City of Las Cruces®
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Council Action and Executive Summary

Item # 3 **Ordinance/Resolution#** 11-014 **Council District:** ___

For Meeting of July 19, 2010
(Adoption Date)

TITLE: **A RESOLUTION AUTHORIZING THE CITY OF LAS CRUCES TO ACCEPT THE NEW MEXICO ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT (EMNRD), STATE ENERGY PROGRAM AND ENERGY EFFICIENCY CONSERVATION BLOCK GRANT PROGRAM, 2009 CLEAN ENERGY DEMONSTRATION PROGRAM GRANT WITH NO MATCH REQUIREMENT FOR THE CITY, AND RATIFY THE CITY MANAGER'S EXECUTION OF THE CONTRACT.**

PURPOSE(S) OF ACTION:

Allow the City to accept American Recovery and Reinvestment Act (ARRA) funds, $495,330, through the New Mexico Energy, Minerals and Natural Resources Department (EMNRD), State Energy Program and Energy Efficiency Conservation Block Grant Program (EECBG), 2009 Clean Energy Demonstration Program Grant.

Name of Drafter: Auguie Henry III		Department: Finance/GAO		Phone: (575) 541-2281	
Department	**Signature**	**Phone**	**Department**	**Signature**	**Phone**
Finance Department	Pat Degman (Acting)	(575) 541-2050	Budget		(575) 541-2107
GAO		(575) 541-2281	Assistant City Manager		(575) 541-2271
Legal		(575) 541-2128	City Manager		(575) 541-2076

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

The original CAES and Resolution, #10-142, was taken off the November 16, 2009 agenda because EMNRD did not have the funding to award the City the $495,330 as stated in their preliminary award letter. Funding was not available for this project until April 2010 when the contract was executed by the City Manager and EMNRD.

(Continue on additional sheets as required)

The contract was approved by the City Manager utilizing CMP 2.2 to meet the deadline requirements of the contract and project. The Convention Center project had actually begun in September 2009 and the original project called for the photovoltaic array and wind turbine to be located on the roof of the convention center. However, the late award of the funding, April 2010, required a change in the project to move the photovoltaic array and wind turbine from the roof to a shade structure over the adjacent parking area. EMNRD approved the project change prior to the issuance of the current contract.

Convention Center Project: parking area to be enhanced with a photovoltaic shade system, wind turbine energy generator, and an educational component as discussed and directed by Council. Specifically, the project shall include:

1. Installation of a parking area shade structure to support a photovoltaic array and wind turbine both of which will provide energy for the facility possibly resulting in a reduction of electrical costs.
2. Instrumentation display of the alternative energy generated to the building providing a teaching tool regarding energy usage and conservation.
3. Funding for this project will meet the total cost of the design and implementation of the photovoltaic system, wind turbine system, and the mandatory energy monitoring for the requisite period required by the contract.

SUPPORT INFORMATION:

No budget adjustment is necessary. These funds are in the FY2010-2011 budget in the fund indicated.

Fund Name / Account Number	Amount of Expenditure	Budget Amount
4912 State Stimulus Capital Projects 49805010-852100-20019	$495,330.00	$495,330.00

1. Resolution
2. Exhibit "A" Contract with EMNRD executed April 26, 2010

OPTIONS / ALTERNATIVES:

1. Approve the City Manager's acceptance of the contract and accept the funding from EMNRD for the ARRA energy project at the new Las Cruces Convention Center.
2. Disapprove the award and the award and funds that have been expended to-date will be returned to EMNRD and the parking shade project will be terminated. The expenditures incurred by the City happened after execution of the contract by the City Manager as authorized by CMP 2.2.

(Continue on additional sheets as required)

RESOLUTION NO. 11-014

A RESOLUTION AUTHORIZING THE CITY OF LAS CRUCES TO ACCEPT THE NEW MEXICO ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT (EMNRD), STATE ENERGY PROGRAM AND ENERGY EFFICIENCY CONSERVATION BLOCK GRANT PROGRAM, 2009 CLEAN ENERGY DEMONSTRATION PROGRAM GRANT WITH NO MATCH REQUIREMENT FOR THE CITY, AND RATIFY THE CITY MANAGER'S EXECUTION OF THE CONTRACT.

The City Council is informed that:

WHEREAS, the American Recovery and Reinvestment Act (ARRA) funds have been awarded through the New Mexico Energy, Minerals and Natural Resources Department (EMNRD), State Energy Program and Energy Efficiency Conservation Block Grant (EECBG) Program; and

WHEREAS, the City of Las Cruces has been selected by the NM Governor's Office and the Energy Conservation and Management Division to receive $495,330 from the 2009 Clean Energy Demonstration Program Grant with no match requirement from the City; and

WHEREAS, the City of Las Cruces has determined the Convention Center parking shade structure with a photovoltaic array, wind turbine, and educational component utilized to meet monitoring requirements fulfills the specified contract requirements.

NOW, THEREFORE, be it resolved by the governing body of the City of Las Cruces, New Mexico:

(I)

THAT, the City of Las Cruces is authorized to accept from the New Mexico Energy, Minerals and Natural Resources Department (EMNRD), State Energy Program

and Energy Efficiency Conservation Block Grant (EECBG) Program the award of $495,330.

(II)

THAT, the Council hereby ratifies the City Manager's execution of the contract between the City of Las Cruces and EMNRD in the amount of $495,330.00.

(III)

THAT, City staff and officials are authorized to do all deeds necessary in the accomplishment of the herein above.

DONE AND APPROVED this 19th day of July, 2010.

_____
Mayor

ATTEST:

_____
City Clerk

(SEAL)

VOTE:

Mayor Miyagishima: _____
Councillor Silva: _____
Councillor Connor: _____
Councillor Pedroza: _____
Councillor Small: _____
Councillor Sorg: _____
Councillor Thomas: _____

Moved by: _____

Seconded by: _____

Approved as to Form:

_____
City Attorney

SHARE No. 000 ... 11528
EMNRD No. 10-521-R1DOE00002-0244
City of Las Cruces

RECEIVED
MAY 07 2010
in mailslot

RECEIVED
MAY 14 2010
BY: GLO

STATE OF NEW MEXICO
GOVERNMENTAL SERVICES AGREEMENT
BETWEEN THE
ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT
AND
CITY OF LAS CRUCES
USING ARRA FUNDS FROM THE U.S. DEPARTMENT OF ENERGY (DOE)

THIS AGREEMENT is made and entered into by and between the State of New Mexico Energy, Minerals, and Natural Resources Department (EMNRD) and the City of Las Cruces (Contractor). Funding for this Agreement comes from the American Recovery and Reinvestment Act (ARRA), Federal Award No. DE-EE0000681, CFDA No. 81.128, thus there are special terms, including significant reporting obligations.

