire designed to gather important medical history information, which is very useful in caring for the baby. The questionnaire includes a stamped return envelope and can be sent in at a later time.

What happens to the baby?

The baby will be examined and given medical treatment. Upon release from the hospital, social workers immediately place the baby in a safe and loving home and begin the adoption process.

What happens to the parent or surrendering adult?

Once the parent or surrendering adult surrenders the baby to hospital or fire station personnel, they may leave at any time.

Why is California doing this?

The purpose of the **Safely Surrendered Baby Law** is to protect babies from being abandoned, hurt or killed by their parents. You may have heard tragic stories of babies left in dumpsters or public bathrooms. Their parents may have been under severe emotional distress. The mothers may have hidden their pregnancies, fearful of what would happen if their families found out. Because they were afraid and had no one or nowhere to turn for help, they abandoned their babies. Abandoning a baby is illegal and places the baby in extreme danger. Too often, it results in the baby's death. The **Safely Surrendered Baby Law** prevents this tragedy from ever happening again in California.

A baby's story

Early in the morning on April 9, 2005, a healthy baby boy was safely surrendered to nurses at Harbor-UCLA Medical Center. The woman who brought the baby to the hospital identified herself as the baby's aunt and stated the baby's mother had asked her to bring the baby to the hospital on her behalf. The aunt was given a bracelet with a number matching the anklet placed on the baby; this would provide some identification in the event the mother changed her mind about surrendering the baby and wished to reclaim the baby in the 14-day period allowed by the Law. The aunt was also provided with a medical questionnaire and said she would have the mother complete and mail back in the stamped return envelope provided. The baby was examined by medical staff and pronounced healthy and full-term. He was placed with a loving family that had been approved to adopt him by the Department of Children and Family Services.

Ley de Entrega de Bebés Sin Peligro
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Los recién nacidos pueden ser entregados en forma segura al personal de cualquier hospital o cuartel de bomberos del Condado de Los Ángeles
Sin pena. Sin culpa. Sin nombres.
En el Condado de Los Ángeles: 1-877-BABY SAFE • 1-877-222-9723
www.babysafela.org

En el Condado de Los Ángeles: 1-877-BABY SAFE • 1-877-222-9723
www.babysafela.org

Ley de Entrega de Bebés *Sin Peligro*

¿Qué es la Ley de Entrega de Bebés sin Peligro?

La Ley de Entrega de Bebés sin Peligro de California permite la entrega confidencial de un recién nacido por parte de sus padres u otras personas con custodia legal, es decir cualquier persona a quien los padres le hayan dado permiso. Siempre que el bebé tenga tres días (72 horas) de vida o menos, y no haya sufrido abuso ni negligencia, pueden entregar al recién nacido sin temor de ser arrestados o procesados.

Cada recién nacido se merece la oportunidad de tener una vida saludable. Si alguien que usted conoce está pensando en abandonar a un recién nacido, infórmele que tiene otras opciones. Hasta tres días (72 horas) después del nacimiento, se puede entregar un recién nacido al personal de cualquier hospital o cuartel de bomberos del condado de Los Angeles.

¿Cómo funciona?

El padre/madre con dificultades que no pueda o no quiera cuidar de su recién nacido puede entregarlo en forma legal, confidencial y segura dentro de los tres días (72 horas) del nacimiento. El bebé debe ser entregado a un empleado de cualquier hospital o cuartel de bomberos del Condado de Los Ángeles. Siempre que el bebé no presente signos de abuso o negligencia, no será necesario suministrar nombres ni información alguna. Si el padre/madre cambia de opinión posteriormente y desea recuperar a su bebé, los trabajadores utilizarán brazaletes para poder vincularlos. El bebé llevará un brazalete y el padre/madre o el adulto que lo entregue recibirá un brazalete igual.

¿Qué pasa si el padre/madre desea recuperar a su bebé?

Los padres que cambien de opinión pueden comenzar el proceso de reclamar a su recién nacido dentro de los 14 días. Estos padres deberán llamar al Departamento de Servicios para Niños y Familias (Department of Children and Family Services) del Condado de Los Ángeles al 1-800-540-4000.

¿Sólo los padres podrán llevar al recién nacido?

No. Si bien en la mayoría de los casos son los padres los que llevan al bebé, la ley permite que otras personas lo hagan *si tienen custodia legal*.

¿Los padres o el adulto que entrega al bebé deben llamar antes de llevar al bebé?

No. El padre/madre o adulto puede llevar al bebé en cualquier momento, las 24 horas del día, los 7 días de la semana, siempre y cuando entreguen a su bebé a un empleado del hospital o cuartel de bomberos.

¿Es necesario que el padre/madre o adulto diga algo a las personas que reciben al bebé?

No. Sin embargo, el personal del hospital o cuartel de bomberos le pedirá a la persona que entregue al bebé que llene un cuestionario con la finalidad de recabar antecedentes médicos importantes, que resultan de gran utilidad para cuidar bien del bebé. El cuestionario incluye un sobre con el sello postal pagado para enviarlo en otro momento.

¿Qué pasará con el bebé?

El bebé será examinado y le brindarán atención médica. Cuando le den el alta del hospital, los trabajadores sociales inmediatamente ubicarán al bebé en un hogar seguro donde estará bien atendido, y se comenzará el proceso de adopción.

¿Qué pasará con el padre/madre o adulto que entregue al bebé?

Una vez que los padres o adulto hayan entregado al bebé al personal del hospital o cuartel de bomberos, pueden irse en cualquier momento.

¿Por qué se está haciendo esto en California? ?

La finalidad de la **Ley de Entrega de Bebés sin Peligro** es proteger a los bebés para que no sean abandonados, lastimados o muertos por sus padres. Usted probablemente haya escuchado historias trágicas sobre bebés abandonados en basureros o en baños públicos. Los padres de esos bebés probablemente hayan estado pasando por dificultades emocionales graves. Las madres pueden haber ocultado su embarazo, por temor a lo que pasaría si sus familias se enteraran. Abandonaron a sus bebés porque tenían miedo y no tenían nadie a quien pedir ayuda. El abandono de un recién nacido es ilegal y pone al bebé en una situación de peligro extremo. Muy a menudo el abandono provoca la muerte del bebé. La **Ley de Entrega de Bebés sin Peligro** impide que vuelva a suceder esta tragedia en California.

Historia de un bebé

A la mañana temprano del día 9 de abril de 2005, se entregó un recién nacido saludable a las enfermeras del Harbor-UCLA Medical Center. La mujer que llevó el recién nacido al hospital se dio a conocer como la tía del bebé, y dijo que la madre le había pedido que llevara al bebé al hospital en su nombre. Le entregaron a la tía un brazalete con un número que coincidía con la pulsera del bebé; esto serviría como identificación en caso de que la madre cambiara de opinión con respecto a la entrega del bebé y decidiera recuperarlo dentro del período de 14 días que permite esta ley. También le dieron a la tía un cuestionario médico, y ella dijo que la madre lo llenaría y lo enviaría de vuelta dentro del sobre con franqueo pagado que le habían dado. El personal médico examinó al bebé y se determinó que estaba saludable y a término. El bebé fue ubicado con una buena familia que ya había sido aprobada para adoptarlo por el Departamento de Servicios para Niños y Familias.

CHARITABLE CONTRIBUTIONS CERTIFICATION

Vanir Construction Management, Inc.
Company Name

4540 Duckhorn Drive, Suite 300, Sacramento, CA 95834
Address

95-3614238
Internal Revenue Service Employer Idenfication Number

N/A
California Registry of Charitable Trusts "CT" number (if applicable)

The Nonprofit Integrity Act (SB 1262, Chapter 919) added requirements to California's Supervision of Trustees and Fundraisers for Charitable Purposes Act which regulates those receiving and raising charitable contributions.

Check the Certification below that is applicable to your company.

☒ Proposer or Contractor has examined its activities and determined that it does not now receive or raise charitable contributions regulated under California's Supervision of Trustees and Fundraisers for Charitable Purposes Act. If Proposer engages in activities subjecting it to those laws during the term of a County contract, it will timely comply with them and provide County a copy of its initial registration with the California State Attorney General's Registry of Charitable Trusts when filed.

OR

☐ Proposer or Contractor is registered with the California Registry of Charitable Trusts under the CT number listed above and is in compliance with its registration and reporting requirements under California law. Attached is a copy of its most recent filing with the Registry of Charitable Trusts as required by Title 11 California Code of Regulations, sections 300-301 and Government Code sections 12585-12586.

Signature

April 9, 2013
Date

Mansour Aliabadi, President and CEO
Name and Title of Signer (Please Print)

EXHIBIT I

CALIFORNIA ENERGY COMMISSION (CEC) PROVISIONS

Document(s) Included:

1. Contract Agreement Number 400-09-024 Exhibit D
2. Contract Agreement Number 400-09-024 Exhibit E and Attachments 1-7

EXHIBIT D

Special Terms and Conditions

1. **CONTRACT MANAGEMENT**

A. The Contractor's Project Manager is responsible for the day-to-day project status, decisions, and communications with the Energy Commission's Contract Manager. The Contractor may change its Project Manager by giving written notice to the Energy Commission, but the Energy Commission reserves the right to approve any substitution of the Project Manager.

B. The Energy Commission may change its Contract Manager at any time by giving written notice to the Contractor. The Energy Commission's Contract Officer will sign the written notice.

C. Energy Commission staff may work side by side with the Contractor's staff, to the extent and under conditions that may be directed by the Energy Commission's Contract Manager. In this connection, the Energy Commission staff will be given access to all data, working papers, etc., that the Contractor may seek to utilize.

D. The Contractor will not be permitted to utilize Energy Commission personnel for the performance of services that are the Contractor's responsibility, unless the Energy Commission's Contract Manager agrees to such utilization in writing and an appropriate adjustment in price is made. No charge will be made to the Contractor for the services of Energy Commission employees while performing, coordinating or monitoring functions.

2. **STANDARD OF PERFORMANCE**

The Contractor shall be responsible in the performance of it and its subawardee and vendor's work under this Agreement for exercising the degree of skill and care required by customarily accepted good professional practices and procedures. Any costs for failure to meet these standards, or otherwise defective services, which require reperformance, as directed by Contract Manager or its designee, shall be borne in total by the Contractor/subawardee/vendor and not the Energy Commission. In the event the Contractor/subawardee/vendor fails to perform in accordance with the above standard, the following will apply. Nothing contained in this section is intended to limit any of the rights or remedies that the Energy Commission may have under law.

A. The Contractor/subawardee/vendor will reperform, at its own expense, any task that was not performed to the reasonable satisfaction of the Contract Manager. Any work reperformed pursuant to this paragraph shall be completed within the time limitations originally set forth for the specific task involved. The Contractor/subawardee/vendor shall work any overtime required to meet the deadline for the task at no additional cost to the Energy Commission.

B. The Energy Commission shall provide a new schedule for the reperformance of any task pursuant to this paragraph in the event that reperformance of a task within the original time limitations is not feasible.

C. If the Energy Commission directs the Contractor not to reperform a task, the Contract Manager and Contractor shall negotiate a reasonable settlement for satisfactory services rendered. No previous payment shall be considered a waiver of the Energy Commission's right to reimbursement.

3. PROCUREMENT

When procuring property and services with funds awarded under this Agreement, the Contractor and subawardees shall follow the following procurement policies and procedures of 10 Code of Federal Regulations (CFR) Part 600: DOE Financial Assistance Regulations (http://ecfr.gpoaccess.gov), which are incorporated by reference in Exhibit E:

A. State governments shall follow the same policies and procedures they use for procurements from their non-Federal funds.

B. Local governments shall follow 10 CFR Section 600.236(b) through (i). For purposes of this Agreement, the Energy Commission has approved the use of the subcontractors specifically named in Section 4 below without requiring competitive solicitation. Procurement for all other services or goods shall be consistent with the requirements for competitive bid as provided in 10 CFR Section 600.236(b) through (i).

C. Institutions of higher education, hospitals, and other nonprofit organizations shall follow 10 CFR Sections 600.140 through 600.149.

D. For-profit organizations shall follow 10 CFR Section 600.331.

4. SUBAWARDS

The Contractor shall enter into agreements with the following firms and/or individuals, and shall manage their performance.

A. Nothing contained in this Agreement or otherwise, shall create any contractual relationship between the Energy Commission and any subawardees or vendors, and no subaward shall relieve the Contractor of its responsibilities and obligations under this Agreement. The Contractor agrees to be as fully responsible to the Energy Commission for the acts and omissions of its subawardees or vendors and/or persons either directly or indirectly employed by any of them as it is for the

acts and omissions of persons directly employed by the Contractor. The Contractor's obligation to pay its subawardees or vendors is an independent obligation from the Energy Commission's obligation to make payments to the Contractor. As a result, the Energy Commission shall have no obligation to pay or to enforce the payment of any monies to any subawardee or vendor.

B. The Contractor shall be responsible for establishing and maintaining contractual agreements with and the reimbursement of each of the subawardees or vendors for work performed in accordance with the terms of this Agreement. The Contractor shall be responsible for: (1) scheduling and assigning subawardees or vendors to specific tasks in the manner described in this Agreement; (2) coordinating subawardee or vendor accessibility to Energy Commission staff; and (3) submitting completed products to the Contract Manager.

C. Required Subaward Provisions

All subawards shall contain the following:

1) The provisions of Exhibit E. Vendor subawards shall only contain the provisions in Attachment 7 of Exhibit E (Exhibit E Vendor Flow-Down Provisions).

2) The provisions required by 10 CFR Section 600.236(i).

3) The "Recordkeeping and Inspection of Records" paragraph of this Exhibit (Exhibit D).

4) A provision that further assignments shall not be made to any third or subsequent tier subawardee without additional written consent of the Contract Manager.

5) The confidentiality provisions in the "Reports" paragraph of this Exhibit (Exhibit D).

6) The audit rights, indemnification, and non-discrimination provisions stated in the General Terms and Conditions (Exhibit C);

7) If applicable, a provision that directs subawardees to submit copies of executed subawards and applicable prevailing wage determinations to the Contract Manager, pursuant to the "Subaward Documentation" paragraph of this Exhibit (Exhibit D).

8) If applicable, a provision that the Energy Commission must approve of executed subawards and prevailing wage determinations prior to the

commencement of any work under a subaward, pursuant to the "Subaward Documentation" paragraph of this Exhibit (Exhibit D).

D. Prevailing Wages

1) The Contractor must ensure that any subawardees or vendors under this Agreement are paid in compliance with federal prevailing wage law as provided in Paragraph 2.M of Exhibit E ("Davis-Bacon Act and Contract Work Hours and Safety Standards Act"), and with state prevailing wage law as provided below. When advertising for a public contract opportunity, the Contractor and its subwardees or vendors must attach the applicable wage determinations to the solicitation, assistance agreement, and resulting contract or grant.

2) The Contractor agrees to pay not less than the specified general prevailing wage rates to all workers employed in the execution of the contract subject to the requirements of California Labor Code Section 1770 et seq. The Contractor is responsible for ascertaining and complying with all current general prevailing wage requirements and rates for crafts and any rate changes that occur during the life of the contract. Information on all prevailing wage rates and all rate changes are to be posted at the job site for all workers to view. The Contractor is further responsible to keep accurate payroll records and comply with all other administrative requirements provided in the California Labor Code.

3) The Energy Commission is directed to include the provisions regarding prevailing wage in this Exhibit D and in Exhibit E by the terms of the federal award. However, as provided in the Scope of Work in Exhibit A, no funds under this Agreement are used to fund or subsidize activities or other work considered to be labor or construction within the meaning of Section 1606 of ARRA. Therefore, it is acknowledged that Contractor and its subawardees or vendors do not need to apply these prevailing wage provisions to their activities funded by this Agreement. This exemption from the Davis-Bacon Act is limited to this Agreement due to the particular Scope of Work in this Agreement; Contractor may be subject to federal or state wage requirements according to the law applicable to other funds used for such labor or construction.

E. Subaward Documentation

1) Subawards and Prevailing Wage Determinations

(a) The Contractor must submit the following to the Contract Manager within thirty (30) days or less of execution of any subaward under this Agreement:

(1) The complete, executed subaward; and
(2) The applicable wage determinations for all labor and mechanic work to be performed under the subaward.

The Energy Commission must approve the executed subaward and applicable wage determinations prior to the commencement of any work under the subaward. Execution of this Agreement does not constitute the Energy Commission's approval of prevailing wage rates identified by the Contractor prior to execution of the Agreement. The Energy Commission will review executed subawards and prevailing wage determinations after this Agreement has been approved and executed. Installation costs incurred by the Contractor prior to the Energy Commission's approval of the subaward and wage determinations are not reimbursable under this Agreement.

(b) The Contractor must include provisions in all subawards that:

(1) Direct its subawardees to submit copies of executed subawards and applicable wage determinations to the Contract Manager; and
(2) State that the Energy Commission must approve the executed subawards and applicable wage determinations prior to the commencement of any work under the subaward.

(c) The requirements specified in (a) and (b) above apply to subawards funded in whole or in part with cost share funds, where the purpose of such subawards is to carry out or support any portion of this Agreement.

2) Certified Payrolls

The Contractor must submit to the Energy Commission on a weekly basis a copy of all certified payrolls prepared in accordance with 29 CFR Section 5.5 (a)(3)(ii) for all subawardees that are subject to the Davis-Bacon Act. See Paragraph 2.M of Exhibit E, "Davis-Bacon Act and Contract Work Hours and Safety Standards Act."

3) Solicitations and Proposals/Bids

The Contractor shall maintain the following subaward documentation and provide it to the Contract Manager or Contract Officer, upon request:

(a) All solicitations for services or products required to carry out the terms of this Agreement.
(b) Copies of solicitation proposals or bids received.

(c) *If the Contractor is a local government that has issued a noncompetitive proposal*, justification and cost analysis for noncompetitive proposals in accordance with 10 CFR Section 600.236(d)(4) specifying why competitive procurement was infeasible and which of the following circumstances applies:

(1) The item is available only from a single source;
(2) The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;
(3) The U.S. Department of Energy authorizes noncompetitive proposals; or
(4) After solicitation of a number of sources, competition is determined inadequate.

F. Assignment of Subawards

The Contractor shall not allow any subawardees or vendors to assign any portion of a subaward related to this Agreement to a third party or subsequent tier subawardees or vendors without first obtaining the written consent of the Contract Manager and following the procedures below in the "Process for Additions, Removal or Substitutions of Subawardees or Vendors" paragraph of this Exhibit.

G. Bureau of State Audits

All subawards entered into pursuant to this Agreement shall be subject to examination and audit by the Bureau of State Audits for a period of three (3) years after final payment under the Agreement.

H. Notification of Subaward Termination

Upon the termination of any subaward, the Contractor shall notify the Contract Manager and Contract Officer immediately in writing.

I. Process for Offering Work; Process for Adding or Substituting People Listed in the Agreement

If the Energy Commission or Contractor requires the replacement or substitution of a person listed in the Agreement to provide a particular service, or requires that a new person is added, the Contractor shall:

1) First offer the work to qualified persons already listed in this Agreement (either an employee of the Contractor or a subawardee or vendor).

2) If there is no available person listed in this Agreement who can perform the work, then the Contractor shall provide documentation from all the persons who were offered and declined the work to the Contract Manager. Then, the Contractor may request to add a new person to the Agreement. A person

added to the Agreement is thereafter treated as a person listed in this Agreement and can be offered future work without first offering it to originally listed people.

3) If the person added is an employee of the Contractor or an existing subawardee or vendor, the Contractor shall provide the added employee's pay rate, classification and resume to the Contract Manager, and the Contract Manager may approve the new person and rate. The Contract Manager approval is only valid if made in writing. In addition, any added person must fit within a classification and corresponding rate already listed in the Agreement. Adding classifications and/or higher rates requires a formal amendment and cannot be accomplished through this process.

4) If the person to be replaced or substituted was identified in the Agreement as a Disabled Veteran Business Enterprise (DVBE) firm, refer to the "Disabled Veteran Business Enterprise (DVBE) Requirements" paragraph below for changes to DVBEs.

5) If the person added is a new subawardee or vendor, the Contractor shall use the process outlined below.

J. Process for Additions, Removal or Substitutions of Subawardees or Vendors

The Energy Commission reserves the right to replace a subawardee or vendor, request additional subawardees or vendors, and approve additional subawardees or vendors requested by the Contractor. Such changes shall be subject to the following conditions:

1) If the Energy Commission or Contractor requires the replacement, substitution or addition of a subawardee or vendor, the subawardee or vendor shall be selected using either: (a) A competitive bid process with written evaluation criteria by obtaining three (3) or more bids and advertising the work to a suitable pool of subawardees or vendors including without limitation: California Contracts Register; the Contractor's mailing lists; mass media; professional papers or journals; posting on websites; and telephone or email solicitations; or (b) Non-competitive bid (sole source) process with a specific subawardee or vendor.

2) The Contractor may also need to comply with Disabled Veteran Business Enterprise requirements for the proposed subawardees or vendors.

3) When a subawardee or vendor is proposed to be added, under either a competitive or non-competitive process, the Contract Manager shall complete and submit to the Contracts Officer a "Subawardee or Vendor Add" form. This form identifies the new subawardee or vendor, resumes, what bidding method was used to obtain the subawardee or vendor (competitive or non-competitive), and rates. The proposed subaward can be executed

only after the Contract Officer approves the "Subawardee or Vendor Add" form.

K. Separation of Duties from Monitoring, Verification, and Evaluation Contractor

The Energy Commission has retained KEMA Inc. to serve as the monitoring, verification, and evaluation (MV&E) contractor for all of the Energy Commission's ARRA-funded projects, including projects funded through contracts, grants, or loans under the State Energy Program, the Energy Efficiency and Conservation Block Grant Program, the State Energy Efficient Appliance Rebate Program, and the Energy Assurance Planning Program. In order to achieve the Energy Commission's policy requiring separation of duties between the MV&E contractor and any projects that it evaluates, the Contractor is prohibited from including KEMA Inc. or its subsidiary known as KEMA Services Inc. as a participant in this project, where KEMA Inc. or KEMA Services Inc. are paid either from funds of this Agreement as a subawardee or from other funds the Contractor has included as cost share to achieve the objectives of this Agreement.

5. DISABLED VETERAN BUSINESS ENTERPRISE (DVBE) REQUIREMENTS

A. Reporting

If the Contractor made a commitment to achieve DVBE participation for this Agreement, the Contractor must within sixty (60) days of receiving final payment under this Agreement, certify in a report to the Contract Officer: (1) the total amount the Contractor received under this Agreement; (2) the name and address of the DVBE(s) that participated in the performance of the Agreement; (3) the amount each DVBE received from the Contractor; (4) that all payments under the Agreement have been made to the DVBE(s); and (5) the actual percentage of DVBE participation that was achieved. Pursuant to California Military and Veterans Code Section 999.5(d), a person or entity that knowingly provides false information shall be subject to a civil penalty for each violation.

B. Substitution of DVBE

The Contractor shall use each DVBE identified in its proposal or listed in this Agreement. The Contractor understands and agrees that if DVBEs were identified in its proposal or listed in this Agreement, award of this Agreement is based in part on its commitment to use the DVBE subcontractor(s). If the Contractor believes an identified DVBE must be replaced or substituted, the Contractor shall inform the Contract Manager and Contract Officer in writing of the reason for the DVBE replacement. Pursuant to California Military and Veterans Code Section 999.5 (e), a DVBE subcontractor may only be replaced by another DVBE subcontractor and must be approved by the Department of General Services. The Contractor shall complete revised DVBE certification forms (provided by the Contract Officer) identifying the new DVBE.

C. Amendment

This Agreement shall be amended if: a DVBE must be substituted and DGS has given approval; or there are changes to the scope of work that impact the DVBE subcontractor(s) identified in the proposal or listed in this Agreement.

D. Grounds for Termination; Damages; Penalties

Failure of the Contractor to seek substitution and adhere to the DVBE participation level identified in the proposal or listed in this Agreement may be cause for: (1) termination of this Agreement; (2) recovery of damages under rights and remedies due to the State; and (3) penalties as outlined in California Military and Veterans Code Section 999.9 and California Public Contract Code Section 10115.10.

6. RECORDKEEPING AND INSPECTION OF RECORDS

The Contractor shall retain backup source documentation for audit purposes, and make the documentation available to the Energy Commission and the Federal government upon request. In accordance with 10 CFR Part 600, the Contractor's accounting records must be supported by documentation that includes but is not limited to cancelled checks, paid bills, payrolls, time and attendance records, and contract and subgrant award documents. Pursuant to 10 CFR Section 600.242, the Contractor agrees to maintain records that directly pertain to, and involve transactions relating to, this Agreement for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated. The Contractor shall include appropriate provisions in each of its subawards to secure adequate backup documentation to verify all subawardee and vendor services and expenses invoiced for payment under this Agreement.

In accordance with Sections 902, 1514 and 1515 of the American Recovery and Reinvestment Act of 2009 (ARRA), the Contractor agrees that it shall permit the State of California, the United States Comptroller General or his representative, or the appropriate Inspector General appointed under Section 3 or 8G of the United States Inspector General Act of 1978 or his representative to: (1) examine any records that directly pertain to, and involve transactions relating to, this Agreement; and (2) interview any officer or employee of the Contractor or any of its subawardees or vendors regarding the activities funded with funds appropriated or otherwise made available by ARRA. The Contractor shall include this provision in all of its agreements with its subawardees, and vendors from whom it acquires goods or services in its execution of ARRA-funded work.

7. DISCRIMINATION AND HARASSMENT TRAINING

All employees of the Contractor, subawardees, and vendors who provide services under this Agreement and maintain work space at the Energy Commission shall take annual

training on the prevention of discrimination and harassment. The Energy Commission shall provide the online training course at no charge to the Contractor, subawardees, and vendors. However, the Contractor, subawardees, and vendors shall not invoice for the time spent taking the course. The Contractor shall ensure that all employees of the Contractor and any subawardee or vendor who provide service under this Agreement and represent the Energy Commission in public hearings and workshops, but do not maintain office space at the Energy Commission, receive training on the prevention of discrimination and harassment.

8. PERFORMANCE EVALUATION

Consistent with California Public Contract Code Sections 10367 through 10371, the Energy Commission shall, upon completion of this Agreement, prepare a performance evaluation of the Contractor. Upon filing an unsatisfactory evaluation with the Department of General Services, Office of Legal Services (DGS) the Energy Commission shall notify and send a copy of the evaluation to the Contractor within fifteen (15) days. The Contractor shall have thirty (30) days to prepare and send statements to the Energy Commission and DGS defending its performance. The Contractor's statement shall be filed with the evaluation in the Energy Commission's Contract file and with DGS for a period of thirty-six (36) months and shall not be a public record.

9. REPORTS

A. **Federal Reporting Requirements:** The Contractor shall submit progress reports to the Energy Commission in accordance with Exhibits A and E.

B. **Additional Reporting Requirements:**

1) **Progress and Final Reports**: The Contractor shall prepare progress reports summarizing all activities conducted by the Contractor to date on a schedule as provided in Exhibit A. At the conclusion of this Agreement, the Contractor shall prepare a comprehensive Final Report, on a schedule as provided in Exhibit A.

2) **Title:** The Contractor's name shall only appear on the cover and title page of reports as follows:

California Energy Commission
Project Title
Contractor Number
By (Contractor)

3) **Ownership**: Each report shall become the property of the Energy Commission.

4) **Non-disclosure**: The Contractor will not disclose data or disseminate the contents of the final or any progress report without written permission of the Contract Manager, except as provided in 6, below. Permission to disclose information on one occasion or at public hearings held by the Energy Commission relating to the same shall not authorize the Contractor to further disclose and disseminate the information on any other occasion. The Contractor will not comment publicly to the press or any other media regarding its report, or the Commission's actions on the same, except to Commission staff, the Contractor's own personnel involved in the performance of this Contract, or at a public hearing, or in response to questions from a legislative committee. Notwithstanding the foregoing, in the event any public statement is made by the Energy Commission or any other party, based on information received from the Energy Commission as to the role of the Contractor or the content of any preliminary or final report, the Contractor may, if it believes the statement to be incorrect, state publicly what it believes is correct.

5) **Confidentiality:** Neither the Contractor, its employees, or any tier of subawardees may disclose any record that has been designated as confidential or is the subject of a pending application of confidentiality, except as provided in 20 California Code of Regulations (CCR), Sections 2506 and 2507, unless disclosure is ordered by a court of competent jurisdiction (20 CCR Sections 2501, et seq.). At the election of the Contract Manager, the Contractor, the Contractor's employees, and any subawardee shall execute a "Confidentiality Agreement," supplied by the Contract Manager or Contract Officer. Each subaward shall contain provisions similar to the foregoing related to the confidentiality and nondisclosure of data.

6) **Disclosure**: Ninety (90) days after any document submitted by the Contractor is deemed by the Contract Manager to be a part of the public records of the State, the Contractor may, if it wishes to do so at its own expense, publish or utilize a report or written document but shall include the following acknowledgement and disclaimer:

> "This material is based upon work supported by the California Energy Commission and the U.S. Department of Energy under Award Number(s) DE-EE0000905."
>
> *Disclaimer*: "This report was prepared as an account of work sponsored by an agency of the United States Government. Neither the California Energy Commission, the United States Government, nor any agency thereof, nor any 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 California Energy Commission, 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 California Energy Commission, the United States Government, or any agency thereof."

10. **PURCHASE OF EQUIPMENT**

A. Equipment identified in this Agreement is approved for purchase.

B. Equipment not identified in this Agreement shall be subject to prior written approval from the Contract Manager.

C. All equipment purchased with Federal funds shall be subject to the provisions of Title 10 CFR Part 600.

D. All equipment purchased with Energy Commission funds shall be subject to the following terms and conditions:

1) Title to all non-expendable equipment purchased in whole or in part with Energy Commission funds shall remain with the Commission. Non-expendable equipment is defined in accordance with Section 7.29 of the State Contract Manual as items of equipment that have a normal life expectancy of one year or more and an approximate unit price of $5,000 or more.

2) The Contractor shall maintain an inventory record of each piece of non-expendable equipment purchased or built with Energy Commission funds. The inventory record shall include the date the equipment was acquired, total cost, serial number, model identification, and any other information or description necessary to identify the equipment.

3) The Contractor shall assume all risk for maintenance, repair, destruction and damage to equipment while in the Contractor's possession or subject to its control. The Contractor is not expected to repair or replace equipment that is intended to undergo significant modification or testing to the point of damage/destruction as part of the work described in Exhibit A, Scope of Work.

E. Upon termination or completion of this Agreement, the Energy Commission's Executive Director may:

1) Authorize the continued use of such equipment.

2) By mutual agreement with the Contractor, allow the Contractor to purchase equipment for an amount not to exceed the residual value of the equipment as of the date of termination or completion of this Agreement.

3) Request delivery of the equipment to the Energy Commission, with any costs incurred for such return to be borne by the Energy Commission.

11. INTELLECTUAL PROPERTY RIGHTS OF PARTIES

If intellectual property will be used or developed under this Agreement, the following provisions apply.

A. Exhibit E, Attachment 5 contains the intellectual property rights between the Energy Commission and the U.S. Department of Energy (DOE), which has funded this Agreement.

B. The Contractor shall obtain the same rights for the Energy Commission and DOE from all subawardees, vendors, and others who produce copyrightable material, data, works of art, works of fine art or subject inventions under this Agreement. The Contractor shall incorporate these paragraphs, modified appropriately, into its agreements with subawardees and vendors. No subaward shall be entered into without these rights being assured to the Energy Commission and DOE from the subawardee or vendor.

C. Rights to DOE

1) The Contractor grants to DOE for all copyrightable work a royalty-free, nonexclusive and irrevocable right to reproduce, publish or otherwise use the work for Federal purposes, and to authorize others to do so.

2) The Contractor acknowledges and agrees that DOE has the right to:
   (a) Obtain, reproduce, publish or otherwise use the data first produced under the Agreement; and
   (b) Authorize others to receive, reproduce, publish, or otherwise use such data for Federal purposes.

D. Rights to Energy Commission

1) The Contractor grants to the Energy Commission for all copyrightable material, work of art and original work of authorship first produced, composed or authored in the performance of this Agreement a royalty-free, paid-up, non-exclusive, irrevocable, nontransferable, worldwide license to produce, translate, publish, use, dispose of, reproduce, prepare derivative works based on, distribute copies of,

publicly perform, or publicly display a work of art or fine art, and to authorize others to produce, translate, publish, use, dispose of, reproduce, prepare derivative works based on, distribute copies of, publicly perform, or publicly display a work of art or fine art.

2) The Contractor grants to the Energy Commission a no-cost, nonexclusive, nontransferable, irrevocable license to use or have practiced for or on behalf of the State of California for governmental purposes any subject invention(s) first produced in the performance of this Agreement.

3) The Contractor grants to the Energy Commission the no-cost use of any technical data first produced or specifically used in the performance of this Agreement.

4) The Contractor grants to the Energy Commission, for all marks developed and first used under this Agreement, a no-cost, irrevocable license to use the marks for purposes of furthering programs funded under this Agreement or other related or successor programs implemented by the Energy Commission. For purposes of this paragraph, “marks” include logos, symbols, service marks, trademarks, registered marks, or other indicia of origin, whether or not registered.