THE PARTIES MUTUALLY AGREE:

1. Scope of Work:

A. Contractor shall:

Plan, implement, and monitor Contractor's Clean Energy Project (Project) located at the Convention Center (Facility) in Las Cruces for the purpose of reducing energy consumption, increasing renewable energy capacity, increasing renewable energy production, reducing electricity peak demand, and reducing greenhouse gas emissions. The Project shall implement renewable energy measures (REMs), including installing a minimum of a hybrid 25-kilowatt (kW) photovoltaic (PV) solar and wind turbine system, which may involve New Mexico State University engineering students for monitoring energy production; and energy efficiency measures (EEMs) to meet Leadership in Energy and Environmental Design certification for the Facility, such as installation of 95% efficient gas-fired boilers. The Contractor shall begin work upon EMNRD's issuance of a written Notice to Proceed to Contractor.

In order to successfully accomplish this Project, Contractor shall complete the following Tasks:

Task 1. Provide preliminary information. Contractor shall provide EMNRD with the following information by the due date specified within the Compensation Paragraph:

a) conditioned (heated or cooled) floor area of the metered Facility affected by EEMs, entered by Contractor into Portfolio Manager energy usage tracking software accounts;
b) baseline annual energy usage based on utility bill data for

the 12 months prior to Project start for utilities serving the metered Facility, entered by Contractor into Portfolio Manager accounts; and

c) utility companies serving the Project, meter and account identification numbers, and rate schedules applicable to each meter.

Task 2. **Plan.** Contractor shall develop a written narrative, schedules and budget information for the Project (Plan). Contractor shall provide a draft version of the Plan to EMNRD by June 30, 2010 for its review and comment. Contractor shall incorporate EMNRD's comments, if any, into a final version and submit one electronic copy of the Plan, in Microsoft Word 1997 or later format, to EMNRD no later than the due date stated in the Compensation Paragraph. The Plan shall include:

a) Project purpose;
b) description of all REMs and EEMs;
c) estimated decrease in annual energy consumption as a result of the Project;
d) recommended equipment to be removed, replaced, and purchased for the Project;
e) written description of how Contractor shall address the following contract requirements:
   i) hazardous materials handling, including construction and demolition debris, old light bulbs, lead ballasts, piping, roofing material, discarded equipment, debris, and asbestos (see Attachment 2, Additional ARRA Requirements Required by DOE, No. 17, Waste Stream);
   ii) Davis-Bacon and state wage rates compliance (see the Wage Rates Paragraph of this Agreement; the Additional ARRA Requirements Paragraph of this Agreement, Subparagraph D, Wage Rate Requirements; and Attachment No. 2, Additional ARRA Requirements Required by DOE, No. 13, Wage Rates);
   iii) Buy American compliance (see the Additional ARRA Requirements Paragraph of this Agreement, Subparagraph C, Buy American Provisions and Attachment No. 2, Additional ARRA Requirements Required by DOE, No. 14, Buy American Requirements for Materials Purchased with ARRA Funding); and
   iv) historic preservation (see Attachment No. 2, Additional ARRA Requirements Required by DOE, No. 16, Historic Preservation).

f) timelines for subcontractor selection, design development and completion, implementation, monitoring, and planned expenditures;
g) detailed Project budget; and
h) a schedule of values table that identifies costs of components for the complete Project.

Task 3. **Implementation.** This task shall begin upon EMNRD's written approval of the Plan in Task 2. Contractor shall implement the following EEMs and REMs:

a) install a minimum 25-kW capacity PV solar and wind turbine system using the following:

i) ground-mounted 3-kW wind generator and 3-kW polycrystalline PV module array;

ii) parking/shade structure mounted 10-kW thin film PV module array and a 4-kW polycrystalline PV module array; and

iii) rack mounted 5-kW bi-facial PV module array.

b) upgrade Facility boilers to 95% efficiency of existing gas-fired condensing boilers .

After upgrades are completed, Contractor shall turn on the Project and make adjustments and commissioning actions to ensure proper operation and performance that meets Contractor's design specifications. Contractor shall obtain operation and maintenance manuals and design documents and make the materials available to Facility staff and EMNRD for inspection at the Facility. Contractor shall train a minimum of one Facility staff and five NMSU students in operations, implementation, and maintenance of the Project, document the training and provide EMNRD copies of training materials and records upon request. Contractor shall submit written draft reports documenting the Project Implementation task in monthly reports as specified in Attachment 1. Contractor shall complete this task, provide EMNRD with the Task 3 final monthly report and arrange for a site inspection by the due date stated in the Compensation Paragraph.

Task 4. **Monitoring.** This task shall begin upon the Contractor successfully activating the Project. Contractor shall conduct the following monitoring activities and provide monthly and final reports to EMNRD according to Attachment 1 of this Agreement:

a) document in writing the date that Project started operation and energy monitoring started;
b) monitor Facility energy consumption and Facility electricity peak demand for a monitoring period of at least one year after Project start date to match the period of the established baseline;
c) document in writing the electricity and heating fuel consumption through the respective utility companies' billing invoices covering the monitoring period;
d) update Portfolio Manager accounts; and
e) document in writing the monthly electricity peak demand during the monitoring period.

Contractor shall operate, monitor, and maintain the Project in working order meeting design specifications for the remainder of this Agreement's term. If the remaining contract term at the beginning of this task does not allow adequate time for documenting actual annual energy savings, Contractor shall provide a best estimate of annual energy savings based on monitored energy savings. Contractor shall complete this task by EMNRD by the due date stated in the Compensation Paragraph.

B. EMNRD may extend task due dates if Contractor requests it in writing and EMNRD is satisfied that significant progress is being made.

C. Contractor also shall comply with the terms and conditions specified in Attachment 1, Additional ARRA Reporting Requirements and in Attachment 2, ARRA Contractual Requirements Required by DOE, the funding source for this Agreement.

2. Compensation:

A. EMNRD shall pay Contractor for services satisfactorily rendered in an amount not to exceed four hundred ninety-five thousand three hundred thirty dollars ($495,330.00), which amount includes New Mexico Governmental Gross Receipts Taxes, if any. EMNRD shall make payment upon the satisfactory and timely completion of the work described above in the Scope of Work for no more than the maximum amount set forth below for each deliverable when the particular task is completed and accepted by EMNRD. EMNRD may make partial payment for partial completion of a task if it is satisfied with progress but more time is required for successful completion. In the event Contractor chooses to provide in-kind support for this Agreement, Contractor shall document the source, type and activity on each request for payment.

Task due dates and compensation:

Task	Description	Due Date (no later than)	Maximum Compensation
1	Provide preliminary information	May 15, 2010	$ 4,000.00
2	Plan	June 30, 2010	$ 12,000.00
3	Implementation	March 31, 2011	$ 454,564.00
4	Monitoring	March 31, 2012	$ 24,766.00

Payment shall not relieve the Contractor of any unperformed obligations under the Scope of Work. Contractor shall not be entitled to receive any payment unless supported by appropriate billing statements and documentation as provided within this Agreement. The amount of compensation set forth in this Agreement is a maximum that may be paid and is not a guarantee that the work assigned to and to be performed by Contractor under this Agreement will result in payment of such maximum amount. EMNRD MUST receive all invoices no later than 15 days after the termination of the Fiscal Year in which the services were delivered. Invoices received after such date SHALL NOT BE PAID.