E. "Data" as used in this Agreement means recorded information, regardless of form or characteristic, of a scientific or technical nature. It may, for example, document research or experimental, developmental or engineering work, or be usable or be used to define a design or process, or to support a premise or conclusion asserted in any deliverable document required by this Agreement. The data may be graphic or pictorial delineations in media, such as drawings or photographs, data or information, etc. It may be in machine form, such as punched cards, magnetic tape or computer printouts, or may be retained in computer memory.

F. "Deliverable data" is that data which, under the terms of this Agreement, is required to be delivered to the Energy Commission and shall belong to the Energy Commission.

G. "Proprietary data" is such data as the Contractor has identified in a satisfactory manner as being under the Contractor's control prior to commencement of performance of this Agreement, and which the Contractor has reasonably demonstrated as being of a proprietary nature either by reason of copyright, patent or trade secret doctrines in full force and effect at the time when performance of this Contract is commenced. The title to "proprietary data" shall remain with the Contractor throughout the term of this Agreement and thereafter. The extent of the Energy Commission access to, and the testimony available regarding, the proprietary data shall be limited to that reasonably necessary to

demonstrate, in a scientific manner to the satisfaction of scientific persons, the validity of any premise, postulate or conclusion referred to or expressed in any deliverable for this Agreement.

H. "Generated data" is that data, which a Contractor has collected, collated, recorded, deduced, read out or postulated for utilization in the performance of this Agreement. Any electronic data processing program, model or software system developed or substantially modified by the Contractor in the performance of this Agreement at the Energy Commission's expense, together with complete documentation thereof, shall be treated in the same manner as "generated data." "Generated data" shall be the property of the Energy Commission, unless and only to the extent that it is specifically provided otherwise in this Agreement.

I. As to "generated data" which is reserved to the Contractor by the express terms hereof, and as to any pre-existing or "proprietary data" which has been utilized to support any premise, postulate or conclusion referred to or expressed in any deliverable hereunder, the Contractor shall preserve the same in a form which may be introduced as evidence in a court of law at the Contractor's own expense for a period of not less than three (3) years after receipt by the Energy Commission of the Final Report herein.

J. Before the expiration of the three (3) years, and before changing the form of or destroying any data, the Contractor shall notify the Energy Commission of any contemplated action and the Energy Commission may, within thirty (30) days after notification, determine whether it desires the data to be preserved. If the Energy Commission so elects, the expense of further preserving data shall be paid for by the Energy Commission. The Contractor agrees that the Energy Commission may at its own expense, have reasonable access to data throughout the time during which data is preserved. The Contractor agrees to use its best efforts to furnish competent witnesses or to identify competent witnesses to testify in any court of law regarding data.

K. The Contractor agrees that it shall not use or allow subcontractors or other third parties to use any deliverable or generated data owned by the Energy Commission and in the possession or control of the Contractor, subcontractor, or third party after termination of this Agreement. Neither the Contractor, subcontractors, nor other third parties have a license to use the data after termination of this Agreement. The Contractor, subcontractor, and other third parties may use the data to the same extent as other members of the public if the Energy Commission makes the data publicly available after termination of this Agreement.

L. The Contractor agrees that it shall return all deliverable and generated data owned by the Energy Commission to the Commission within thirty (30) days of termination of this Agreement, including any backup copies of the data. The Contractor shall destroy the data if its return is infeasible. “Destroy” means to

physically or electronically eliminate or ruin the data beyond all possible recovery.

Destruction of the data is subject to the Energy Commission's approval. The Contractor must provide the Contract Manger written notice of its intent to destroy any deliverable or generated data owned by the Energy Commission within fifteen (15) days of termination of this Agreement. The notice of intent must identify the data and specify the reason that its return is infeasible. The Contract Manager will notify the Contractor of the Energy Commission's decision regarding destruction of the data within thirty (30) days of receipt of the notice of intent. The Contractor shall provide the Contract Manager with a written certification of destruction within five (5) days of destruction of the data.

The Contractor agrees to indemnify the Energy Commission in the event of breach of its agreement not to use the data and to destroy data for which return is infeasible.

M.

12. **PUBLIC HEARINGS**

If public hearings on the scope of work are held during the period of this Agreement, the Contractor will make available to testify the personnel assigned to this Agreement. The Energy Commission will reimburse the Contractor for compensation and travel of the personnel at the Agreement rates for the testimony that the Energy Commission requests.

13. **DISPUTES**

In the event of a Contract dispute or grievance between the Contractor and the Energy Commission, both parties shall follow the following procedure. The Contractor shall continue with the responsibilities under this Agreement during any dispute.

A. Commission Dispute Resolution

The Contractor shall first discuss the problem informally with the Contract Manager. If the problem cannot be resolved at this stage, the Contractor must direct the grievance together with any evidence, in writing, to the Contracts Officer. The grievance must state the issues in the dispute, the legal authority or other basis for the Contractor's position, and the remedy sought. The Contracts Officer and the Program Office Manager must make a determination on the problem within ten (10) working days after receipt of the written communication from the Contractor. The Contracts Officer shall respond in writing to the Contractor, indicating a decision and explanation for the decision. Should the Contractor disagree with the Contracts Officer's decision, the Contractor may appeal to the Executive Director.

The Contractor must prepare a letter indicating why the Contracts Officer's decision is unacceptable, attaching to it the Contractor's original statement of the dispute with supporting documents, along with a copy of the Contracts Officer's response. This letter shall be sent to the Energy Commission's Executive Director within ten (10) working days from receipt of the Contracts Officer's decision. The Executive Director or designee shall meet with the Contractor to review the issues raised. A written decision signed by the Executive Director or designee shall be returned to the Contractor within twenty (20) working days of receipt of the Contractor's letter. The Executive Director may inform the Energy Commission of the decision at an Energy Commission business meeting. Should the Contractor disagree with the Executive Director's decision, the Contractor may appeal to the Energy Commission at a regularly scheduled business meeting. The Contractor will be provided with the current procedures for placing the appeal on an Energy Commission Business Meeting Agenda.

B. Binding Arbitration by Mutual Agreement

Should the Energy Commission's Dispute Resolution procedure above fail to resolve a contract dispute or grievance to the satisfaction of the Contractor, the Contractor and Energy Commission mutually may elect to have the dispute or grievance resolved through binding arbitration. If one party does not agree, the matter shall not be submitted to arbitration.

The arbitration proceeding shall take place in Sacramento County, California, and shall be governed by the commercial arbitration rules of the American Arbitration Association (AAA) in effect on the date the arbitration is initiated. The dispute or grievance shall be resolved by one (1) arbitrator who is an expert in the particular field of the dispute or grievance. The arbitrator shall be selected in accordance with the aforementioned commercial arbitration rules.

If arbitration is mutually decided by the parties, arbitration is in lieu of any court action and the decision rendered by the arbitrator shall be final (not appealable to a court through the civil process). However, judgment may be entered upon the arbitrator's decision and is enforceable in accordance with the applicable law in any court having jurisdiction over this Agreement. The demand for arbitration shall be made no later six (6) months after the date of the contract's termination, despite when the dispute or grievance arose, and despite the applicable statue of limitations for a suit based on the dispute or grievance. If the parties do not mutually agree to arbitration, the parties agree that the sole forum to resolve a dispute is state court.

The cost of arbitration shall be borne by the parties as follows:

1) The AAA's administrative fees shall be borne equally by the parties;

2) The expense of a stenographer shall be borne by the party requesting a stenographic record;

3) Witness expenses for either side shall be paid by the party producing the witness;

4) Each party shall bear the cost of its own travel expenses;

5) All other expenses shall be borne equally by the parties, unless the arbitrator apportions or assesses the expenses otherwise as part of his or her award.

At the option of the parties, any or all of these arbitration costs may be deducted from any balance of funds from this Agreement. Both parties must agree, in writing, to utilize funds from this Agreement to pay for arbitration costs.

14. **TERMINATION**

The parties agree that because the Energy Commission is a state entity, it must be able to immediately terminate the Agreement upon the default of Contractors, and to proceed with the work required under the Agreement in any manner the Energy Commission deems proper. The Contractor specifically acknowledges that the Energy Commission's unilateral termination of the Agreement under the terms set forth below is an essential term of the Agreement, without which the Energy Commission would not enter into the Agreement. The Contractor further agrees that upon any of the events triggering the unilateral termination the Agreement by the Energy Commission, the Energy Commission has the sole right to terminate the Agreement, and it would constitute bad faith of the Contractor to interfere with the immediate termination of the Agreement by the Energy Commission.

This Agreement may be terminated for any reason set forth below.

A. With Cause

In the event of any breach by the Contractor of the conditions set forth in this Agreement, the Energy Commission may, without prejudice to any of its legal remedies, terminate this Agreement for cause upon five (5) days written notice to the Contractor. In such event, the Energy Commission shall pay the Contractor only the reasonable value of the services rendered by the Contractor prior to termination, as may be agreed upon by the parties or determined by a court of law, but not in excess of the contract maximum payable. "Cause" includes without limitation:

1) Failure to perform or breach of any of the terms or covenants at the time and in the manner provided in this Agreement;

2) Inability of the Contractor to pay its debts as they become due and/or the Contractor's default of an obligation that impacts its ability to perform under this Agreement;

3) Determination by the Energy Commission or the Executive Director after notice and hearing that the Contractor or any agent or representative of the Contractor offered or gave gratuities to any officer or employee of the Energy Commission, with a view toward securing an Agreement or securing favorable treatment with respect to awarding, amending or making a determination with respect to performance of the Agreement;

4) Significant change in Energy Commission policy such that the work or product being funded would not be supported by the Energy Commission;

5) Reorganization to a business entity unsatisfactory to the Energy Commission; and

6) The retention or hiring of subawardees/vendors, or the replacement or addition of personnel, that fail to perform to the standards and requirements of this Agreement.

B. Without Cause

The Energy Commission may, at its option, terminate this Agreement without cause in whole or in part, upon giving thirty (30) days advance notice in writing to the Contractor. In such event, the Contractor agrees to use all reasonable efforts to mitigate its expenses and obligations hereunder. Also, in such event, the Energy Commission shall pay the Contractor for all satisfactory services rendered and expenses incurred within thirty (30) days after notice of termination which could not by reasonable efforts of the Contractor have been avoided, but not in excess of the maximum payable under this Agreement.

15. **ENFORCEABILITY**

The Contractor agrees that if it or one of its subawardees or vendors fails to comply with all applicable Federal and State requirements governing the use of ARRA funds, the State may withhold or suspend, in whole or in part, funds awarded under the program, or recover misspent funds following an audit. This provision is in addition to all other remedies available to the State under all applicable Federal and State laws.

16. **WAIVER**

No waiver of any breach of this Agreement shall be held to be a waiver of any other or subsequent breach. All remedies afforded in this Agreement shall be taken and construed as cumulative, meaning in addition to every other remedy provided therein or by law. The failure of the Energy Commission to enforce at any time any of the

provisions of this Agreement, or to require at any time performance by the Contractor of any of the provisions, shall in no way be construed to be a waiver of those provisions, nor in any way affect the validity of this Agreement or any part of it or the right of the Energy Commission to thereafter enforce each and every such provision.

17. **CAPTIONS**

The clause headings appearing in this Agreement have been inserted for the purpose of convenience and ready reference and do not define, limit, or extend the scope or intent of the clauses.

18. **PRIOR DEALINGS, CUSTOM OR TRADE USAGE**

In no event shall any prior course of dealing, custom or trade usage modify, alter, or supplement any of these terms.

19. **NOTICE**

This paragraph applies to situations where notice is required to be given by this Agreement, or the parties are asserting their legal rights and remedies. This paragraph is not intended to apply to normal, daily communication between the parties related to progress of the work.

The parties to the Agreement must give legal notice using U.S. Mail, overnight mail, or personal delivery, providing evidence of receipt to the person identified in Exhibit F of this Agreement for legal notices. Delivery by fax or e-mail is not considered legal notice for the purpose of this paragraph.

Notice shall be effective when received, unless a legal holiday for the State commences on the date of the attempted delivery. In this event, the effective date shall be postponed until the next business day.

20. **STOP WORK**

The Contract Officer may, at any time, by written notice to the Contractor, require the Contractor to stop all or any part of the work tasks in this Agreement. Stop Work Orders may be issued for reasons such as a project exceeding budget, standard of performance, out of scope work, delay in project schedule, and misrepresentations.

A. Compliance. Upon receipt of such stop work order, the Contractor shall immediately take all necessary steps to comply therewith and to minimize the incurrence of costs allocable to work stopped.

B. Equitable Adjustment. The Commission shall make an equitable adjustment based upon the Contractor's written request. The Contractor must make such

adjustment request within thirty (30) days from the date of receipt of the stop work notice.

C. Revoking a Stop Work Order. The Contractor shall resume the stopped work only upon receipt of written instructions from the Energy Commission's Contract Officer canceling the stop work order.

21. INTERPRETATION OF TERMS

This Agreement shall be conducted in accordance with these terms and conditions. The Contractor's proposal is not attached, but is expressly incorporated by reference into this Agreement. In the event of conflict or inconsistency between the terms of this Agreement and the solicitation or proposal, this Agreement shall be considered controlling.

22. AMENDMENTS

A. This Agreement may be amended to make changes, including without limitation: additional funds, additional time, additional or modified tasks, and additional or modified terms. Amendments may be made without competitively bidding, so long as the amendment is exempt from competitive bidding pursuant to California Public Contract Code Section 10335, California Government Code Section 11010.5, and the State Contract Manual. Amendments may require prior written approval from DOE.

B. The Contractor acknowledges that provisions included in this Agreement pursuant to Federal or State law, regulation, or policy are subject to change. The Contractor agrees to comply with any amendments that the Energy Commission makes to this Agreement to comply with Federal or State law, regulation, or policy.

C. Formal Amendments

Significant changes to this Agreement must be approved at an Energy Commission business meeting through a formal amendment. Significant changes include, but are not limited to:

1) Change of the Contractor;

2) Changes to Exhibit A that significantly modify the Agreement's purpose;

3) Changes to Exhibit A that extend the due dates beyond the term of the Agreement;

4) Changes to Exhibit B that increase the amount of the Agreement; and

5) Changes to Exhibit B that increase rates or fees.

D. Informal Amendments

The Energy Commission's Contract Manager may approve changes to this Agreement that are not significant, including changes required to comply with Federal or State law, regulation, or policy. These changes shall be documented in a letter of agreement between the Energy Commission's Contracts Officer and the Contractor.

23. BONDING AND INSURANCE REQUIREMENTS

A. The Contractor shall follow its own bonding and insurance requirements relating to bid guarantees, performance bonds, and payment bonds without regard to the dollar value of the subcontract(s) as long as they reflect applicable state and local laws and regulations and are not in conflict with the minimum standards specified in the federal provisions incorporated by reference in Exhibit E, including OMB Circulars.

B. The Contractor hereby warrants that it carries Worker's Compensation Insurance for all of its employees who will be engaged in the performance of this Agreement, and agrees to furnish to the Contract Manager satisfactory evidence of this insurance at any time the Contract Manager may request.

C. If the Contractor is self-insured for worker's compensation, it hereby warrants such self-insurance is permissible under the laws of the State of California and agrees to furnish to the Contract Manager satisfactory evidence of this insurance at any time the Contract Manager may request.

24. CONFIDENTIALITY

A. Information Considered Confidential

If applicable, all Contractor information considered confidential at the commencement of this Agreement is designated in the Attachment to this Exhibit.

B. Confidential Deliverables: Labeling and Submitting Confidential Information

Prior to the commencement of this Agreement, if applicable, the parties have identified in the Attachment to this Exhibit, specific Confidential Information to be provided as a deliverable. All such confidential deliverables shall be marked, by the Contractor, as "Confidential" on each page of the document containing the Confidential Information and presented in a sealed package to the Commission's Contracts Officer. (Non-confidential deliverables are submitted to the Accounting Office.) All Confidential Information will be contained in the "confidential" volume: no Confidential Information will be in the "public" volume.

C. Submittal of Unanticipated Confidential Information as a Deliverable

The Contractor and the Energy Commission agree that during this Agreement, it is possible that the Contractor may develop additional data or information not originally anticipated as a confidential deliverable. In this case, the Contractor shall follow the procedures for a request for designation of Confidential Information specified in 20 California Code of Regulations (CCR) Section 2505. The Energy Commission's Executive Director makes the determination of confidentiality. Such subsequent determinations may be added to the list of confidential deliverables in the Attachment to this Exhibit.

D. Disclosure of Confidential Information

Disclosure of Confidential Information by the Energy Commission may only be made pursuant to 20 CCR Sections 2506 and 2507. All confidential data, records or deliverables that are legally disclosed by the Contractor or any other entity become public records and are no longer subject to the above confidentiality designation.