B. Contractor shall be responsible for paying New Mexico Governmental Gross Receipts taxes, if any, levied on amounts paid under this Agreement.

C. Contractor must submit detailed statements accounting for all services performed, goods obtained and expenses incurred. Vouchers must be supported by approved purchase order or equivalent document and invoice by the supplier, evidencing the propriety of each claim for payment. Wage amounts charged shall be based upon payrolls maintained by Contractor and must be supported by time and attendance sheets. If EMNRD finds that the statement, services, goods or expenses are not acceptable, within 30 days after the date of receipt of written notice from the Contractor that payment is requested and all required documentation, EMNRD shall provide the Contractor a letter of exception explaining the defect or objection, and outlining steps the Contractor may take to provide remedial action. Upon EMNRD's certification that the statement, services, goods or expenses have been received and accepted, EMNRD shall tender payment to the Contractor within 30 days after the date of acceptance. If payment is made by mail, the payment shall be deemed tendered on the date it is postmarked. However, EMNRD shall not incur late charges, interest, or penalties for failure to make payment within the time specified herein.

3. Term: This Agreement becomes effective when executed by an authorized representative of Contractor and of EMNRD and when DFA encumbers funds for this Agreement. It shall terminate on April 30, 2012, unless earlier terminated pursuant to the Termination Paragraph or the Appropriations Paragraph.

4. Termination: Either party may terminate this Agreement upon written notice delivered to the other at least 10 days prior to the intended termination date. By such termination, neither party may nullify obligations or duties accrued prior to the termination date. If a party fails to fulfill this Agreement's terms, after the other party provides written notice of the failure to perform and a reasonable opportunity to comply, the notifying party may immediately terminate this Agreement for breach of contract. These provisions are not exclusive and do not waive other legal rights and remedies afforded EMNRD in such circumstances as Contractor's default or breach of contract.

5. Appropriations: This Agreement's terms are contingent upon the New Mexico State Legislature and DOE granting sufficient appropriation and authorization. If sufficient appropriation or authorization is not granted, EMNRD may terminate this Agreement, or in the alternative suspend performance pending approval of sufficient appropriation or authorization, upon written notice from EMNRD to Contractor. EMNRD's decision as to whether sufficient appropriations are available shall be at its sole and absolute discretion and shall be final, binding and accepted by Contractor.

6. Status of Contractor: The Contractor and its agents and employees are independent contractors performing professional services for EMNRD and are not employees of the State of New Mexico. The Contractor and its agents and employees shall not accrue leave, retirement, insurance, bonding, use of state vehicles, or any other benefits afforded to employees of the State of New Mexico as a result of this Agreement. The Contractor acknowledges that all sums received hereunder are reportable by the Contractor for tax purposes, including without limitation, self-employment and business income tax. The Contractor agrees not to purport to bind the State of New Mexico unless the Contractor has express written authority to do so, and then only within the strict limits of that written authority.

7. Assignment: Contractor shall not assign or transfer any interest in this Agreement or assign any claims for money due or to become due under this Agreement without EMNRD's prior written approval.

8. Subcontracting: Contractor shall not subcontract any portion of the services to be performed under this Agreement or obligate itself in any manner to any third party, with respect to any rights or responsibilities under this Agreement, without EMNRD's prior written approval. EMNRD may disallow costs incurred by Contractor in relation to a subcontract if Contractor does not obtain prior written approval.

A. Contractor is required to provide EMNRD with evidence of competitive procurement for any subcontract, including records of advertisement of bid, proposals received and methods used to select each subcontractor.

B. Any subcontract shall include provisions necessary to allow Contractor to meet its obligations and requirements under this Agreement.

9. Release: Contractor, upon final payment of all amounts due under this Agreement, releases EMNRD and its employees from all liabilities, claims and obligations whatsoever arising from or related to this Agreement. Contractor agrees not to purport to bind EMNRD to any obligation not expressly assumed herein, without EMNRD's express written authorization, and then only within the strict limits of that written authority.

10. Acknowledgment: Contractor shall acknowledge EMNRD and DOE as co-sponsors and ARRA as the funding source in all news releases, programs, proceedings and related publicity/publications for the Project. (See additional acknowledgement requirements in Attachment 2, ARRA Contractual Requirements Required by DOE.)

11. Product of Services; Copyright: All materials developed or acquired by Contractor under this Agreement shall become the State of New Mexico's property and be delivered to EMNRD no later than this Agreement's expiration date. Nothing Contractor produces, in whole or in part, under this Agreement shall be the subject of a copyright application or other claim of ownership by or on behalf of Contractor. EMNRD agrees that Contractor shall retain all of Contractor's proprietary methodologies which were not created under this Agreement. (See additional acknowledgement requirements in Attachment 2, ARRA Contractual Requirements Required by DOE.)

12. Conflict of Interest: Contractor warrants that it presently has no interest and that it shall not acquire any interest, direct or indirect, which would conflict in any manner with performance or other services required under this Agreement. Contractor certifies that the requirements of the Governmental Conduct Act, NMSA 1978, §§ 10-16-1 through –18, regarding contracting with a public officer or state employee have been followed.

13. Amendment: This Agreement shall not be altered, changed or amended except by written instrument executed and approved by the parties hereto.

14. Waiver: No waiver of any breach of this Agreement or any of the terms or conditions hereof shall be a waiver of any other or subsequent breach; no waiver shall be valid or binding unless the same be in writing and signed by the party alleged to have granted the waiver.

15. Merger: This Agreement incorporates all the agreements, covenants and understandings between the parties hereto concerning the subject matter hereof, and all such covenants, agreements and understandings have been merged into this written Agreement. No prior agreement or understanding, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless as embodied in this Agreement.

16. Penalties for Violation of Law: The Procurement Code, NMSA 1978, §§ 13-1-28 through 13-1-199, imposes civil and criminal penalties for its violation. In

addition, the New Mexico criminal statutes impose felony penalties for bribes, gratuities and kickbacks.

17. Equal Opportunity Compliance: Contractor agrees to abide by all federal and state laws and rules and regulations, and executive orders of the Governor of the State of New Mexico, pertaining to equal employment opportunity. In accordance with all such laws of the State of New Mexico, Contractor assures that no person in the United States shall, on the grounds of race, religion, color, national origin, ancestry, sex, age, physical or mental handicap, or serious medical condition, spousal affiliation, sexual orientation or gender identity, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed under this Agreement. If Contractor is found not to be in compliance with these requirements during the life of this Agreement, Contractor agrees to take appropriate steps to correct these deficiencies.

18. Applicable Law: The laws of the State of New Mexico shall govern this Agreement, without giving effect to its choice of law provisions. Venue shall be proper only in a New Mexico court of competent jurisdiction in accordance with NMSA 1978, § 38-3-1 (G). By execution of this Agreement, Contractor acknowledges and agrees to the jurisdiction of the courts of the State of New Mexico over any and all lawsuits arising under or out of any term of this Agreement.