25. **CONFLICT OF INTEREST**

A. The Contractor agrees to continuously review new and upcoming projects in which members of the Contractor's team may be involved for potential conflicts of interest. The Contractor shall inform the Contract Manager as soon as a question arises about whether a potential conflict may exist. The Contract Manager and Energy Commission's Chief Counsel's Office shall determine what constitutes a potential conflict of interest. The Energy Commission reserves the right to redirect work and funding on a project if the Commission's Chief Counsel's Office determines that there is a potential conflict of interest.

B. The Contractor shall submit an economic interest statement (Fair Political Practices Commission's Form 700) from each employee or subcontractor whom the Energy Commission's Chief Counsel's Office, in consultation with the Contract Manager, determines is a consultant under the Political Reform Act and, thus, subject to the requirements and restrictions of the Act. Such determination will be based on the nature and duration of the work to be performed by the employee or subcontractor. The determination as to who is a consultant under the Political Reform Act shall be requested by the Contract Manager before work by the employee or subcontractor begins. Each employee and subcontractor determined to be a consultant under the Political Reform Act shall be subject to the same disclosure category or categories applicable to the Commission staff who perform the same nature and scope of work as the consultant.

C. No person, firm, or subsidiary thereof who has been awarded a consulting services contract may submit a bid for, nor be awarded a contract for, the provision of

services, procurement of goods or supplies, or any other related action which is required, suggested, or otherwise deemed appropriate in the end product of the consulting services contract. This does not apply to any person, firm, or subsidiary thereof who is awarded a subcontract of a consulting services contract which amounts to no more than ten (10) percent of the total monetary value of the consulting services contract.

26. RECOGNITION OF ARRA FUNDING

The Contractor shall publicly recognize ARRA as a source of funding for project(s) funded under this Agreement. The Contract Manager shall provide the Contractor with instructions on how to publicly recognize ARRA funding.

27. "ENERGY UPGRADE CALIFORNIA" IDENTITY MARK AND LOGO

It is important for all ARRA-funded programs administered by the Energy Commission to provide consistent and clear messaging and branding for the State of California's consumers. A single identifying brand lends authority and reliability to the multiple statewide programs offered by various private and public local, regional, and state entities. The Energy Commission is implementing a statewide branding effort called "Energy Upgrade California". The branding effort will include development of a statewide ARRA Energy Upgrade California Identity Mark and Logo (Identity Mark/Logo) for use in conjunction with marketing, promotional, and educational materials, and development of a central Energy Upgrade California website portal for purposes of disseminating program information and interconnecting program participants. Energy Upgrade California is being developed in conjunction with the statewide branding efforts of the California Public Utilities Commission.

The Contractor shall participate in the Energy Commission's statewide branding effort as specified in this section.

A. Identity Mark/Logo

The Contractor shall use the Identity Mark/Logo on all marketing, promotional, and informational materials for programs and projects funded through this Agreement, including any printed or electronic collateral, websites, signage, or clothing.

B. Coordinating Use of Identity Mark/Logo

1) The Contractor shall coordinate its required use of the Identity Mark/Logo with the Energy Commission before using the Identity Mark/Logo. This coordination may include the Contractor's submission of its proposed marketing, promotional, and informational materials and websites to the Energy Commission for its review to ensure the Identity Mark/Logo is

being used appropriately. If the Energy Commission requires the Contractor to submit such materials and websites for its review, the Energy Commission will use its best efforts to approve all proposed uses of the Identity Mark/Logo in an expeditious manner. The Energy Commission may prohibit the Contractor from using the Identity Mark/Logo if any of the proposed uses breach the terms of this Agreement.

2) Upon reasonable prior written notice, the Contractor shall provide the Energy Commission unrestricted access to its websites, so the Energy Commission may review the Contractor's use of the Identity Mark/Logo.

C. Authorized Uses

1) The Contractor may use, reproduce, display, and publish the Identity Mark/Logo only for purposes of marketing or promoting the ARRA-funded program or project(s) funded through this Agreement. The Contractor may not use the Identity Mark/Logo for other purposes. The Contractor may not use any other Energy Commission mark or logo obtained from the Energy Commission's website, promotional materials, or any other source.

2) The Contractor may use, reproduce, and display the Identity Mark/Logo on its website as a link to the Energy Commission's website. The Contractor may not use the Identity Mark/Logo to link to any other website.

D. Unauthorized Uses

1) The Contractor may not use the Identity Mark/Logo in a manner that expresses or implies the Energy Commission's endorsement, approval, favoring, or sponsorship of the Contractor or its products, services, or websites. Except to identify itself as a contractor of the Energy Commission, the Contractor may not use the Identity Mark/Logo in a manner that implies the Energy Commission's affiliation with the Contractor or its products, services, or websites.

2) The Contractor may not use the Identity Mark/Logo in a manner that suggests the Contractor's products, services, or websites are the Energy Commission's products, services, or websites.

3) The Contractor may not use the Identity Mark/Logo in a manner that damages, disparages, or diminishes the Energy Commission or its ARRA-funded programs or projects, including but not limited to uses that could be deemed obscene or that encourage unlawful activities.

4) The Contractor may not authorize any other party to use the Identity Mark/Logo.

5) The Contractor may not use the Identity Mark/Logo as a feature or design element of any other logo. The Contractor may not use the Identity

Mark/Logo in any trademark, service mark, service name, or other indicia of origin.

6) The Contractor may not alter the Identity Mark/Logo in any manner, including proportions, colors, or elements, except as otherwise permitted by the Energy Commission.

7) The Contractor may not use the Identity Mark/Logo on any materials in which the Contractor's name, logo, or product name does not also appear.

E. Ownership of Identity Mark/Logo

1) As between the Energy Commission and the Contractor, the Energy Commission is the exclusive owner of the Identity Mark/Logo. The Energy Commission retains all rights and title to, and interest in, the Identity Mark/Logo. This Agreement does not transfer to the Contractor the Energy Commission's service marks, copyrights, or other intellectual property interests.

2) The Contractor may not register, adopt, or use any corporate name, trade name, trademark, domain name, service mark, certification mark, or other designation that violates the Energy Commission's rights in the Identity Mark/Logo.

28. **SURVIVAL**

Certain Agreement provisions survive the completion or termination of this Agreement for any reason. The provisions include, but are not limited to, the following:

A. Recordkeeping and Inspection of Records

B. Purchase of Equipment

C. Intellectual Property Rights of Parties

D. Disputes

E. Confidentiality

F. Indemnification (applicable only to Contractors other than state agencies; see state provisions incorporated by reference in Exhibit C)

EXHIBIT E

Federal Provisions Incorporated By Reference, Special Provisions Governing Work Funded Under the American Recovery and Reinvestment Act of 2009, and General Federal Provisions

The Contractor must include in its agreements with subawardees all of the provisions in this Exhibit E and in Exhibit E Attachments 1 through 6. The Contractor must include in its agreements with vendors only the provisions in Attachment 7 of this Exhibit (Exhibit E Vendor Flow-Down Provisions). Exhibit D, paragraph 4 contains additional provisions that the Contractor must include in subawards.

1. FEDERAL REGULATIONS/ GUIDELINES/ OMB CIRCULARS INCORPORATED BY REFERENCE

The Office of Management and Budget (OMB) Circulars, Federal regulations, and guidelines checked below are incorporated as part of this Agreement. OMB Circulars may be accessed on the OMB website at www.whitehouse.gov/omb/circulars/index.html or by calling the Office of Administration, Publications Office, at (202) 395-7332. Federal Regulations may be accessed at http://ecfr.gpoaccess.gov.

The Contractor must include in its subawards only the provisions below that apply to the particular organization concerned.

☒ Title 10 Code of Federal Regulations (CFR) Part 600: DOE Financial Assistance Regulations

☒ Title 48 Code of Federal Regulations (CFR), Ch. 1, Subpart 31.2: Contracts with Commercial Organizations (Supplemented by 48 CFR, Ch. 9, Subpart 931.2 for Department of Energy grants) (commercial firms and certain non-profit organizations)

☒ Title 10 Code of Federal Regulations (CFR) Part 420: State Energy Program

☒ Energy Efficiency and Conservation Block Grant Funding Opportunity Announcement DE-FOA-0000013, CDFA Number 81.128 (https://www.fedconnect.net/FedConnect/)

☒ OMB Circular A-102: Common Rule for Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments

☒ OMB Circular A-110: Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations (also applicable to private entities)

☒ OMB Circular A-87: Cost Principles for State, Local and Tribal Governments

☒ OMB Circular A-21: Cost Principles for Educational Institutions

☒ OMB Circular A-122: Cost Principles Applicable to Grants, Contracts, and Other Agreements with Non-Profit Organizations (non-profit organizations and individuals, except for those specifically exempted)

☒ OMB Circular A-133: Audits of States, Local Governments, and Non-Profit Organizations

☐ Other:

☐ None

2. SPECIAL PROVISIONS RELATING TO WORK FUNDED UNDER THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009

A. ARRA-FUNDED PROJECT

Funding for this Agreement has been provided through the American Recovery and Reinvestment Act of 2009 (ARRA), Pub. L. 111-5, and is dependent on a Federal agreement (DE-EE0000905) authorized by the Energy Efficiiency Block Grant (EECBG), CFDA Number 81.128. The Contractor and all of its subawardees and vendors are subject to audit by appropriate Federal and State of California (State) entities. The State has the right to cancel, terminate, or suspend this Agreement if the Contractor or any subawardee or vendor fails to comply with the reporting and operational requirements contained in this Agreement.

B. SEGREGATION OF COSTS

The Contractor, its subawardees, and its vendors must segregate the obligations and expenditures related to funding under ARRA. 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 ARRA shall be commingled with any other funds or used for a purpose other than that of making payments for costs allowable for ARRA projects.

C. PROHIBITION ON USE OF FUNDS

None of the funds provided under this Agreement derived from ARRA may be used by the Contractor or any of its subawardees or vendors for any casino or other gambling establishment, aquarium, zoo, golf course, or swimming pool.

D. ACCESS TO RECORDS

With respect to each contract or grant awarded utilizing at least some of the funds appropriated or otherwise made available by ARRA, 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, any of its subawardees or vendors, or any State or local agency administering such contract that pertain to, and involve transactions related to, the contract, subcontract, grant, or subgrant; and

2) To interview any officer or employee of the Contractor, subawardee, vendor, or agency regarding such transactions.

E. PUBLICATION

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

F. PROTECTING STATE AND LOCAL GOVERNMENT AND CONTRACTOR WHISTLEBLOWERS

The Contractor agrees that both it and its subawardees and vendors shall comply with Section 1553 of ARRA, which prohibits all non-Federal employers, including the State, and all contractors of the State, from discharging, demoting or otherwise discriminating against an employee for disclosures by the employee that the employee reasonably believes are evidence of: (1) gross mismanagement of a contract relating to ARRA funds; (2) a gross waste of ARRA funds; (3) a substantial and specific danger to public health or safety related to the implementation or use of ARRA funds; (4) an abuse of authority related to implementation or use of ARRA funds; or (5) a violation of law, rule, or regulation related to an agency contract (including the competition for or negotiation of a contract) awarded or issued relating to ARRA funds. The Contractor agrees that it and its subawardees and vendors shall post notice of the rights and remedies available to employees under Section 1553 of Title XV of Division A of ARRA.

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

Prohibition on Reprisals: An employee of any non-Federal employer receiving covered funds under ARRA 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 management of an agency contract or grant relating to covered funds;
- A gross waste of covered funds;
- A substantial and specific danger to public health or safety related to the implementation or use of covered funds;
- An abuse of authority related to the implementation or use of covered funds; or
- A 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 thirty (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 reinstatement 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.

Non-enforceability 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 ARRA shall post notice of the rights and remedies as required therein. (Refer to section 1553 of ARRA located at www.recovery.gov, for specific requirements of this section and prescribed language for the notices.)

G. FALSE CLAIMS ACT

The Contractor shall promptly notify the State and refer to an appropriate Federal inspector general any credible evidence that a principal, employee, agent, subawardee, vendor, or other person has submitted a false claim under the False Claims Act or has committed a criminal or civil violation of laws pertaining to fraud, conflict or interest, bribery, gratuity or similar misconduct involving ARRA funds.

H. INFORMATION IN SUPPORT OF ARRA REPORTING

The Contractor may be required to submit backup documentation for expenditures of funds under ARRA including such items as timecards and invoices. The Contractor shall provide copies of backup documentation at the request of DOE's Contracting Officer or designee, or the Energy Commission's Contract Manager or designee.

I. AVAILABILITY OF FUNDS

Funds appropriated under ARRA and obligated to this award are available for reimbursement of costs until September 13, 2012.

J. REPORTING AND REGISTRATION REQUIREMENTS UNDER SECTION 1512 OF ARRA

1) This award requires the Contractor to complete projects or activities which are funded under ARRA and to report on use of ARRA funds provided through this award. Information from these reports will be made available to the public.

2) The reports are due monthly by the third of the following month. For example, the January progress report is due on February 3. The reports must be submitted in accordance with the "Monthly Progress Reports" section of Exhibit A of this Agreement.

3) The Contractor must maintain current registrations in the Central Contractor Registration (http://www.ccr.gov) at all times during which it has an active award funded with ARRA funds. A Dun and Bradstreet Data Universal Numbering System (DUNS) Number (http://www.dnb.com) is one of the requirements for registration in the Central Contractor Registration.

4) The Contractor shall report the information described in section 1512(c) of ARRA, in addition to any information reasonably requested by the Energy Commission or required by Federal law, regulation, or policy. Standard data elements and federal reporting instructions will be provided online at http://www.FederalReporting.gov. The Contractor will not register at FederalReporting.gov, but will provide the information to the Energy Commission in a manner specified by the Commission.

5) The Contractor must provide information including, but not limited to, the following:

a) ARRA Section 1512 Report

- Direct jobs created (i.e., new positions created and filled or unfilled positions that are filled) and jobs retained (i.e., previously existing filled positions that are retained as a result of ARRA funds). Only include jobs that are directly funded by ARRA funds. The number shall be expressed as “full-time equivalent” (FTE), calculated cumulatively as all hours worked divided by the total number of hours in a full-time schedule.
- Description of jobs created. Provide a brief description of impact on the Contractor’s workforce and include the types of jobs created and retained. Include time base (full-time or part-time) and duration (1 year, 1-2 years, 2-5 years, or more than 5 years).
- The Contractor will be required to calculate direct jobs created and retained by all subrecipients and many vendors. The requirement to calculate vendor jobs does not apply to subcontracts with material suppliers or central service providers ("indirect" jobs), or to jobs created by the re-spending of worker income within the local community ("induced" jobs). Job calculations will be captured on the FTE Calculator tab of the Subrecipient 1512 reporting spreadsheet. Per the Single Audit Act Amendments of 1996, the Contractor should be able to substantiate subrecipient/ vendor job hours reported by retaining payroll and project records for a minimum of three (3) years after the final payment has been received, unless a longer period of records retention is stipulated.
- Dun and Bradstreet (D&B) Data Universal Numbering System (DUNS) number.
- Central Contractor Registration (CCR) number.
- Award number.
- Name (legal name as registered in CCR or D&B).
- The Doing-Business-As (DBA) name as registered in CCR or D&B.
- Address (physical location as listed in the CCR).
- Congressional district (based on physical location address).
- Type of entity (this is the “Business Type” in the CCR).
- Amount awarded (total amount of the Commission agreement).
- Amount received (total cumulative amount of Commission agreement funds received as of the reporting period).
- Date of award (date the Commission agreement was signed).
- Award period (term of the Commission agreement).
- Place of performance (the physical location of primary place of performance, including street address, city, state, zip code+4, country, congressional district, state senate district, and state assembly district).
- Area of benefit (e.g., state, county, city, special district).
- Names and total compensation of five most highly compensated officers for the calendar year in which the agreement is awarded if,

- In the Contractor's preceding fiscal year, the Contractor received–
  - 80 percent or more of its annual gross revenues from federal contracts (and subcontracts), loans, grants (and subgrants) and cooperative agreements; and
  - $25,000,000 or more in annual gross revenues from federal contracts (and subcontracts), loans, grants (and subgrants) and cooperative agreements
- The public does not have access to information about the compensation of the senior executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d) or section 6104 of the Internal Revenue Code of 1986.

- Vendor Data Elements (purchases $25,000 or above)
  - DUNS or name.
  - Zip code of Headquarters.
  - Description of the product and/or service provided by the vendor.
  - The amount invoiced from the vendor (aggregated) that will be paid with ARRA funds.

b) U.S. Department of Energy Progress Report

- A comparison of the actual accomplishments with the goals and objectives established for the period and reasons why the established goals were not met.
- A discussion of what was accomplished under these goals during this Reporting period, including major activities, significant results, major findings or conclusions, key outcomes or other achievements. This section should not contain any proprietary data or other information not subject to public release. If such information is important to reporting progress, do not include the information, but include a note in the report advising the reader to contact the Principal Investigator or the Project Director for further information.
- Cost Status. Show approved budget by budget period and actual costs incurred. Separate costs by project activities, administration, and evaluation.
- Schedule Status. List milestones, anticipated completion dates, and actual completion dates.
- Any changes in approach or aims, and reasons for change.
- Actual or anticipated problems or delays, and actions taken or planned to resolve them.
- Any absence or changes of key personnel or changes in consortium/teaming arrangement.
- A description of any product produced or technology transfer activities accomplished during this reporting period, such as:
  - Publications (list journal name, volume, issue); conference

papers; or other public releases of results.
  - Web site or other Internet sites that reflect the results of this project.
  - Networks or collaborations fostered.
  - Technologies/techniques.
  - Inventions/patent applications.
  - Other products, such as data or databases, physical collections, audio or video, software or netware, models, educational aid or curricula, instruments or equipment.

- Performance Metrics
  - Energy savings (kWh, therms, gallons, Btu, etc.).
  - Renewable energy capacity and generation.
  - GHG and criteria pollutant emissions reductions (tons) (CO2 equivalents, tons).
  - Energy cost savings.

- Project type metrics. The key metrics to be reported will vary by project type. See Exhibit E, Attachment 6, Project Type Metrics.

K. REQUIRED USE OF AMERICAN IRON, STEEL, AND MANUFACTURED GOODS (COVERED UNDER INTERNATIONAL AGREEMENTS) — SECTION 1605 OF ARRA

The Contractor agrees that in accordance with ARRA, Section 1605, neither the Contractor nor its subawardees or vendors will use ARRA funds for a project for the construction, alteration, maintenance, or repair of a public building or public work unless all of the iron, steel and manufactured goods used in the project are produced in the United States in a manner consistent with United States obligations under international agreements. The Contractor understands that this requirement may only be waived by the applicable Federal agency in limited situations as set out in ARRA, Section 1605.

1) Definitions. As used in this award term and condition—

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

(i) Processed into a specific form and shape; or
(ii) Combined with other raw material to create a material that has different properties than the properties of the individual raw materials.

b) 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.

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

2) Domestic preference.

a) This award term and condition implements Section 1605 of the American Recovery and Reinvestment Act of 2009 (Recovery Act) (Pub. L. 111-5), by requiring that all iron, steel, and manufactured goods used in the project are produced in the United States except as provided in paragraph (b)(3) and (b)(4) of this section and condition.

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

— None

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

(i) The cost of the domestic iron, steel, and/or manufactured goods would be unreasonable. The cost of domestic iron, steel, or manufactured goods used in the project is unreasonable when the cumulative cost of such material will increase the cost of the overall project by more than 25 percent;
(ii) The iron, steel, and/or manufactured good is not produced, or manufactured in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or
(iii) The application of the restriction of section 1605 of the Recovery Act would be inconsistent with the public interest.

3) Request for determination of inapplicability of Section 1605 of the Recovery Act.

a) (i) Any recipient request to use foreign iron, steel, and/or manufactured goods in accordance with paragraph (b)(3) of this section shall include adequate information for Federal Government evaluation of the request, including—

(A) A description of the foreign and domestic iron, steel, and/or manufactured goods;
(B) Unit of measure;
(C) Quantity;
(D) Cost;
(E) Time of delivery or availability;
(F) Location of the project;
(G) Name and address of the proposed supplier; and
(H) A detailed justification of the reason for use of foreign iron, steel, and/or manufactured goods cited in accordance with paragraph (b)(3) of this section.

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

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

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

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

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

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

Foreign and Domestic Items Cost Comparison

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

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

[Include other applicable supporting information.]
[*Include all delivery costs to the construction site.]

L. WAGE RATE REQUIREMENTS UNDER SECTION 1606 OF ARRA

In accordance with ARRA Section 1606, the Contractor assures that it and its subawardees and vendors shall fully comply with said Section and notwithstanding any other provision of law and in a manner consistent with other provisions of ARRA, all laborers and mechanics employed by contractors and subawardees or vendors on projects funded directly by or assisted in whole or in part by and through the Federal government pursuant to ARRA shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the United States Secretary of Labor in accordance with Subchapter IV of Chapter 31 of Title 40, United States Code (Davis-Bacon Act). It is understood that the Secretary of Labor has the authority and functions set forth in Reorganization Plan Numbered 14 or 1950 (64 Stat. 1267; 5 U.S.C. App.) and Section 3145 of Title 40, United States Code.

1) Section 1606 of ARRA requires that all laborers and mechanics employed by contractors and subawardees or vendors on projects funded directly by or assisted in whole or in part by and through the Federal Government pursuant to ARRA 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 ARRA 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).

When advertising for a public contract opportunity, the Contractor and its subrecipients and vendors must attach the applicable wage determinations to the solicitation, assistance agreement, and resulting contract or grant, and must provide the wage determination to contractors or subcontractors ten (10) calendar days prior to issuing the solicitation.

M. DAVIS-BACON ACT AND CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

1) Definitions. For purposes of this Section, Davis Bacon Act and Contract Work Hours and Safety Standards Act, the following definitions are applicable:

a) 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.

b) 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.

d) 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.

e) 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.

f) 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.

g) 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.

h) 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.

2) Davis-Bacon Act

a) 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 29 CFR Section 5.5(a)(1)(iv); 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 29 CFR Section 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 29 CFR Section 5.5(a)(1)(ii)) 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:

i. The work to be performed by the classification requested is not performed by a classification in the wage determination; and

ii. The classification is utilized in the area by the construction industry; and

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

(b) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the Contracting Officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the Contracting Officer to the Administrator of the Wage and Hour Division, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.

(c) In the event the Contractor, the laborers or mechanics to be employed in the classification or their representatives, and the Contracting Officer do not agree on the proposed classification and wage rate (including the amount designated for fringe

benefits, where appropriate), the Contracting Officer shall refer the questions, including the views of all interested parties and the recommendation of the Contracting Officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.

(d) The wage rate (including fringe benefits where appropriate) determined pursuant to 29 CFR Section 5.5(a)(1)(ii)(B) or (C), 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.

b) 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.

c) 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 Section 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii) (a) The Contractor shall submit weekly for each week in which any Contract work is performed a copy of all payrolls to the Department of Energy if the agency is a party to the Contract, but if the agency is not such a party, the Contractor will submit the payrolls to the Recipient or Subrecipient (as applicable), applicant, sponsor, or owner, as the case may be, for transmission to the Department of Energy. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR Section 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:

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

ii. 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;

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

(c) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by 29 CFR Section 5.5(a)(3)(ii)(B).

(d) The falsification of any of the above certifications may subject the Contractor or subcontractor to civil or criminal prosecution under

section 1001 of title 18 and section 3729 of title 31 of the United States Code.

(iii) The Contractor or subcontractor shall make the records required under 29 CFR Section 5.5 (a)(3)(i) 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 Section 5.12.

c) Apprentices and trainees--

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

the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

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

(iii) Equal employment opportunity. The utilization of apprentices, trainees

and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended and 29 CFR part 30.

d) 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.

e) Contracts and Subcontracts. The Recipient, Subrecipient, the Recipient's and Subrecipient's contractors and subcontractor shall insert in any Contracts the clauses contained in 29 CFR Section 5.5(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.

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

g) 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.

h) 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.

i) 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 Section 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 Section 5.12(a)(1).

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

j) Requirement to submit copies of certified payrolls

The Contractor must submit to the Energy Commission on a weekly basis a copy of all certified payrolls prepared in accordance with 29 CFR Section 5.5 (a)(3(ii) for all lower tier contractors.

k) Requirement to notify the Energy Commission of any non-compliance

The Contractor must notify the Energy Commission of any non-compliance with Davis-Bacon prevailing wage requirements by any lower tier contractors.

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

a) 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.

b) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in 3(a) of this paragraph 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 29 CFR Section 5.5(b)(1), 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 29 CFR Section 5.5 (b)(1).

c) 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 29 CFR Section 5.5(b)(2).

d) 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 29 CFR Section 5.5 (b)(1) through (4) 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.

e) 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.

N. ARRA TRANSACTIONS LISTED IN SCHEDULE OF EXPENDITURES OF FEDERAL AWARDS

1) To maximize the transparency and accountability of funds authorized under ARRA 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, the Contractor agrees 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.

2) If the Contractor is covered by the Single Audit Act Amendments of 1996 and OMB Circular A–133, "Audits of States, Local Governments, and Non-Profit Organizations," the Contractor agrees to separately identify the expenditures for Federal awards under ARRA 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 ARRA

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.

3) The Contractor agrees to separately identify to each subawardee and vendor, and document at the time of subaward and at the time of disbursement of funds, the Federal award number, CFDA number, and amount of ARRA funds. When the Contractor awards ARRA funds for an existing program, the information furnished to subawardees and vendors shall distinguish the subawards of incremental ARRA funds from regular subawards under the existing program.

4) The Contractor agrees to require its subawardees and vendors to include on their SEFA information to specifically identify ARRA funding similar to the requirements for the Contractor SEFA described above. This information is needed to allow the Energy Commission and the Contractor to properly monitor subawardee and vendor expenditure of ARRA funds as well as oversight by the Federal awarding agencies, Offices of Inspector General and the Government Accountability Office.

O. ADVANCED UNDERSTANDING CONCERNING PUBLICLY FINANCED ENERGY IMPROVEMENT PROGRAMS (FOR MUNICIPAL FINANCING PROJECTS ONLY):

The parties recognize that the Contractor may use funds under this award for Property-Assessed Clean Energy (PACE) loans, Sustainable Energy Municipal Financing, Clean Energy Assessment Districts, Energy Loan Tax Assessment Programs (ELTAPS), or any other form or derivation of Special Taxing District whereby taxing entities collect payments through increased tax assessments for energy efficiency and renewable energy building improvements made by their constituents. The Department of Energy (DOE) intends to publish "Best Practices" or other guidelines pertaining to the use of funds made available to the Energy Commission under DOE award number DE-EE-0000905 pertaining to the programs identified herein. By accepting this award, the Contractor agrees to incorporate, to the maximum extent practicable, those Best Practices and other guidelines into any such program(s) within a reasonable time after notification by DOE that the Best Practices or guidelines have been made available. The Contractor also agrees, by its acceptance of this award, to require its subawardees and vendors to incorporate to the maximum extent practicable the best practices and other guideline into any such program used by the subawardee or vendor.

3) <u>ADDITIONAL FEDERAL PROVISIONS</u>

A. SITE VISITS

The Energy Commission, the Federal awarding agency, and/or their designees 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 Contractor must provide and must require subawardees and vendors to provide reasonable access to facilities, office space, resources, and assistance for the safety and convenience of the government representatives in the performance of their duties. All site visits and evaluations must be performed in a manner that does not unduly interfere with or delay the work.

B. NON-DISCRIMINATION CLAUSE

This award is subject to the provisions of 10 Code of Federal Regulations (CFR) 1040.1 *et seq*., Nondiscrimination in Federally Assisted Programs.

The Contractor will complete and certify by signature on the DOE Form 1600.5, U.S. DOE "Assurance of Compliance," (Exhibit E, Attachment 1 of this Agreement) its commitment to comply with this law and return it to the Energy Commission Contracts Officer.

C. CERTIFICATIONS REGARDING LOBBYING AND DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS

This award is subject to the provisions of 10 CFR Part 601, 2 CFR Part 180, and 2 CFR Part 901.

The Contractor will complete and certify by signature on the Form “Certifications Regarding Lobbying and Debarment, Suspension and Other Responsibility Matters” (Exhibit E, Attachment 2 of this Agreement) its commitment to comply with these requirements and return it to the Energy Commission’s Contracts Officer.

D. LOBBYING RESTRICTIONS

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

The Contractor will disclose lobbying activities by completing and signing the Standard Form LLL (Exhibit E, Attachment 3 of this Agreement) and return it to the Energy Commission’s Contracts Officer.

E. NATIONAL POLICY ASSURANCES

The Contractor agrees to adhere to and include in all subawards the requirements set forth in the attached "National Policy Assurances" (Exhibit E, Attachment 4 of this Agreement).

F. PUBLICATIONS

1) The Contractor is encouraged to publish or otherwise make publicly available the results of the work conducted under this Agreement.

2) An acknowledgment of Energy Commission and 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 California Energy Commission and the U.S. Department of Energy [add name(s) of other agencies, if applicable] under Award Number(s) [enter the award number(s)]."

   Disclaimer: "This report was prepared as an account of work sponsored by an agency of the United States Government. Neither the California Energy Commission, the United States Government, nor any agency thereof, nor any 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 California Energy Commission, 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 California Energy Commission, the United States Government, or any agency thereof."

G. FEDERAL INTELLECTUAL PROPERTY PROVISIONS AND CONTACT INFORMATION

1) The Federal intellectual property provisions applicable to this award are provided in Exhibit E, Attachment 5 to this award. A list of all intellectual property provisions may be found at: http://www.gc.energy.gov/financial_assistance_awards.htm.

2) Questions regarding intellectual property matters should be referred to the DOE DOE Award Administrator and the Patent Counsel designated as the service provider for the DOE office that issued the award. The IP Service Providers List is found at: http://www.gc.doe.gov/documents/Intellectual_Property_(IP)_Service_Providers_for_Acquisition.pdf.

H. PRESERVATION OF OPEN COMPETITION AND GOVERNMENT NEUTRALITY TOWARDS CONTRACTORS' LABOR RELATIONS ON FEDERALLY FUNDED CONSTRUCTION PROJECTS

Unless in conflict with State or local laws, the Contractor must ensure that bid specifications, project agreement, or other controlling documents in construction contracts awarded pursuant to this Agreement, or pursuant to a subaward to this Agreement, do not:

1) Require or prohibit bidders, offerors, contractors, or subawardees or vendors to enter into or adhere to agreements with one or more labor organizations, on the same or other related construction project(s); or

2) Otherwise discriminate against bidders, offerors, contractors, or subawardees or vendors for becoming or refusing to become or remain signatories or otherwise to adhere to agreements with one or more labor organizations, on the same or other related construction project(s).

3) The term "construction contract" as used in this provision means any contract for the construction, rehabilitation, alteration, conversion, extension, or repair of buildings, highways, or other improvements to real property.

4) Nothing in this provision prohibits bidders, offerors, contractors, or subawardees or vendors from voluntarily entering into agreements with labor organizations.

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

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

J. NATIONAL ENVIRONMENTAL POLICY ACT (NEPA) COMPLIANCE

The Contractor is restricted from taking any action using Federal funds for projects under this Agreement that will have an adverse effect on the environment or limit the choice of reasonable alternatives prior to DOE providing a final NEPA determination regarding these projects.

If the Contractor moves forward with activities that are not authorized for Federal funding by the DOE Contracting Officer in advance of the final NEPA determination, it

is doing so at risk of not receiving Federal funding and such costs may not be recognized as allowable cost share.

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

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

L. HISTORIC PRESERVATION

Prior to the expenditure of federal funds to alter any structure or site, the Contractor is required to comply with the requirements of Section 106 of the National Historic Preservation Act (NHPA) outlined in 36 CFR Part 800, 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 Contractor 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. The Contractor shall avoid taking any action that results in an adverse effect to historic properties pending compliance with Section 106.

The Energy Commission executed a Programmatic Agreement on February 18, 2010, as amended May 19, 2010, to streamline the Section 106 consultation process and to categorically exclude some projects from the SHPO's direct review and consultation. Because of their nature, these categorically excluded projects cannot impact historic resources. The categorically excluded projects are identified in the Programmatic Agreement and include: (1) undertakings for planning, training and educational purposes; (2) undertakings to replace equipment on existing buildings or structures that result in no building or structure changes or ground disturbances; and (3) undertakings on buildings or structures less than 45 years of age that will result in no ground disturbances. Projects that are categorically excluded from the SHPO's direct review and consultation will be deemed to have satisfied Section 106 of NHPA without further review or involvement by the SHPO.

The Energy Commission will evaluate projects to determine whether they are categorically excluded from the SHPO's direct review and consultation under the Programmatic Agreement. If projects are categorically excluded, the Energy Commission will issue the project applicant a clearance letter on the SHPO's behalf. In order for the Energy Commission to determine whether a given project is

categorically excluded from the SHPO's direct review and consultation, the Contractor must prepare a Consultation Package, as provided in the Programmatic Agreement, for each building or structure upon which the project will be undertaken.

M. WASTE MANAGEMENT PLAN

Prior to the proposed project activities generating any waste, the Contractor and its subrecipients and vendors must each submit a Waste Management Plan to the Energy Commission's Contract Manager. The Waste Management Plan must describe the Contractor/subrecipient/vendor's plan to dispose of any sanitary or hazardous waste generated by the proposed project activities. Sanitary and hazardous waste includes, but is not limited to, construction and demolition debris, old light bulbs, lead ballasts, piping, roofing material, discarded equipment, debris, and asbestos.