19. Compliance with Law and Funding Source Conditions: Contractor shall comply with all applicable state and federal statutes and regulations, including without limitation those imposed as a consequence of funding pursuant to this Agreement. (See additional funding compliance requirements in Attachment 2, ARRA Contractual Requirements Required by DOE.)

20. Insurance Coverage: Contractor shall provide EMNRD a statement indicating that the activities described in the Scope of Work are covered by insurance as set forth below, secured in accordance with any method allowed by applicable law, including self-insurance, pooling of self-insured reserves or insurance provided by a third party, prior to commencing work under this Agreement and in no case later than 15 days after this Agreement's execution. Contractor shall maintain continuous coverage of the activities described in the Scope of Work, so long as this Agreement is in effect. Failure to maintain such coverage is reason for immediate termination of this Agreement. Contractor shall notify EMNRD prior to cancellation or expiration of any insurance required under this Agreement.

A. Worker's Compensation protection that complies with the requirements of the New Mexico Worker's Compensation Act, NMSA 1978, §§ 52-1-1, *et seq.*, if applicable. If the Contractor fails to comply with the Workers Compensation Act and applicable rules when required to do so, EMNRD may terminate this Agreement.

B. Comprehensive public liability protection covering property damage and personal injury liability that may arise under this Agreement and any amendments hereto, in amounts equal or greater than liability limits set forth in NMSA 1978, § 41-4-19, as it may be amended from time to time.

21. Records and Audit:

A. Contractor shall maintain detailed time and expenditure records that indicate the date, time, nature and cost of services rendered during the Agreement's term and effect and retain them until September 30, 2015. These records shall be maintained and available within the State of New Mexico if the Contractor has an office within the state; otherwise, Contractor shall make such records available to EMNRD within 10 days upon EMNRD's request.

During this time, such records shall be subject to inspection by EMNRD, DFA, the State Auditor and DOE. Contractor further agrees to include in all subcontracts hereunder the same right of inspection and audit against all subcontractors. EMNRD shall have the right to audit billings both before and after payment. Payment under this Agreement shall not foreclose EMNRD's right to recover excessive or illegal payments. The periods of inspection and audit may be extended for records, which relate to litigation or settlement of claims arising out of performance of this Agreement and costs and expenses related to this Agreement for which exception is under consideration by DOE or any authorized representative and shall continue until all potential litigation, appeals, claims or exceptions have expired or been resolved. More specifically, Contractor agrees to maintain records that fully identify the source and application of ARRA funds.

B. If Contractor receives $500,000 or more in federal funding from all sources in the aggregate in a fiscal year, Contractor's financial records involving services and procurement under this Agreement shall be audited annually pursuant to all federal, state and local government audit requirements and 2 C.F.R. Part 225 and OMB Circular and A-133, as prescribed by the Single Audit Act of 1984, or any subsequent OMB Circular. Contractor shall provide EMNRD with a copy of the independent financial audit, either in hard copy format or on disk, no more than 45 days after the audit's completion for each fiscal year this Agreement is in effect.

C. Because this Agreement creates a subrecipient relationship between EMNRD and Contractor, the following financial and performance compliance requirements apply:

1. Contractor shall maintain payroll records and provide them to EMNRD as specified in this Agreement.

2. Contractor shall maintain records of purchase of fixed assets under this Agreement and provide them to EMNRD as specified in this Agreement..

3. Contractor shall maintain financial records related to this Agreement and provide them to EMNRD as specified in this Agreement.

D. See additional audit requirements in the Additional ARRA Reporting Requirements Paragraph herein and Attachment 2, ARRA Contractual Requirements Required by DOE.

22. Liability: Neither party shall be responsible for liability incurred as a result of the other party's acts or omissions in connection with this Agreement. Any liability incurred with this Agreement is subject to the immunities and limitations of the New Mexico Tort Claims Act, NMSA 1978, §§ 41-4-1, *et seq.*, as amended.

23. Procurement, Utilization and Disposition of Property: Contractor shall report acquisition of any property to EMNRD within one month following the acquisition. Title to property acquired by Contractor with federal funds shall vest in the Contractor pursuant to and subject to DOE Assistance Regulations, 10 C.F.R. Part 600 as long as Contractor uses the property for the purpose for which it was intended. If equipment is no longer needed for its original intent, Contractor shall account for the property and dispose of it as EMNRD directs.

24. Wage Rates: If applicable, Contractor shall comply with minimum wage rates as established by the New Mexico Department of Workforce Solutions, Labor and Industrial Division, and with all other applicable requirements of that Division, including posting of the wage rates in a prominent location on the site for hiring and performing of this Agreement. (See additional wage rate requirements in Attachment 2, ARRA Contractual Requirements Required by DOE.)

25. Attorney's Fees and Costs: Contractor agrees that if a court of competent jurisdiction finds Contractor has breached this Agreement, or amendments hereto, or to have committed any tortious act relating to this Agreement's scope, EMNRD may recover from Contractor reasonable attorneys' fees and costs in connection with litigation brought to obtain the judicial determination.

26. Invalid Term or Condition: If any term or condition of this Agreement shall be held invalid or unenforceable, the remainder of this Agreement shall not be affected and shall be valid and enforceable.

27. Enforcement of Agreement: A party's failure to require strict performance of any provision of this Agreement shall not waive or diminish that party's right thereafter to demand strict compliance with that or any other provision. No waiver by a party of any of its rights under this Agreement shall be effective unless express and in writing, and no waiver of a specified right by a party shall be effective to waive any other rights.

28. Authority: The individual(s) signing this Agreement on behalf of Contractor represent and warrant that he or she has the power and authority to bind

Contractor, and that no further action, resolution, or approval from Contractor or any other entity is necessary to enter into a binding contract.

29. Additional ARRA Reporting Requirements:

A. If any part of this Agreement is funded pursuant ARRA, Contractor agrees to abide by the reporting requirements of that Act, as amended. Receipt of funds pursuant to ARRA is expressly contingent upon Contractor's agreement that it shall fully comply with the reporting requirements specified by the Act. These reporting requirements shall include, but not necessarily be limited to, the following, as applicable. Contractor shall also comply with the reporting requirements as specified in Attachment 1, Additional ARRA Reporting Requirements.

a) Contractor shall report information required by the Federal Funding Accountability and Transparency Act of 2006 (P.L. 109-282) (FFATA), as that law may be amended or renumbered.

1. The name of the entity receiving the award.

2. The amount of the award.

3. Information on the award including transaction type, funding agency, the North American Industry Classification System code or Catalog of Federal Domestic Assistance number (where applicable), program source, and an award title descriptive of the purpose of each funding action.

4. The location of the entity receiving the award and the primary location of the performance under the award, including the city, State, congressional district, and county.

5. A unique identifier of the entity receiving the award and of the parent entity of the recipient, should the entity be owned by another entity.