The Waste Management Plan must comply with all Federal, state, and local laws and regulations governing waste disposal.

N. FEDERAL, STATE, AND MUNICIPAL REQUIREMENTS

The Contractor must obtain any required permits and comply with all applicable Federal, state, and municipal laws, codes, and regulations for work performed under this Agreement.

O. STATEMENT OF FEDERAL STEWARDSHIP

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

P. RESOLUTION OF CONFLICTING CONDITIONS

Any apparent inconsistency between Federal statutes and regulations and the terms and conditions contained in this Exhibit E must be referred to the Energy Commission's Contract Manager for guidance.

Any apparent inconsistency between Federal statutes and regulations and the terms and conditions contained in Exhibits A through D must be referred to the Energy Commission's Contract Manager for guidance.

EXHIBIT E
ATTACHMENT 1

ASSURANCE OF COMPLIANCE

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

U.S. Department of Energy
Assurance of Compliance

OMB Control No.
1910-0400

Nondiscrimination in Federally Assisted Programs

OMB Burden Disclosure Statement

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Office of Information Resources Management Policy, Plans, and Oversight, Records Management Division, HR-422 - GTN, Paperwork Reduction Project (1900-0400), U.S. Department of Energy, 1000 Independence Avenue, S.W., Washington, DC 20585; and to the Office of Management and Budget (OMB), Paperwork Reduction Project (1900-0400), Washington, DC 20503.

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

Applicability and Period of Obligation

In the case of any service, financial aid, covered employment, equipment, property, or structure provided, leased, or improved with Federal assistance extended to the Applicant by the Department of Energy, this assurance obligates the Applicant for the period during which Federal assistance is extended. In the case of any transfer of such service, financial aid, equipment, property, or structure, this assurance obligates the transferee for the period during

which Federal assistance is extended. If any personal property is so provided, this assurance obligates the Applicant for the period during which it retains ownership or possession of the property. In all other cases, this assurance obligates the Applicant for the period during which the Federal assistance is extended to the Applicant by the Department of Energy.

Employment Practices

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

Subrecipient Assurance

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

Data Collection and Access to Records

The Applicant agrees to compile and maintain information pertaining to programs or activities developed as a result of the Applicant's receipt of Federal assistance from the Department of Energy. Such information shall include, but is not limited to, the following: (1) the manner in which services are or will be provided and related data necessary for determining whether any persons are or will be denied such services on the basis of prohibited discrimination; (2) the population eligible to be served by race, color, national origin, sex, age, and disability; (3) data regarding covered employment including use or planned use of bilingual public contact employees serving beneficiaries of the program where necessary to permit effective participation by beneficiaries unable to speak or understand English; (4) the location of existing or proposed facilities connected with the program and related information adequate for determining whether the location has or will have the effect of unnecessarily denying access to any person on the basis of prohibited discrimination; (5) the present or proposed membership by race, color, national origin, sex, age, and disability, in any planning or advisory body which is an integral part of the program; and (6) any additional written data determined by the Department of Energy to be relevant to its obligation to assure compliance by recipients with laws cited in the first paragraph of this assurance.

The Applicant agrees to submit requested data to the Department of Energy regarding programs and activities developed by the Applicant from the use of Federal assistance funds extended by

the Department of Energy, Facilities of the Applicant (including the physical plants, building, or other structures) and all records, books, accounts, and other sources of information pertinent to the Applicant's compliance with the civil rights laws shall be made available for inspection during normal business hours on request of an officer or employee of the Department of Energy specifically authorized to make such inspections. Instructions in this regard will be provided by the Director, Office of Civil Rights, U.S. Department of Energy.

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

DOE F 1600.5 OMB Control No.
(06-94) 1910-0400
All Other Editions are Obsolete

Applicant Certification

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

Designated Responsible Employee

Name and Title (Printed to Typed)	( ) - Telephone Number
Signature	Date

Applicant's Name	( ) - Telephone Number
Address:	Date

Agency Use Only

EXHIBIT E
ATTACHMENT 2

CERTIFICATIONS REGARDING LOBBYING AND DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 10 CFR Part 601 "New Restrictions on Lobbying," 2 CFR Part 180 “OMB Guidelines to Agencies on Government wide Debarment and Suspension (Nonprocurement)” and 2 CFR Part 901 “Nonprocurement Debarment and Suspension." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Energy determines to award the covered transaction, grant, or cooperative agreement.

1. LOBBYING

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

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

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

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

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

2. ADDITIONAL LOBBYING REPRESENTATION

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

As set forth in section 3 of the Lobbying Disclosure Act of 1995 as amended, (2 U.S.C. 1602), lobbying activities are defined broadly to include, among other things, contacts on behalf of an organization with specified employees of the Executive Branch and Congress with regard to Federal legislative, regulatory, and program administrative matters.

Check the appropriate block:

The applicant is an organization described in section 501(c)(4) of the Internal Revenue Code of 1986?
☐ Yes ☐ No

If you checked "Yes" above, check the appropriate block:

The applicant represents that after December 31, 1995 it ☐ has ☐ has not engaged in any lobbying activities as defined in the Lobbying Disclosure Act of 1995, as amended.

3. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

(1) The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period 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 or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery; falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

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

4. SIGNATURE

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

Name of Applicant: _____

Printed Name and Title of
Authorized Representative: _____

_____ _____
SIGNATURE DATE

EXHIBIT E
ATTACHMENT 3

STANDARD FORM LLL
DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB
0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure)

1. Type of Federal Action: a. contract ____ b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	**2. Status of Federal Action:** a. bid/offer/application _____ b. initial award c. post-award	**3. Report Type:** a. initial filing _____ b. material change **For material change only:** Year _____ quarter _____ Date of last report_____

4. Name and Address of Reporting Entity: ____ Prime _____ Subawardee Tier_____, if Known: **Congressional District, if known:**	**5. If Reporting Entity in No. 4 is Subawardee,** Enter Name and Address of Prime: **Congressional District, if known:**
6. Federal Department/Agency:	**7. Federal Program Name/Description:** CFDA Number, *if applicable*: _____
***7.* Federal Action Number,** *if known:*	**9. Award Amount**, *if known:* **$**
10. a. Name and Address of Lobbying Registrant *(if individual, last name, first name, MI):*	**b. Individuals Performing Services** *(including address if different from No. 10a) (last name, first name, MI):*
11. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.	**Signature:** _____ **Print Name:** _____ **Title:** _____ **Telephone No.:** _____ **Date:** _____

Federal Use Only	Authorized for Local Reproduction Standard Form - LLL (Rev. 7-97)

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a follow-up report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, State and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in item 4 checks “Subawardee,” then enter the full name, address, city, State and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitations for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Included prefixes, e.g., “RFP-DE-90-001.”

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, State and zip code of the lobbying registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.

(b) Enter the full names of the individual(s) performing services, and include full address if different from 10(a). Enter Last Name, First Name, and Middle Initial (MI).

11. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

According to the Paperwork Reduction Act, as amended, no persons are required to respond to a collection of information unless it displays a valid OMB control Number. The valid OMB control number for this information collection is OMB No. 0348-0046. Public reporting burden for this collection of information is estimated to average 10 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, DC 20503

EXHIBIT E
ATTACHMENT 4

NATIONAL POLICY ASSURANCES

NATIONAL POLICY ASSURANCES TO BE INCORPORATED AS AWARD TERMS (August 2008)
To the extent that a term does not apply to a particular type of activity or award, it is self-deleting.

Nondiscrimination Policies

By signing this agreement or accepting funds under this agreement, the recipient assures that it will comply with applicable provisions of the following, national policies prohibiting discrimination:

a. On the basis of race, color, or national origin, in Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d, et seq.), as implemented by DOE regulations at 10 CFR part 1040.

b. On the basis of sex or blindness, in Title IX of the Education Amendments of 1972 (20 U.S.C. 1681, et seq.), as implemented by DOE regulations at 10 CFR parts 1041 and 1042.

c. On the basis of age, in the Age Discrimination Act of 1975 (42 U.S.C. 6101, et seq.), as implemented by Department of Health and Human Services regulations at 45 CFR part 90 and DOE at 10 CFR part 1040.

d. On the basis of disability, in Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), as implemented by Department of Justice regulations at 28 CFR part 41 and DOE regulations at 10 CFR part 1041.

e. On the basis of race, color, national origin, religion, disability, familial status, and sex under Title VIII of the Civil Rights Act (42 U.S.C. 3601 et seq.) as implemented by the Department of Housing and Urban Development at 24 CFR part 100.

f. On the basis of disability in the Architectural Barriers Act of 1968 (42 U.S.C. 4151 et seq.) for the design, construction, and alteration of buildings and facilities financed with Federal funds.

Environmental Policies

By signing this agreement or accepting funds under this agreement, the recipient assures that it will:

a. Comply with applicable provisions of the Clean Air Act (42 U.S.C. 7401, et. seq.) and Clean Water Act (33 U.S.C. 1251, et. seq.), as implemented by Executive Order 11738 [3 CFR, 1971-1975 Comp., p. 799] and Environmental Protection Agency (EPA) rules at Subpart J of 40 CFR part 32.

b. Identify to the awarding agency any impact this award may have on:

   1. The quality of the human environment, including wetlands, and provide help the agency may need to comply with the National Environmental Policy Act (NEPA, at 42 U.S.C. 4321, et. seq.) and assist the agency to prepare Environmental Impact Statements or other required environmental documentation. In such cases, the recipient agrees to take no action that will have an adverse environmental impact (e.g., physical disturbance of a site such as breaking of ground) or limit the choice of reasonable alternatives

until the agency provides written notification of compliance with NEPA, as implemented by DOE at 10 CFR part 1021.

2. Flood-prone areas, and provide any help the agency may need to comply with the National Flood Insurance Act of 1968 and Flood Disaster Protection Act of 1973 (42 U.S.C. 4001, et. seq.), which require flood insurance, when available, for Federally assisted construction or acquisition in flood-prone areas, as implemented by DOE at 10 CFR part 1022.

3. Use of land and water resources of coastal zones, and provide any help the agency may need to comply with the Coastal Zone Management Act of 1972 (16 U.S.C. 1451, et. Seq.).

4. Coastal barriers along the Atlantic and Gulf coasts and Great Lakes' shores, and provide any help the agency may need to comply with the Coastal Barriers Resource Act (16 U.S.C. 3501, et. seq.), concerning preservation of barrier resources.

5. Any existing or proposed component of the National Wild and Scenic Rivers system, and provide help the agency may need to comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. 1271, et seq.).

6. Underground sources of drinking water in areas that have an aquifer that is the sole or principal drinking water source, and provide help the agency may need to comply with the Safe Drinking Water Act (42 U.S.C. 300h-3).

c. Comply with applicable provisions of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821-4846), as implemented by the Department of Housing and Urban Development at 24 CFR part 35. The requirements concern lead-based paint in housing owned by the Federal Government or receiving Federal assistance).

d. Comply with section 6002 of the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6962), and implementing regulations of the Environmental Protection Agency, 40 CFR Part 247, which require the purchase of recycled products by States or political subdivision of States.

Live Organisms

By signing this agreement or accepting funds under this agreement, the recipient assures that it will comply with applicable provisions of the following national policies concerning live organisms:

a. For human research subjects, the recipient must protect the rights and welfare of individuals that participate as human subjects in research under this award in accordance with the Common Federal Policy for the Protection of Human Subjects (45 CFR part 46), as implemented by DOE at 10 CFR part 745.

b. For animals and plants:

1. The recipient must comply with applicable provisions of Department of Agriculture rules at 9 CFR parts 1-4 that implement the Laboratory Animal Welfare Act of 1966 (7 U.S.C. 2131-2156) and

provide for humane transportation, handling, care, and treatment of animals used in research, experimentation, or testing under this award.

2. The recipient must follow the guidelines in the National Academy of Sciences (NAS) Publication "Guide for the Care and Use of Laboratory Animals"(1996, which may be found currently at http://www.nap.edu/readingroom/books/labrats/) and comply with the Public Health Service Policy and Government principles Regarding the Care and use of animals (included as Appendix D to the NAS Guide).

3. The recipient must immediately identify to the awarding agency any potential impact that the recipient finds this award may have on endangered species, as defined by the Endangered Species Act of 1973, as amended ("the Act," 16 U.S.C. 1531-1543), and implementing regulations of the Departments of the Interior (50 CFR parts 10-24) and Commerce (50 CFR parts 217-227). The recipient also must provide any help the awarding agency may need to comply with 16 U.S.C. 1536(a)(2). This is not in lieu of responsibilities the recipient has to comply with provisions of the Act that apply directly to it as a U.S. entity, independent of receiving this award.

Debarment and Suspension

The recipient agrees to comply with the requirements regarding debarment and suspension in Subpart C of 2 CFR parts 180 and 901.

Drug-Free Workplace

The recipient agrees to comply with the requirements in Subpart B of 10 CFR part 607, which implements sec. 5151-5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100-690, Title V, Subtitle D; 41 U.S.C. 701, et seq.).

Lobbying

a. The recipient assures that it will comply with the restrictions on lobbying in 31 U.S.C.1352, as implemented by DOE at 10 CFR part 601, and submit all disclosures required by that statute and regulation.

b. The recipient, if it is a nonprofit organization described in section 501(c)(4)of title 26, United States Code (the Internal Revenue Code of 1968), may not engage in lobbying activities as defined in the Lobbying Disclosure Act of 1995 (2 U.S.C., Chapter 26). If the awarding agency determines that the recipient has engaged in lobbying activities, it will cease all payments to the recipient under this and other awards and terminate the awards unilaterally for material failure to comply with the award terms and conditions. By submitting an application and accepting funds under this agreement, the recipient assures that it is not an organization described in section 501(c)(4) that has engaged in any lobbying activities described in the Lobbying Disclosure Act of 1995 (2 U.S.C. 1611).

c. The recipient must comply with the prohibition in 18 U.S.C. 1913 on the use of Federal funds, absent express Congressional authorization, to pay directly or indirectly for any service, advertisement or other

NATIONAL POLICY ASSURANCES TO BE INCORPORATED AS AWARD TERMS (August 2008)
To the extent that a term does not apply to a particular type of activity or award, it is self-deleting.

written matter, telephone communication, or other device intended to influence at any time a Member of Congress or official.

Officials not to benefit

The recipient agrees to comply with the requirement that no member of Congress shall be admitted to any share or part of this agreement, or to any benefit arising from it, in accordance with 41 U.S.C. 22.

Hatch Act

The recipient agrees to comply with the Hatch Act (5 U.S.C. 1501-1508 and 7324-7328), as implemented by the Office of Personnel Management at 5 CFR part 151, which limits political activity of employees or officers of State or local governments whose employment is connected to an activity financed in whole or part with Federal funds.

Native American Graves Protection and Repatriation Act of 1990

The recipient, if it is an organization which controls or possesses Native American remains and associated funerary objects, must comply with the requirements of 43 CFR part 10, the Department of the Interior implementation of the Native American Graves Protection and Repatriation Act of 1990 (25 U.S.C., chapter 32).

Fly America Act

The recipient agrees that it will comply with the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118), commonly referred to as the “Fly America Act,” and implementing regulations at 41 CFR 301-10.131 through 301-10.143. The law and regulations require air transport of people or property to, from, between or within a country other than the United States, the cost of which is supported under this award, to be performed by or under a cost-sharing arrangement with a U.S. flag carrier, if service is available.

Use of United States-flag vessels

a. Pursuant to Pub. L. 664 (43 U.S.C. 1241(b)), at least 50 percent of any equipment, materials or commodities procured, contracted for or otherwise obtained with funds under this award, and which may be transported by ocean vessel, must be transported on privately owned United States-flag commercial vessels, if available.

b. Within 20 days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, “on-board” commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph 9.a of this section shall be furnished to both the awarding agency’s administrator (through the recipient in the case of its contractor’s bill-of-lading) and to the Division of National Cargo,

Office of Market Development, Maritime Administration, Washington, DC 20590.

Research Misconduct

The recipient assures that it will comply with the government-wide policy on research misconduct issued by the Office of Science and Technology Policy (available in the Federal Register at 65 FR 76260, December 6,2000, or on the Internet at www.ostp.gov), as implemented by DOE at 10 CFR part 733 and 10 CFR 600.31.