6. Any other relevant information specified by the Office of Management and Budget (OMB).

b) Contractor shall acquire or update its DUNS number and register with the Central Contractor Registration, if applicable.

c) Contractor shall report information responsive to ARRA Section 1512 as identified in that Section, and as that Section may be amended or renumbered, and in OMB memoranda and supplements addressing Section 1512 reporting, as amended or renumbered. Reported information shall include:

1. Data elements specific to vendor reporting.

   i. Award Number – Prime Recipient Vendor
   ii. Subaward Number – Subrecipient Vendor
   iii. Vendor DUNS Number
   iv. Vendor HQ Zip Code + 4
   v. Vendor Name
   vi. Product and Service Description
   vii. Payment Amount

2. Data elements for which the prime recipient or subrecipient is responsible, but which are generated by the vendor, including, but not limited to: project status, jobs creation and number of jobs.

3. Data on number of jobs shall comply with OMB Memorandum M-09-21 description of a mathematical formula to calculate Full Time Equivalence (FTE) for jobs created and retained, at page 35, and as that memorandum may be amended, supplemented, or replaced by OMB.

4. If applicable, pursuant to ARRA Division B, Title VII, or pursuant to OMB Guidelines, memoranda or other directives, Contractor shall report the names and compensation of the five most highly compensated officers of the Contractor.

d) Contractor shall report any other information specified by the funding federal agency for ARRA-funded projects in addition to the reporting requirements specified in Section 1512 and OMB Memoranda.

e) At EMNRD's direction, Contractor shall use any automated data system EMNRD identifies to report ARRA funds, jobs created or retained, or any other ARRA-mandated reporting requirements.

f) Contractor shall meet all reporting deadlines EMNRD establishes to ensure compliance with ARRA-mandated reporting deadlines as well as any deadlines EMNRD specifies for the reporting of data that EMNRD requires in order to comply with EMNRD's ARRA reporting requirements.

g) In the event that additional data reporting is imposed on EMNRD by federal law or by an appropriate federal agency subsequent to the execution of this Agreement, Contractor agrees to fully comply with any and all additional reporting requirements as EMNRD directs.

B. Contractor shall also be fully responsible for complying with any reporting requirements which apply to any subcontracts awarded pursuant to this Agreement and in accordance with Section 8 of this Agreement regarding subcontracting, such reporting to comply with ARRA or FFATA (P.L. 109-282), as those laws may be amended or renumbered. Contractor shall be responsible for ensuring that all required subcontractor reporting is completed in a timely and accurate manner.

a) The data elements required for compliance shall include, but not necessarily be limited to, the following, as applicable:

1. Specific data elements identified by OMB for vendor reporting.

2. Any other information specified by OMB or the funding federal agency, if applicable.

3. The number of jobs created and retained by the project or activity, with a narrative description of the types of jobs. Data on number of jobs shall comply with OMB M-09-21 description of a mathematical formula to calculate FTE, as that memorandum may be amended or supplemented by OMB.

b) At EMNRD's direction, Contractor shall require any subcontractor to use any automated data system EMNRD identifies to track ARRA funds, jobs created or retained, or any other ARRA mandated reporting requirements.

c) ARRA funds may be used in conjunction with other funds to perform the Scope of Work under this Agreement, but tracking and reporting must be done separately to meet the reporting requirements of ARRA and the OMB Guidance.

d) Contractor agrees that it shall include in any subcontract agreement subject to these requirements, an affirmative obligation upon any subcontractor to collect, maintain and timely provide any and all information subject to the reporting requirements specified herein and a specific authorization for the release of this information directly EMNRD upon EMNRD's request.

30. <u>Additional ARRA Audit Requirements</u>:

A. If any part of this Agreement is funded pursuant to the ARRA, Contractor agrees to abide by the following:

1) Allow access by any appropriate federal entity, including an inspector general appointed under section 3 or 8G of the Inspector General Act of 1978 (5 U.S.C. App.) to examine any records of the Contractor and any subcontractor

pursuant to this original Agreement that pertain to, and involve transactions relating to, this Agreement or any subcontract pursuant to this Agreement; and

2) To allow any appropriate inspector general appointed under section 3 or 8G of the Inspector General Act of 1978 to interview any officer or employee of the Contractor or any subcontractor pursuant to this original Agreement regarding such transactions.

3) Nothing in this Section shall be interpreted to limit or restrict in any way any existing authority of an inspector general.

B. If any part of this Agreement is funded pursuant to the ARRA, Contractor agrees to abide by the following:

1) Allow access by the Government Accountability Office Comptroller General and his representatives to examine any records of the Contractor or any of Contractor's subcontractors, or any state or local agency administering such contract, that directly pertain to, and involve transactions relating to, the contract or subcontract; and

2) Allow the Comptroller General and his representatives to interview any officer or employee of the Contractor or any of Contractor's subcontractors, or of any state or local government agency administering the contract, regarding such transactions.

3) Nothing in this section shall be interpreted to limit or restrict in any way any existing authority of the Comptroller General.

C. If any part of this Agreement is funded pursuant to ARRA, Contractor agrees to maintain documentation and records that support all information submitted to EMNRD for federal reporting purposes.

D. Contractor agrees that it shall include in any subcontract agreement an affirmative obligation upon any subcontractor to comply with and submit to all of the additional audit requirements specified herein.

31. Additional ARRA Requirements:

A. EMNRD and Contractor hereby acknowledge that any funding provided pursuant to ARRA is one-time funding which shall be limited to the specific purposes and deliverables specified herein.

B. Whistleblower Protections of Employees Under ARRA

1) Contractor shall comply with Section 1553 of the ARRA regarding Whistleblower protections, as that section may be amended or renumbered.

2) Any employer, including Contractor, receiving funds pursuant to ARRA shall post notice of the rights and remedies provided under this section. The notice of rights shall be the same as or equivalent to the example notice set forth in Attachment 3.

3) Contractor agrees that it shall include in any subcontract agreement an affirmative obligation upon any subcontractor to comply with the whistleblower protection provisions specified herein.

4) See additional whistleblower protection requirements in Attachment 2, ARRA Contractual Requirements Required by DOE.

C. Buy American Provisions

1) If applicable, Contractor shall comply with Division A, Section 1605 of ARRA regarding Buy American Provisions, regarding use of American iron, steel, and manufactured goods, as that section may be amended or renumbered.

2) If applicable, Contractor is responsible for advising any subcontractor of this requirement.

3) If applicable, Contractor shall also comply with the additional Buy American Requirements for Materials Purchased with ARRA Funding requirements as specified in Attachment 2, ARRA Contractual Requirements Required by DOE.

D. Wage Rate Requirements

1) If applicable, Contractor shall comply with Division A, Section 1606 of ARRA regarding wage rate requirements, as that section may be amended or renumbered.

2) If applicable, Contractor shall comply with Division B, Section 1601 of ARRA regarding application of certain labor standards to projects financed with certain tax-favored bonds.

3) If applicable, Contractor is responsible for advising any subcontractor of this requirement.

32. <u>Mandatory Waste, Fraud or Abuse Reporting</u>:

If any part of this Agreement is funded pursuant to ARRA, Contractor shall:

A. Promptly refer to an appropriate inspector general any credible evidence that a principal, employee, agent, contractor, 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 such ARRA funds.

B. Promptly report to EMNRD and the New Mexico Office of Recovery and Reinvestment (NMORR) any credible evidence that a principal, employee, agent, contractor, subcontractor, or other person has committed fraud, waste, or abuse of ARRA funds.

C. Contractor agrees that it shall include in any subcontract agreement an affirmative obligation upon any subcontractor to comply with the mandatory waste, fraud or abuse reporting requirements specified herein.

33. Non-Compliance With ARRA Reporting Requirements:

Failure of Contractor or any subcontractor to Contractor to comply with the reporting requirements, through material omission, knowingly reporting false data, or failure to comply with reporting deadlines, may result in withholding of payment or termination of this Agreement.

34. Cited Documents:

Cited documents may be viewed in their entirety at United States government websites, and it is Contractor's responsibility to fully understand Contractor's duties and responsibilities for reporting and disclosure requirements when receiving ARRA funds pursuant to this or any other agreement under which ARRA funds are disbursed.

American Recovery and Reinvestment Act of 2009	ARRA
Federal Funding Accountability and Transparency Act of 2006 (P.L. 109-282	FFATA
OMB M-09-21, Implementing Guidance for the Reports on Use of Funds Pursuant to the Recovery Act of 2009. OMB M-09-21 Supp 1: List of Programs Subject to Recipient Reporting OMB M-09-21 Supp 2: Recipient Reporting Data Model	M-09-21 Memorandum M-09-21 Supplement 1 M-09-21 Supplement 2
OMB M-09-19, Guidance on Data Submission under the Federal Funding Accountability and Transparency Act (FFATA)	M-09-19
OMB M-09-15, Updated Implementing Guidance for the Recovery Act of 2009	M-09-15

35. Debarment and Suspension and Other Responsibility Matters:

A. Contractor certifies by signing this Agreement, that Contractor and Contractor's principals, if applicable, to the best of Contractor's knowledge and belief: (1) are not debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any federal department or agency; (2) have not, within a three-year period preceding the effective date of this Agreement, 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) contract or subcontract; violation of Federal or state antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, or receiving stolen property; (3) have not been indicted for, or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any of the offenses enumerated above in this Paragraph; and, (4) have not, within a three-year period preceding the effective date of this Agreement, had one or more public agreements or transactions (federal, state or local) terminated for cause or default. If applicable, Contractor certifies that it and its principals have not been excluded from participation from Medicare, Medicaid or other federal health care programs pursuant to Title XI of the Social Security Act, 42 U.S.C. § 1320a.

B. Contractor's certification in Paragraph A is a material representation of fact upon which EMNRD relied when this Agreement was entered into by the parties. Contractor shall provide immediate written notice to EMNRD if, at any time during the term of this Agreement, Contractor learns that Contractor's certification in Paragraph A was erroneous on the effective date of this Agreement or has become erroneous by reason of new or changed circumstances. If it is later determined that Contractor's certification in Paragraph A was erroneous on the effective date of this Agreement or has become erroneous by reason of new or changed circumstances, in addition to other remedies available to EMNRD, EMNRD may terminate the Agreement.

C. Contractor shall require each proposed first-tier subcontractor whose subcontract shall equal or exceed $25,000, to disclose to EMNRD whether as of the time of award of the subcontract, the subcontractor, or its principals, is or is not debarred, suspended, or proposed for debarment by any federal department or agency. Contractor shall make such disclosures available to the agency. If the subcontractor, or its principals, is debarred, suspended, or proposed for debarment by any federal department or agency, the agency may refuse to approve the use of the subcontractor.

36. Other Provisions:

PLEASE NOTE: the clauses numbered 29 through 35 and set forth hereinabove are IN ADDITION TO any other pertinent requirements as set forth by the federal government either pursuant to or outside of ARRA, such as specific requirements set

forth by the federal agency from which funds have been appropriated or any other pertinent federal agency.

If such additional requirements exist for this Agreement, they are contained in Attachments 1 and 2.

IN WITNESS WHEREOF, the parties hereto have herein below executed this Agreement.

STATE OF NEW MEXICO, ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT

By: _____ Date: 4/29/10
Cabinet Secretary or Designee

CITY OF LAS CRUCES

By: _____ Date: 4-26-10
Authorized Representative/Title

APPROVED AS TO FORM:
_____
City Attorney

Attachment 1 Additional ARRA Reporting Requirements

Many of the following report items are answered one time, and remain the same for each subsequent report. Those items are marked "*static*" in the list below. The items which change with each report are marked "[redacted]".

The New Mexico Office of Recovery and Reinvestment provides a web-based system named "CertiClear" to collect and consolidate much of this reporting online. The items the Contractor is required to report using this web system are marked: [W].

Items reported directly to EMNRD in Microsoft Word 1997 or later format are marked: [E]. Items reported directly to EMNRD and also with the Web system are marked: [E & W].

A. Monthly Reports: Shall be delivered monthly, by the 25th calendar day of most months. In months that end with holidays the reports will be due at earlier dates, specified by EMNRD. These reports may be sent by email attachment to the EMNRD Project Manager.

1. Contractor Identification

   1.1. Federal award ID number – static [E & W]
   1.2. Contractor's name – static [E & W]
   1.3. Contractor's DUNS number – static [E & W]
   1.4. EMNRD-assigned subaward number – static [E & W]
   1.5. Contractor's street address, city and 9-digit ZIP Code – static [E & W]
   1.6. Contractor's county – static [E & W]
   1.7. Contractor's congressional district – static [E & W]
   1.8. Name, telephone and email address of person who completes the monthly report – mostly static [E]
   1.9. Name, telephone and email address of person who submits the online information via CertiClear – mostly static E & W
   1.10. Conditional information on officer compensation – static [E & W]

   If Contractor receives $25 million or more per year in federal revenue, Contractor may be required to report the names and total annual compensation of Contractor's most highly-compensated officers. Contractor shall contact EMNRD for specific instruction on this.

2. Project Identification and Status

   2.1. Project Name – static [E & W]
   2.2. Any significant project news since the last report, including progress items, anything blocking progress, and any help you may need to resolve progress blockers [redacted]
   2.3. Cumulative tally of the major tasks completed; major tasks remaining; and any major tasks that are currently behind schedule [redacted]

   2.4. Activity codes that describe this project – static [E & W] – EMNRD will assist Contractor with determining the proper codes for Contractor's main project

activity from the National Center for Charitable Statistics or from the North American Industry Classification System as appropriate.

2.5. Energy Efficiency Activities Completed This Month [redacted] Contractor shall report only those activities listed below that are applicable to Contractor's project, using specific metrics defined by the Department of Energy (DOE). EMNRD will provide a reporting template including the specific metrics relevant to Contractor's activities.