Requirements for an Institution of Higher Education Concerning Military recruiters and Reserve Officers Training Corps (ROTC)

a. As a condition for receiving funds under an award by the National Nuclear Security Administration of the Department of Energy, the recipient agrees that it is not an institution of higher education that has a policy or practice placing any of the restrictions specified in 10 U.S.C. 983 as implemented by 32 CFR part 216, on:

   1. Maintenance, establishment, or operation of Senior ROTC units, or student participation in those units; or
   2. Military recruiters' access to campuses, students on campuses, or information about students.

b. If the recipient is determined, using the procedures in 32 CFR part 216, to be such an institution of higher education during the period of performance of this award, the awarding agency:

   1. Will cease all payments to the recipient of funds under this award and all other awards subject to the requirements in 32 CFR part 216; and
   2. May suspend or terminate those awards unilaterally for material failure to comply with the award terms and conditions.

National Historic Preservation

a. The recipient agrees to identify to the awarding agency any property listed or eligible for listing on the National Register of Historic Places that will be affected by this award, and to provide any help the awarding agency may need, with respect to this award, to comply with Section 106 of the National Historic Preservation Act of 1966 (16 U.S.C. 470f), as implemented by the Advisory Council on Historic Preservation regulations at 36 CFR part 800 and Executive Order 11593, "Identification and Protection of Historic Properties," [3 CFR, 1971-1975 Comp., p. 559].

b. The recipient agrees to identify to the awarding agency the potential under this award for irreparable loss or destruction of significant scientific, prehistorical, historical, or archeological data, and provide any help we may need, with respect to this award, to comply with the Archaeological and Historic Preservation Act of 1974 (16 U.S.C.469a-1, et seq.).

Relocation and Real Property Acquisition

The recipient assures that it will comply with 49 CFR part 24, which implements the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601, et seq.) and provides for fair and equitable treatment of persons displaced by Federally assisted programs or persons whose property is acquired as a result of such programs.

Confidentiality of patient records

The recipient must keep confidential any records that it maintains of the identity, diagnosis, prognosis, or treatment of any patient in connection with any program or activity relating to substance abuse education, prevention, training, treatment, or rehabilitation that is assisted directly or indirectly under this award, in accordance with 42 U.S.C. 290dd-2.

Constitution Day

The recipient must comply with Public Law 108-447, Div. J, Title I, Sec. 111 (36 U.S.C. 106 note), which requires each educational institution receiving Federal funds in a Federal fiscal year to hold an educational program on the United States Constitution on September 17th during that year for the students served by the educational institution.

Trafficking in Persons

a. Provisions applicable to a recipient that is a private entity:

   1. The recipient, its employees, subrecipients under this award, and subrecipients' employees may not—

      i. Engage in severe forms of trafficking in persons during the period of time that the award is in effect;
      ii. Procure a commercial sex act during the period of time that the award is in effect; or
      iii. Use forced labor in the performance of the award or subawards under the award.

   2. The Federal awarding agency may unilaterally terminate this award, without penalty, if the recipient or a subrecipient that is a private entity –

      i. Is determined to have violated a prohibition in paragraph a.1 of this award term; or
      ii. Has an employee who is determined by the agency official authorized to terminate the award to have violated a prohibition in paragraph a.1 of this award term through conduct that is either—
         A. Associated with performance under this award; or
         B. Imputed to the recipient or the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR part 180, "OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," as implemented by the awarding agency at 2 CFR part 901.

b. Provision applicable to a recipient other than a private entity:

   The Federal awarding agency may unilaterally terminate this award, without penalty, if a subrecipient that is a private entity—

   1. Is determined to have violated an applicable prohibition in paragraph a.1 of this award term; or
   2. Has an employee who is determined by the agency official authorized to terminate the award to have violated an applicable prohibition in paragraph a.1 of this award term through conduct that is either—

      i. Associated with performance under this award; or
      ii. Imputed to the subrecipient using the standards and due process for imputing the conduct of an

individual to an organization that are provided in 2 CFR part 180, “OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement),” as implemented by the awarding agency at 2 CFR part 901.

c. Provisions applicable to any recipient:

1. The recipient must inform the awarding agency immediately of any information it receives from any source alleging a violation of a prohibition in paragraph a.1 of this award term.
2. The awarding agency’s right to terminate unilaterally that is described in paragraph a.2 or b. of this section:

   i. Implements section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended (22 U.S.C. 7104(g)), and
   ii. Is in addition to all other remedies for noncompliance that are available to the awarding agency under this award.

3. The recipient must include the requirements of paragraph a.1 of this award term in any subaward it makes to a private entity.

d. Definitions. For purposes of this award term:

1. “Employee” means either:

   i. An individual employed by the recipient or a subrecipient who is engaged in the performance of the project or program under this award; or
   ii. Another person engaged in the performance of the project or program under this award and not compensated by the recipient including, but not limited to, a volunteer or individual whose services are contributed by a third party as an in-kind contribution toward cost sharing or matching requirements.

2. “Forced labor” means labor obtained by any of the following methods: the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

3. “Private entity”:

   i. Means any entity other than a State, local government, Indian tribe, or foreign public entity, as those terms are defined in 2 CFR 175.25.
   ii. Includes:
      A. A nonprofit organization, including any nonprofit institution of higher education, hospital, or tribal organization other than one included in the definition of Indian tribe at 2 CFR 175.25(b).
      B. A for-profit organization.

4. “Severe forms of trafficking in persons,” “commercial sex act,” and “coercion” have the meanings given at section 103 of the TVPA, as amended (22 U.S.C. 7102).

EXHIBIT E
ATTACHMENT 5

FEDERAL INTELLECTUAL PROPERTY PROVISIONS

Intellectual Property Provisions (NRD-1003)
Nonresearch and Development

Grant #DE-EE0000221

Under federal grant #DE-EE0000221, the following intellectual property provisions apply to the rights of the Energy Commission and the U.S. Department of Energy (DOE).

Nonprofit organizations are subject to the intellectual property requirements at 10 CFR 600.136(a), (c) and (d). All other organizations are subject to the intellectual property requirements at 10 CFR 600.136(a) and (c).

<u>10 CFR 600.136 Intangible property.</u>

(a) The Energy Commission may copyright any work that is subject to copyright and was developed, or for which ownership was purchased, under an award. DOE reserves a royalty-free, nonexclusive and irrevocable right to reproduce, publish or otherwise use the work for Federal purposes, and to authorize others to do so.

(c) DOE has the right to:

(1) Obtain, reproduce, publish or otherwise use the data first produced under an award; and

(2) Authorize others to receive, reproduce, publish, or otherwise use such data for Federal purposes.

(d) (1) In addition, in response to a Freedom of Information act (FOIA) request for research data relating to published research findings produced under an award that were used by the Federal Government in developing an agency action that has the force and effect of law, the DOE shall request, and the Energy Commission shall provide, within a reasonable time, the research data so that they can be made available to the public through the procedures established under the FOIA. If the DOE obtains the research data solely in response to a FOIA request, the agency may charge the requester a reasonable fee equaling the full incremental cost of obtaining the research data. This fee should reflect the costs incurred by the agency, the Energy Commission, and applicable subrecipients. This fee is in addition to any fees the agency may assess under the FOIA (5 U.S.C. 552(a)(4)(A)).

EXHIBIT E
ATTACHMENT 6

PROJECT TYPE METRICS

Metrics Activity: The key metrics to be reported will vary by project type. The minimum information to be reported, by project activity type, is listed below. The project type metrics to be reported for this award are checked below.

☐ Building Codes and Standards
- Name of new code adopted
- Name of old code replaced
- Number and percentage of new and existing buildings covered by new code
- Other: _____

☒ Building Retrofits
- Number of buildings retrofitted, by sector
- Square footage of buildings retrofitted, by sector
- Other: _____

☐ Clean Energy Policy
- Number of alternative energy plans developed or improved
- Number of renewable portfolio standards established or improved
- Number of interconnection standards established or improved
- Number of energy efficiency portfolio standards established or improved
- Number of other policies developed or improved
- Other: _____

☒ Building Energy Audits
- Number of audits performed, by sector
- Floor space audited, by sector
- Auditor's projection of energy savings, by sector
- Other: _____

☒ Energy Efficiency Rating and Labeling
- Types of energy-consuming devices for which energy-efficiency rating and labeling systems were endorsed by the Contractor or subawardee
- Other: _____

☒ Financial Incentives for Energy Efficiency and Other Covered Investments
- Monetary value of financial incentive provided, by sector
- Total value of investments incentivized, by sector
- Other: _____

☐ Government, School, Institutional Procurement

- Number of units purchased, by type (e.g., vehicles, office equipment, HVAC equipment, streetlights, exit signs)
- Other: _____

☐ Industrial Process Efficiency (kwh equivalents)

- Reduction in natural gas consumption (MMcf)
- Reduction in fuel oil consumption (gallons)
- Reduction in electricity consumption (MWh)
- Other: _____

☐ Loans and Grants

- Number and monetary value of loans given
- Number and monetary value of grants given
- Other: _____

☐ Renewable Energy Market Development

- Number and capacity of solar energy systems installed (kW)
- Number and capacity of wind energy systems installed (kW)
- Number and capacity of solar thermal systems installed (square feet)
- Number and capacity of ground source geothermal systems installed (tons)
- Number and capacity of biomass (non-transport) systems installed (kW)
- Number and capacity of biofuel systems installed (gallons per year)
- Number and capacity of hydropower systems installed (kW)
- Number and capacity of other renewable energy systems installed (BTU/h or kW)
- Other: _____

☐ Technical Assistance

- Number of information transactions contacts (for example, webinar, site visit, media, fact sheet) in which energy efficiency or renewable energy measures were recommended, by sector
- Other: _____

☐ Transportation

- Number of alternative fuel vehicles purchased
- Number of conventional vehicles converted to alternative fuel use
- Number of new alternative refueling stations emplaced
- Number of new carpools and vanpools formed
- Number of energy-efficient traffic signals installed
- Number of street lane-miles for which synchronized traffic signals were installed
- Other: _____

☒ Workshops, Training, and Education

- Number of workshops, training, and education sessions held, by sector
- Number of people attending workshops, training, and education sessions, by sector
- Other: _____

☐ Other Activities Not Previously Defined

- Pertinent metric information for any activity not defined above should be captured and included as needed
- Other: _____
- Other: _____
- Other: _____

EXHIBIT E
ATTACHMENT 7

EXHIBIT E VENDOR FLOW-DOWN PROVISIONS

The provisions below must be included in all contracts with vendors that receive ARRA funding. The term "vendor" as used below refers to those entities defined as such by Office of Management and Budget (OMB) Circular A-133, Subpart A, Section .105 and Subpart B, Section .210.

A. Federal Regulations/Guidelines/OMB Circulars Incorporated by Reference (Exhibit E, Paragraph 1)

1. Title 10 CFR Part 600
2. Additional provisions that apply to the vendor

B. Special Provisions Relating to Work Funded under the American Recovery and Reinvestment Act of 2009 (Exhibit E, Paragraph 2)

3. ARRA-Funded Project
4. Segregation of Costs
5. Prohibition on Use of Funds
6. Access to Records
7. Protecting State and Local Government and Contractor Whistleblowers
8. False Claims Act
9. Information in Support of ARRA Reporting
10. Reporting and Registration Requirements under Section 1512 of ARRA *(Applicable only if payment to the vendor is $25,000 or more. Please use the following language in vendor subcontracts, rather than the language in the "Reporting and Registration Requirements" paragraph in Exhibit E)*

    As this award requires [name of vendor] to complete projects or activities funded under ARRA, [name of vendor] must provide the following "Vendor Data Elements" to [name of Contractor, or name of other entity that entered into contract with vendor]. This information must be provided to [name of Contractor], so that it may fulfill its ARRA reporting obligations:

    - Dun and Bradstreet Data Universal Numbering System (DUNS) Number (http://www.dnb.com) or name and zip code of headquarters

11. Required Use of American Iron, Steel, and Manufactured Goods (Covered Under International Agreements) — Section1605 of ARRA

12. Wage Rate Requirements Under Section 1606 of ARRA
13. Davis-Bacon Act and Contract Work Hours and Safety Standards Act
14. ARRA Transactions Listed in Schedule of Expenditures of Federal Awards

C. Additional Federal Provisions (Exhibit E, Paragraph 3)

15. Site Visits
16. Non-Discrimination Clause
17. Certifications Regarding Lobbying and Debarment, Suspension and Other Responsibility Matters
18. Lobbying Restrictions
19. National Policy Assurances
20. Federal Intellectual Property Provisions and Contact Information
21. Preservation of Open Competition and Government Neutrality Towards Contractors' Labor Relations on Federally Funded Construction Projects *(Construction Contracts Only)*
22. Decontamination and/or Decommissioning (D&D) Costs
23. Notice Regarding the Purchase of American-Made Equipment and Products–Sense of Congress
24. Waste Management Plan
25. Federal, State, and Municipal Requirements
26. Resolution of Conflicting Conditions (*Please use the following language in vendor subcontracts, rather than the language in the "Resolution of Conflicting Conditions" paragraph in Exhibit E)*

    Any apparent inconsistency between federal statutes and regulations and the terms and conditions contained in this award must be referred to [name of Contractor, or name of other entity that entered into contract with vendor]. [Name of Contractor] will refer the matter to the Energy Commission's Contract Manger for guidance.

D. Exhibit E Attachments

27. Attachment 2 – Certifications Regarding Lobbying and Debarment, Suspension, and Other Responsibility Matters
28. Attachment 3 – Standard Form LLL, Disclosure of Lobbying Activities

29. Attachment 4 – National Policy Assurances *(Applicable provisions)*
30. Attachment 5 – Federal Intellectual Property Provisions

EXHIBIT J

U.S. DEPARTMENT OF ENERGY (DOE) PROVISIONS

Document(s) Included:

1. Contract Agreement Number DE-EE0000896/000 Special Terms and Conditions

SPECIAL TERMS AND CONDITIONS

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1. RESOLUTION OF CONFLICTING CONDITIONS

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

2. AWARD AGREEMENT TERMS AND CONDITIONS

This award/agreement consists of the Assistance Agreement, plus the following:

a. Special Terms and Conditions.
b. Attachments:

Attachment Number	Title
1.	Statement of Project Objectives
2.	Federal Assistance Reporting Checklist and Instructions
3.	Budget Pages (SF 424A)

c. Program regulations, if applicable.
d. DOE Assistance Regulations, 10 CFR Part 600 at http://ecfr.gpoaccess.gov.
e. Application/proposal as approved by DOE.
f. National Policy Assurances to Be Incorporated as Award Terms in effect on date of award at http://management.energy.gov/business_doe/1374.htm.

3. ELECTRONIC AUTHORIZATION OF AWARD DOCUMENTS

Acknowledgement of award documents by the Recipient's authorized representative through electronic systems used by the Department of Energy, specifically FedConnect, constitutes the Recipient's acceptance of the terms and conditions of the award. Acknowledgement via FedConnect by the Recipient's authorized representative constitutes the Recipient's electronic signature.

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

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

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

c. Adjusting payment requests for available cash. You must disburse any funds that are available from repayments to and interest earned on a revolving fund, program income,

rebates, refunds, contract settlements, audit recoveries, credits, discounts, and interest earned on any of those funds before requesting additional cash payments from DOE.

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

5. CEILING ON ADMINISTRATIVE COSTS

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

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

6. LIMITATIONS ON USE OF FUNDS

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

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

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

7. INDIRECT COSTS AND FRINGE BENEFITS ARE NOT REIMBURSABLE

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

share unless approved by the Contracting Officer. This restriction does not apply to subawardees' indirect or fringe benefit costs.

8. USE OF PROGRAM INCOME

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

9. STATEMENT OF FEDERAL STEWARDSHIP

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

10. SITE VISITS

DOE's authorized representatives have the right to make site visits at reasonable times to review project accomplishments and management control systems and to provide technical assistance, if required. You must provide, and must require your subawardees to provide, reasonable access to facilities, office space, resources, and assistance for the safety and convenience of the government representatives in the performance of their duties. All site visits and evaluations must be performed in a manner that does not unduly interfere with or delay the work.

11. REPORTING REQUIREMENTS

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

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

12. PUBLICATIONS

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

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

> *Acknowledgment*: "This material is based upon work supported by the Department of Energy [National Nuclear Security Administration] [add name(s) of other agencies, if applicable] under Award Number(s) [enter the award number(s)]."
>
> *Disclaimer*: "This report was prepared as an account of work sponsored by an agency of the United States Government. Neither the United States Government nor any agency thereof, nor any of their employees, makes any warranty, express or implied, or assumes any legal liability or responsibility for the accuracy, completeness, or usefulness of any information, apparatus, product, or process disclosed, or represents that its use would not infringe privately owned rights. Reference herein to any specific commercial product, process, or service by trade name, trademark, manufacturer, or otherwise does not necessarily constitute or imply its endorsement, recommendation, or favoring by the United States Government or any agency thereof. The views and opinions of authors expressed herein do not necessarily state or reflect those of the United States Government or any agency thereof."

13. FEDERAL, STATE, AND MUNICIPAL REQUIREMENTS

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

14. LOBBYING RESTRICTIONS

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

15. STAGED DISBURSEMENT

a. The total funding allocation for this award, shown in Block 12 of the Assistance Agreement, will be obligated in full with this action; however, funds will be released according to a staged disbursement schedule. All funds must be expended within 36 months of the effective date of the award.

1. The initial disbursement of funds is 50% of the total funding allocation. The amount identified on Page 2 of the Assistance Agreement will be released to the Recipient to begin work on the approved activities listed in the Statement of Project Objectives. If conditions are included in the terms and conditions of this award, upon satisfying the conditions, the Contracting Officer will lift the funding restrictions associated with the conditions and release the remainder of the initial disbursement of funds.

2. Project performance will be monitored and corrective action taken, as necessary to ensure acceptable performance under this award. After one or more progress reviews, in which the Recipient must demonstrate that it has made satisfactory progress on its activities; expended funds appropriately; complied with reporting requirements; and created jobs, the Contracting Officer will approve the release of the remaining balance of the total funding allocation.

b. No additional funds will be disbursed to the Recipient for payment, and DOE does not guarantee or assume any obligation to reimburse costs incurred by the Recipient, until the requirements of each progress review are met. Failure by the Recipient to demonstrate acceptable performance under this award will be deemed a noncompliance pursuant to 10 CFR 600. If a noncompliance occurs, the Contracting Officer may unilaterally terminate or suspend this award and deobligate the amounts obligated. In such case, the Recipient shall not be reimbursed for costs incurred at the Recipient's risk, as described above.

16. NATIONAL ENVIRONMENTAL POLICY ACT (NEPA) REQUIREMENTS

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

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

DOE has made a conditional NEPA determination for this award, and funding for certain activities or tasks under this award is contingent upon the final NEPA determination.

Green Building Ordinance: DOE has made a final NEPA Determination for this activity, which is categorically excluded from further NEPA review.

Community-Scale Building Retrofit Program: Prohibited actions include: Demolition, construction, removal, installation or disposal activities, until such time that Recipient complies with the Waste Stream and Historic Preservation clauses.

This restriction does not preclude Recipient from: (1) purchasing any necessary equipment or related materials, or (2) conducting assessments, studies and other related administrative work.

Recipient shall ensure the safety and structural integrity of any repair, replacement, construction and/or alteration performed under this project.

Regional Climate Action Plan: DOE has made a final NEPA Determination for this activity, which is categorically excluded from further NEPA review.

Municipal Building Retrofit Program: Prohibited actions include: Demolition, construction, removal, installation or disposal activities, until such time that Recipient complies with the Waste Stream and Historic Preservation clauses.

This restriction does not preclude Recipient from: (1) purchasing any necessary equipment or related materials, or (2) conducting assessments, studies and other related administrative work.

Recipient shall ensure the safety and structural integrity of any repair, replacement, construction and/or alteration performed under this project.

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

17. 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.

18. WASTE STREAM

Prior to the expenditure of Federal funds to dispose of sanitary or hazardous waste, the Recipient is required to provide documentation to the Project Officer demonstrating that it has prepared a disposal plan for sanitary or hazardous waste generated by the proposed activities. Sanitary or hazardous waste includes, but is not limited to, old light bulbs, lead ballasts, piping, roofing material, discarded equipment, debris, asbestos, etc.

The DOE Contracting Officer shall consider compliance with this clause complete only after the Recipient has submitted adequate documentation to DOE for its review, and DOE has provided written approval to the Recipient of its proposed plan to dispose of its sanitary or hazardous waste.

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

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

20. SUBCONTRACT/SUBGRANT APPROVALS

a. In the original application, the subcontractor(s)/subgrantee(s) were not proposed by the recipient. In order to receive reimbursement for the costs associated with subcontractors/activities listed in the approved Statement of Project Objectives (SOPO), each subcontract/subgrant must be approved by the DOE Contracting Officer.

b. Upon the recipient's selection of the subcontractor(s)/subgrantee(s), and within 180 days of the award date in Block 27 of the Assistance Agreement, the recipient shall provide the following information for each, regardless of dollar amount:
    - Name
    - DUNS Number
    - Award Amount
    - Statement of work including applicable activities
    - EF-1 for all proposed activities

c. In addition to the information in paragraph b. above, for each subcontract/subgrant that has an estimated cost greater than 25% of the Total Allocation or $1,000,000, whichever is less, the recipient must submit a Statement of Objectives, SF424A Budget Information – Nonconstruction Programs, and Budget Justification. The DOE Contracting Officer may require additional information concerning these subcontract(s)/subgrant(s) prior to providing written approval.

d. No funds shall be expended on the subcontracts supporting the activities listed in the approved SOPO until DOE approval is provided. DOE does not guarantee or assume any obligation to reimburse costs incurred by the Recipient or subcontractor for these activities, until approval is provided in writing by the Contracting Officer.

e. Upon written approval by the Contracting Officer, the Recipient may then receive payment for the activities listed in the approved SOPO for allowable costs incurred in accordance with the payment provisions contained in the Special Terms and Conditions of this agreement.

21. ADVANCE UNDERSTANDING CONCERNING PUBLICLY FINANCED ENERGY IMPROVEMENT PROGRAMS

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

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

Preamble

The American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, (Recovery Act) was enacted to preserve and create jobs and promote economic recovery, assist those most impacted by the recession, provide investments needed to increase economic efficiency by spurring technological advances in science and health, invest in transportation, environmental protection, and other infrastructure that will provide long-term economic benefits, stabilize State and local government budgets, in order to minimize and avoid reductions in essential services and counterproductive State and local tax increases. Recipients shall use grant funds in a manner that maximizes job creation and economic benefit.

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

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

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

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

Definitions

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

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

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

Special Provisions

A. <u>Flow Down Requirement</u>

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

B. <u>Segregation of Costs</u>

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

C. Prohibition on Use of Funds

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

D. Access to Records

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

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

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

E. Publication

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

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

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

F. Protecting State and Local Government and Contractor Whistleblowers.

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

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

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

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

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

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

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

G. Reserved

H. False Claims Act

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

I. Information in Support of Recovery Act Reporting

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

J. Availability of Funds

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

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

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

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

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

L. Certifications

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) *Domestic preference.* (1) This award term and condition implements Section 1605 of the American Recovery and Reinvestment Act of 2009 (Recovery Act) (Pub. L. 111–5), by requiring that all iron, steel, and manufactured goods used in the project are produced in the United States except as provided in paragraph (b)(3) and (b)(4) of this section and condition.

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

To Be Determined

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

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

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

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

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

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

(B) Unit of measure;

(C) Quantity;

(D) Cost;

(E) Time of delivery or availability;

(F) Location of the project;

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

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

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

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

(iv) Any recipient request for a determination submitted after Recovery Act funds have been obligated for a project for construction, alteration, maintenance, or repair shall explain why the recipient could not reasonably foresee the need for such determination and could not have

requested the determination before the funds were obligated. If the recipient does not submit a satisfactory explanation, the award official need not make a determination.

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

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

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

Foreign and Domestic Items Cost Comparison

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

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

Include other applicable supporting information.

*Include all delivery costs to the construction site.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(ii) Section 1605(d), which requires application of the Buy American requirement in a manner consistent with U.S. obligations under international agreements. The restrictions of section 1605 of the Recovery Act do not apply to designated country iron, steel, and/or manufactured goods. The Buy American requirement in section 1605 shall not be applied where the iron, steel or manufactured goods used in the project are from a Party to an international agreement that obligates the recipient to treat the goods and services of that Party the same as domestic goods and services. This obligation shall only apply to projects with an estimated value of $7,443,000 or more.

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

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

To Be Determined

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

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

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

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

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

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

(B) Unit of measure;

(C) Quantity;

(D) Cost;

(E) Time of delivery or availability;

(F) Location of the project;

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

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

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

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

(iv) Any recipient request for a determination submitted after Recovery Act funds have been obligated for a project for construction, alteration, maintenance, or repair shall explain why

the recipient could not reasonably foresee the need for such determination and could not have requested the determination before the funds were obligated. If the recipient does not submit a satisfactory explanation, the award official need not make a determination.

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

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

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

Foreign and Domestic Items Cost Comparison

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

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

Include other applicable supporting information.

*Include all delivery costs to the construction site.

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

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

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

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

28. 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.

29. DAVIS-BACON ACT REQUIREMENTS

Note: Where necessary to make the context of these articles applicable to this award, the term "Contractor" shall mean "Recipient" and the term "Subcontractor" shall mean "Subrecipient or Subcontractor" per the following definitions.

Recipient means the organization, individual, or other entity that receives an award from DOE and is financially accountable for the use of any DOE funds or property provided for the performance of the project, and is legally responsible for carrying out the terms and conditions of the award.

Subrecipient means the legal entity to which a subaward is made and which is accountable to the recipient for the use of the funds provided. The term may include foreign or international organizations (such as agencies of the United Nations).

Davis-Bacon Act

(a) Definition.--"Site of the work"--

(1) Means--

(i) The primary site of the work. The physical place or places where the construction called for in the award will remain when work on it is completed; and

(ii) The secondary site of the work, if any. Any other site where a significant portion of the building or work is constructed, provided that such site is--

(A) Located in the United States; and

(B) Established specifically for the performance of the award or project;

(2) Except as provided in paragraph (3) of this definition, includes any fabrication plants, mobile factories, batch plants, borrow pits, job headquarters, tool yards, etc., provided--

(i) They are dedicated exclusively, or nearly so, to performance of the award or project; and

(ii) They are adjacent or virtually adjacent to the "primary site of the work" as defined in paragraph (a)(1)(i), or the "secondary site of the work" as defined in paragraph (a)(1)(ii) of this definition;

(3) Does not include permanent home offices, branch plant establishments, fabrication plants, or tool yards of a Contractor or subcontractor whose locations and continuance in operation are determined wholly without regard to a particular Federal award or project. In addition, fabrication plants, batch plants, borrow pits, job headquarters, yards, etc., of a commercial or material supplier which are established by a supplier of materials for the project before opening of bids and not on the Project site, are not included in the "site of the work." Such permanent, previously established facilities are not a part of the "site of the work" even if the operations for a period of time may be dedicated exclusively or nearly so, to the performance of a award.

(b) (1) All laborers and mechanics employed or working upon the site of the work 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, or as may be incorporated for a secondary site of the work, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics. Any wage determination incorporated for a secondary site of the work shall be effective from the first day on which work under the award was performed at that site and shall be incorporated without any adjustment in award price or estimated cost. Laborers employed by the construction Contractor or construction subcontractor that are transporting portions of the building or work between the secondary site of the work and the primary site of the work shall be paid in accordance with the wage determination applicable to the primary site of the work.

(2) 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 (e) of this article; 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 period.

(3) Such laborers and mechanics shall be paid not less than the appropriate wage rate and fringe benefits in the wage determination for the classification of work actually performed, without regard to skill, except as provided in the article entitled Apprentices and Trainees. 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.

(4) The wage determination (including any additional classifications and wage rates conformed under paragraph (c) of this article) 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.

(c) (1) The Contracting Officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the award 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 all the following criteria have been met:

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

(ii) The classification is utilized in the area by the construction industry.

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

(2) 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
Employment Standards Administration
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.

(3) 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 of the Wage and Hour Division 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.

(4) The wage rate (including fringe benefits, where appropriate) determined pursuant to subparagraphs (c)(2) and (c)(3) of this article shall be paid to all workers performing work in the classification under this award from the first day on which work is performed in the classification.

(d) Whenever the minimum wage rate prescribed in the award 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.

(e) 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.

Rates of Wages - Prior Approval for Proceeding with Davis-Bacon Construction Activities

If the Recipient determines at any time that any construction, alteration, or repair activity as defined by 29 CFR 5.2(j) (http://cfr.vlex.com/vid/5-2-definitions-19681309) will be performed during the course of the project, the Recipient shall request approval from the Contracting Officer prior to commencing such work. If the Contracting Officer concurs with the Recipient's determination, the Recipient must receive Contracting Officer approval to proceed with such activity, and must comply with all applicable Davis-Bacon requirements, prior to commencing such work. A modification to the award which incorporates the appropriate Davis-Bacon wage rate determination(s) will constitute the Contracting Officer's approval to proceed. If the Contracting Officer does not concur with the Recipient's determination, the Contracting Officer will so notify the Recipient in writing.

PRICING SCHEDULE

The following rates are for the period of October 1, 2013 through September 30, 2014. Additional classifications and rates shall be negotiated as requested by County. The classifications below and rates apply to Facilities Operations Services/Alterations & Improvements Division (A&I) and County Office of Sustainability/Energy Management Division (EMD).

Work Classification	Hourly Rate
Project Director	$170
Project Director Alternate	$162
Senior Project Manager	$157
Project Manager	$150
Assistant Project Manager	$125
Scheduler	$135
Estimator	$135
Senior Estimator	$145
Resource Manager/Data Analyst	$85
LEED Project Manager	$160
Marketing Specialist	$160
Document Control Analyst	$65

The hourly rates listed above are: (i) subject to the not-to-exceed fee in Contract Sub-paragraph 5.1, (ii) include any and all costs associated with the services provided under this contract with the exception of mileage and parking costs that may be invoiced as set forth in Contract Sub-paragraph 5.5.7 - Reimbursable Expense, and (iii) may be modified pursuant to Contract Sub-paragraph 5.6 - Cost of Living Adjustments (COLA's).

Solicitation and Contracting Opportunity Announcements

Bid Information

Bid Number : 104380
Bid Title : Construction Project Management and Support Services RFP
Bid Type : Service
Department : Internal Services Department
Commodity : ENERGY CONSERVATION SERVICES (INCLUDING AUDITS)
Open Date : 2/1/2013
Closing Date : 4/9/2013 2:00 PM
Notice of Intent to Award : View Detail
Bid Amount : N/A
Bid Download : Available
Bid Description : The County of Los Angeles (County) through its Department of Internal Services (ISD) is seeking qualified Contractors to provide construction project management and support services, including ISD Facilities and Operations Service (FOS) and ISD County Office of Sustainability (COS) work.

The successful Contractor shall provide construction/project management and support services, including estimating and scheduling support, cost control, document control, and management of information to ensure timely and cost-effective construction projects. The successful Contractor shall also manage projects consisting of the repair and refurbishment of County-owned, and/or leased facilities, and provide management of energy retrofit efficiency projects. In addition, efforts in support of energy work shall include design, analysis, and construction services related to the application of current technology to improve energy efficiency in existing facilities owned and/or operated by the County. Consultant(s) shall augment the County's A&I, and EMD staff, and provide project management training services on a temporary and "as-needed" basis.

Contact Name : Angela Wu
Contact Phone# : (323) 881-5178
Contact Email : awu@isd.lacounty.gov
Last Changed On : 2/26/2013 4:46:47 PM

Mandatory Proposers Conference Attendees

1. Alan Cade
2. Arcadis
3. BORJ Construction Management Inc.
4. BRJ & Associates, LLC
5. California Construction Management, Inc. (CCM)
6. Century Diversified Inc.
7. D. Edwards, Incorporated (DEI)
8. Fess Energy, Inc.
9. gkkworks
10. Global Business Solutions
11. Hernandez, Kroone & Associates
12. JGMC Inc.
13. Leland Saylor Associates
14. Minco Construction
15. MNS Engineers Inc.
16. Owen Group
17. Paragon Engineering & Management
18. PMCS Group
19. PSOMAS
20. Ramos Consulting Services, Inc.
21. Reno Contracting
22. Roshanian and Associates, Inc.
23. Simplex Construction Management, Inc.
24. Simpson & Simpson Management Consulting
25. Swinerton Management & Consulting
26. The "G" Crew
27. The Greenridge Group
28. The PMI Group
29. TTG Construction Services
30. Vanir Construction Management, Inc.
31. Vertex
32. W2 Design, Inc.
33. Willdan Energy Solutions

Community Business Enterprise (CBE) Program Information

FIRM INFORMATION*	Vanir Construction Management

BUSINESS STRUCTURE	Corporation

CULTURAL/ETHNIC COMPOSITION		
OWNERS/PARTNERS	Black/African American	0
	Hispanic/Latino	2
	Asian or Pacific Islander	1
	American Indian	0
	Filipino	0
	White	20
	Female (included above)	3
MANAGER	Black/African American	0
	Hispanic/Latino	3
	Asian or Pacific Islander	2
	American Indian	0
	Filipino	0
	White	37
	Female (included above)	5
STAFF	Black/African American	10
	Hispanic/Latino	38
	Asian or Pacific Islander	25
	American Indian	2
	Filipino	13
	White	177
	Female (included above)	103
Total # of Employees		332

COUNTY CERTIFICATION	
CBE	#71869
LSBE	

OTHER CERTIFYING AGENCY	MBE/WBE

*Information as provided by vendor.