- Building Codes and Standards
- Building Energy Audits
- Building Retrofits
- Clean Energy Policy
- Energy Efficiency Rating and Labeling
- Financial Incentives for Energy Efficiency Investments
- Government, School, Institutional Procurement
- Industrial Process Efficiency
- Loans and Grants
- Renewable Energy Market Development
- Small-scale Renewable Energy Applications Installed
- Technical Assistance
- Transportation
- Workshops, Training and Education

EMNRD will supply the DOE metrics for Contractor's activities.

3. Physical location where most of the project work is performed

3.1. Street address, city and nine-digit ZIP code – static E & W
3.2. County – static E & W
3.3. Congressional district – static E & W

4. Conditional Jobs Data for Contractor Employees – If this project's ARRA funding paid any portion of employee salaries in Contractor's organization, then Contractor will report two types of Jobs Data until all of Contractor's work on this project is complete:

4.1. The number of ARRA-funded hours that each of your ARRA-funded employees worked on this project (part-time or full-time) [redacted]
4.2. A list of job categories that describe all the Contractor employee positions whose salaries and/or benefits were charged, partially or fully, to this ARRA project during the current reporting period.. EMNRD will supply a master list of job categories for this task. [redacted]

5. Expenditure Summary

5.1. Total funds allotted to the project – static E & W
5.2. Amount of project award from EMNRD – static E & W
5.3. Date of project award from EMNRD – static E & W
5.4. Project funds spent this month [redacted]

5.5. Cumulative subtotal of EMNRD award spent to date [redacted]
5.6. Funds leveraged from non-federal sources added to this project this month [redacted]
5.7. Cumulative subtotal of funds leveraged from non-federal sources to date [redacted]
5.8. Administration costs this reporting period [redacted]
5.9. Cumulative amount of administration costs [redacted]

6. Energy Consumption [redacted]

Contractor shall report only the energy consumption applicable to Contractor's project. EMNRD will help Contractor set up an account in EPA's Portfolio Manager software and establish a baseline energy consumption level for this project.

For the duration of this contract, each month Contractor will enter the amount of energy consumed by the project's facilities into Portfolio Manager, and will share those records with EMNRD's Portfolio Manager Master Account:

- Natural gas consumed (therms)
- Electricity consumed (kilowatt-hours)
- Peak demand for electric power (kilowatts)
- Propane consumed (gallons)
- Gasoline and diesel fuel consumed (gallons)

7. Renewable Energy Capacity and Generation [redacted]

If the project generates power from renewable energy sources, Contractor will report the power capacity currently installed at the project's site(s), and the amount of power generated:

- Wind-powered electric generating capacity installed (kilowatts)
- Electricity generated from wind systems (kilowatt-hours)
- Photovoltaic generating capacity installed (kilowatts)
- Electricity generated from photovoltaic systems (kilowatt-hours)
- Electric generating capacity from other renewable sources installed (kilowatts)
- Electricity generated from other renewable sources (kilowatt-hours)
- Power generated from solar thermal and/or geothermal sources (therms or British thermal units)

8. For each Subcontractor whom Contractor paid $25,000 or more in a single payment:

8.1. Name of the Subcontractor – static [E & W]
8.2. Subcontractor contact's name, telephone and email address – mostly static [E]
8.3. Subcontractor's DUNS number (if available) – static [E & W]
8.4. The 9-digit ZIP Code of Subcontractor's headquarters – static [E & W]

8.5. Short description of the product or service Contractor purchased from this Subcontractor [redacted]
8.6. Amount paid to Subcontractor from this project's ARRA funds [redacted]
8.7. Physical location where most of the Subcontractor's work was performed [redacted]
8.7.1. Street address, city and 9-digit ZIP Code
8.7.2. County
8.7.3. Congressional District
8.8. Conditional Jobs Data for Subcontractor Employees – If the ARRA funding Contractor paid this Subcontractor paid any portion of employee salaries in the Subcontractor's organization; then Contractor or Subcontractor must report two types of Jobs Data until the subcontracted project is complete:

8.8.1. The number of ARRA-funded hours that each of the ARRA-funded, Subcontractor employees worked on this project (part-time or full-time) [redacted]
8.8.2. A list of job categories that describe all the Subcontractor employee positions whose salaries and/or benefits were charged, partially or fully, to this ARRA project during this reporting period. EMNRD will supply a master list of job categories for this task. . [redacted]

B. Summary Report: When the project is near completion, Contractor shall provide EMNRD with a final report giving detail on all the jobs supported, energy consumption changes, renewable energy capacity, renewable energy generation, energy efficiency activities completed, and any qualitative improvements achieved (environmental, occupant health and comfort, resource efficiency, etc.).

Contractor shall provide EMNRD with a written draft of this summary report two months prior to this Agreement's termination date. Contractor shall incorporate EMNRD's review comments, if any, into a final report on Compact Disc in Microsoft Word 1997 or later format and deliver that final report by this Agreement's termination date.

C. Additional Information: Any other information specified by OMB, or DOE, or NMORR, if applicable, to allow EMNRD to meet its reporting obligations in Section 1512(c) of the ARRA, and to assure EMNRD's reports are correct and up-to-date.

D. EMNRD Duties: EMNRD shall work with Contractor to assist in these reporting obligations.

E. Use and Tracking of Funds: ARRA funds may be used in conjunction with other funds to perform the Scope of Work under this Agreement, but tracking and reporting must be done separately to meet the reporting requirements of ARRA and the OMB Guidance.

F. Failure to Comply with Reporting Requirements: Failure to comply with the 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 funds. A willful failure to perform, a history of failure to perform, or unsatisfactory performance of this or other financial

assistance awards may also result in a debarment action to preclude awards funded by DOE.

G. **Information in Support of ARRA Reporting:** Contractor may be required to submit backup documentation for expenditures of funds under ARRA including such items as timecards and invoices. Contractor shall provide copies of backup documentation at the request of the Contracting Officer or designee.

Attachment 2
ARRA Contractual Requirements Required by DOE

Contractor shall comply with the requirements listed below, where applicable.

1. **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:

A. To examine any records of contractor or grantee, its subcontractors or subgrantees, or any state or local agency administering such contract that pertain to, and involve transactions relation to, the subcontract, grant or subgrant; and

B. To interview any officer or employee of the contractor, grantee, subgrantee, or agency regarding such transactions.

2. **Use of facilities:** DOE 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. Contractor must provide, and must require subcontractors 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.

3. **Publication Requirements:**

Contractor shall acknowledge DOE in any publication that results from this Agreement. Any such publication shall contain the following acknowledgment:

"This material is based upon work supported by the Department of Energy under Award Number(s) DE-EE0000681.

"Disclaimer: This report was prepared as an account of work sponsored by an agency of the United States government. Neither the United States Government or 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. References 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."

4. **Segregation of Costs:** Recipients shall 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 ARRA funds shall be commingled with any other funds or used for a purpose other than that of making payments for costs allowable for ARRA projects.

5. **Prohibition of Use of Funds:** None of the ARRA funds may be used by any state or local government or private entity, for any casino or other gambling establishment, aquarium, zoo, golf course, or swimming pool.

6. **Protecting State and Local Government and Contractor Whistleblowers:** The requirements of Section 1553 of ARRA are summarized below. They include, but are not limited to:

A. 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 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.

B. Agency Action: Not later than 30 days after receiving an inspector general report of an alleged reprisal, the head of the federal 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.

C. Nonenforceablity 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.

D. 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 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.) (See Attachment 3)

7. **Request for Reimbursement:** RESERVED.

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

9. **Availability of Funds:** Funds appropriated under ARRA and obligated to this award are available for reimbursement of costs until September 30, 2015.

10. **Certifications:** With respect to funds made available to state or local governments for infrastructure investments under ARRA, 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. The State of New Mexico, through EMNRD, 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.

11. **Central Contractor Registration:** Contractor must maintain current registrations in the Central Contractor Registration (CCR) (*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 CCR.

12. **Contractor Responsibilities for Informing Subcontractors:**

A. 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, 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.*

B. For Contractors 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 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.

C. Contractor agrees to separately identify to each subcontractor, 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 EMNRD awards ARRA funds for an existing program, the information furnished to Contractor shall distinguish the subawards of incremental ARRA funds from regular subawards under the existing program.

D. Contractor agrees to require its subcontractors to include on their SEFA information to specifically identify ARRA funding similar to the requirements for the recipient SEFA described above. This information is needed to allow EMNRD 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.

13. **Wage Rates:** If the work to be performed under this Agreement is for work in excess of $2,000 for construction, alteration, or repair, including painting and decorating, or otherwise is subject to the provisions of the Davis-Bacon Act (40 U.S.C. Section 3142), Contractor and any Subcontractors shall comply as specified in 29 C.F.R. 5.5(a) as indicated below. If Contractor fails to comply with the provisions of this Paragraph, EMNRD may terminate this Agreement by giving notice as specified in the Term Paragraph.

Subpart A - Davis-Bacon and Related Acts Provisions and Procedures

Sec. 5.5 Contract provisions and related matters.

TITLE 29--LABOR

PART 5_LABOR STANDARDS PROVISIONS APPLICABLE TO CONTRACTS COVERING FEDERALLY FINANCED AND ASSISTED CONSTRUCTION (ALSO LABOR STANDARDS PROVISIONS APPLICABLE TO NONCONSTRUCTION CONTRACTS SUBJECT TO THE CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

Subpart A - Davis-Bacon and Related Acts Provisions and Procedures

Sec. 5.5 Contract provisions and related matters.

(a) The Agency head shall cause or require the contracting officer to insert in full in any contract in excess of $2,000 which is entered into for the actual construction, alteration and/or repair, including painting and decorating, of a public building or public work, or building or work financed in whole or in part from Federal funds or in accordance with guarantees of a Federal agency or financed from funds obtained by pledge of any contract of a Federal agency to make a loan, grant or annual contribution (except where a different meaning is expressly indicated), and which is subject to the labor standards provisions of any of the acts listed in Sec. 5.1, the following clauses (or any modifications thereof to meet the particular needs of the agency, Provided, That such modifications are first approved by the Department of Labor):

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

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

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

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

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

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

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, 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.

(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 vie of all interested parties and the recommendation of the contracting officer,

to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

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

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

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

(2) Withholding. The (write in name of Federal Agency or the loan or grant recipient) 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 (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 until such violations have ceased.

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

(ii)(A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the (write in name of appropriate federal agency) 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 applicant, sponsor, or owner, as the case may be, for transmission to the (write in name of agency). The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for

each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at http://www.dol.gov/esa/whd/forms/wh347instr.htm or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the (write in name of appropriate federal agency) 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 applicant, sponsor, or owner, as the case may be, for transmission to the (write in name of agency), 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 applicant, sponsor, or owner).

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

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

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

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

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

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

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

(4) Apprentices and trainees--(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work

actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved. (iii) Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

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

(6) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the (write in the name of the Federal agency) may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

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

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

(9) Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be

resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

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

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

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

14. **Buy American Requirements for Materials Purchased with ARRA Funding:**

A. None of the funds appropriated or otherwise made available through ARRA may be used for a project for the construction, alternation, maintenance or repair of a public building or public work unless all of the iron, steel and manufactured goods in the project are produced in the United States. "Manufactured goods" means a good incorporated into a building or work that has been:

1. Processed into a specific form or shape; or

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

There is no requirement with regard to the subcomponents of a manufactured good so long as the manufacturing took place in the United States.

B. Unless DOE makes a determination that: 1) application of this requirement would be inconsistent with the public interest; 2) iron, steel and the manufactured goods are not produced in the U.S. in sufficient and reasonable quantities and of a satisfactory quality; or 3) inclusion of iron, steel and manufactured goods produced in the U.S. will increase the overall project cost by more than 25 percent, Contractor must adhere to the "buy American" requirements.

C. If DOE makes such a determination and publishes in the Federal Register a detailed written justification as to why the provision is being waived, EMNRD shall advise Contractor of the determination.

15. **Preservation of Open Competition and Government Neutrality Towards Contractors' Labor Relations on Federally-Funded Construction Projects:**

A. Unless in conflict with state laws, Contractor shall ensure that bid specifications, project agreement, or other controlling documents in construction contracts awarded pursuant to this Agreement, or pursuant to a subcontract of this Agreement, do not:

1. Require or prohibit bidders, offerors, contractors, or subcontractors 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 subcontractors 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).

B. 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.

C. Nothing in this provision prohibits bidders, offerors, contractors, or subcontractors from voluntarily entering into agreements with labor organizations.

16. **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 30 C.F.R. 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 provide 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.

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

Attachment 3

Know Your Rights Under the Recovery Act!

Did you know?

The American Recovery and Reinvestment Act of 2009 [1] provides protections for certain employees of non-federal employers who make specified disclosures relating to possible fraud, waste and/or abuse or Recovery Act funds.

Who is protected?

Employees of non-federal employers receiving recovery funds. This includes State and local governments, contractors, subcontractors, grantees or professional membership organizations acting in the interest of recovery fund recipients.

How are Whistleblowers Protected?

You cannot be discharged, demoted or otherwise discriminated against as a reprisal for making a protected disclosure.

What types of disclosures are protected?

The disclosure must be made by the employee to the Recovery 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, a court or grand jury, or the head of a federal agency or his/her representatives.

The disclosure must involve information that the employee believes is evidence of:

- gross mismanagement of an agency contract or grant relating to recovery funds;
- a gross waste of recovery funds;
- a substantial and specific danger to public health or safety related to the implementation or use of recovery funds;
- an abuse of authority related to the implementation or use of recovery funds; or
- a violation of law, rule, or regulation related to an agency contract or grant awarded or issued relating to recovery funds.

Take Action!

Log on to Recovery.gov for more information about your rights and details on how to report at www.recovery.gov.

[1] Section 1553 of Division A, Title XV of the American Recovery and Reinvestment Act of 2009, P.L. 111-5