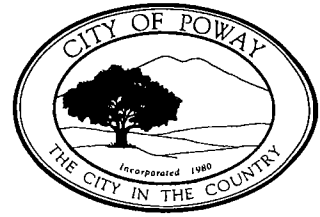


CITY OF POWAY



DON HIGGINSON, Mayor
CARL KRUSE, Deputy Mayor
MERRILEE BOYACK, Councilmember
JIM CUNNINGHAM, Councilmember
BETTY REXFORD, Councilmember

December 28, 2009

Subject: Request for Proposal for Photovoltaic Solar Design Consulting Services for the Poway Public Works Operations Facility RFP #10-004

(THE PROJECT DESIGN COMPANY IS INELIGIBLE TO BID ON THE PROJECT CONSTRUCTION)

The City of Poway is requesting proposals for the turnkey design and engineering of a new Photovoltaic Solar System at the Poway Public Works Operations Facility. The Photovoltaic system shall be designed to supply a minimum 90% of the current facility demand (Attachment "D"). The proposal will also include preparation of an RFB document (Attachment "F"), and consulting during the bid and construction phases of the project. The following information outlines the scope of work, schedule, and criteria that will be used to judge the proposals. This project is funded under The American Recovery and Reinvestment Act of 2009 [Special Terms and Conditions] (Attachment "A"), and National Policy Assurances August 2008 (Attachment "B") UTILIZING AMERICAN MADE STEEL AND LOCAL RESOURCES. The Designer awarded the project may also be requested to review the existing Photovoltaic System on Fire Station #1 located at 13050 Community Road and provide recommendations and design for expansion. Work will be performed based on Operations Center Photovoltaic Solar Design unit proposal prices for project proposal.

BACKGROUND

The Poway Public Works Operations Facility is located at 14445 Lake Poway Road (Attachment "C"). The project location has two buildings onsite. Both buildings can be used for installation of solar panels. Building #1 is a parking garage consisting of an approximate 4,608 square-foot roof surface area. Building #2 is the Operations facility consisting of approximately 7,154 square feet of roof surface area including an HVAC unit and duct work. The main electrical room is located at the north end of Building #2, and a subpanel is located in the garage area of Building #1.

The following is the scope of services for the proposed project.

Site Selections & System Designs

The Designer shall review the potential project site to design a Photovoltaic Solar PV System that meets the project's objectives and takes into consideration the Public Works Operations facility's overall electrical demand and load patterns, site-specific conditions, available solar resources, applicable zoning ordinances, and other relevant factors. The design documents will detail:

- Evaluation of existing roof conditions and report including roof membrane remaining life expectancy.
- Structural analyses of existing roofs.
- System description utilizing a nationally recognized modeling tool to estimate the energy output of the system and provide a shading analysis report for each proposed location to understand the potential system output.
- Equipment details, descriptions, maintenance requirements and warranties.
- Layout of installation site(s).
- Layout of equipment.
- Specifications for equipment procurement and installation.
- Power and energy output.
- Value of energy output.
- Performance monitoring equipment.
- Electrical grid interconnection requirements.

The Designer shall be responsible for coordination of the plan review process and electrical grid interconnection requirements, permits and agreements with SDG&E.

The Designer shall provide design documents in hard copy and electronic format using AutoCAD software suitable for submittal to the City for review and approval. The design drawings shall include the dimensions and layout of equipment and address all code, utility interconnect, utility shut-off and fire safety issues.

The Designer shall complete the design for all elements of the project, including but not limited to: civil, structural, architectural, mechanical, electrical, and specialty consulting areas. Drawings shall be stamped by an Engineer registered in the State of California.

The Designer shall provide all submittals in an 11 x 17 – inch size format. The as-builts shall be provided on “D” sheet mylars. All submittals shall be on CD using the CAD 14 or latest version.

After each submittal, the Designer will attend “comments resolution meeting”. The Designer will review the City’s comments at this meeting and will be prepared, with the proper people in attendance, to resolve the City’s comments. Comments will be resolved to the Designer’s and the City’s mutual satisfaction.

Solar array layout shall comply with the attached City of Poway “Solar Power Requirements Photovoltaic Systems” (Attachment “E”).

PROJECT DESCRIPTION

The consultant team should at a minimum consist of:

Civil Engineer
Architect
Structural Engineer
Mechanical Engineer
Electrical Engineer

Scope of Work

The Consultant shall complete the following milestone tasks:

Design Phase

Furnish support to a constructability review team (City furnished) at the 10 percent, 75 percent, and 100 percent design completion stage. Incorporate results of this review into the design. Each design completion stage should include the following components:

Milestone Task #1 – 10% Design Submittal

Interpret and complete the conceptual design of the Photovoltaic Solar system

- Provide evaluation of existing roof conditions and provide report including roof membrane remaining life expectancy.
- Provide structural analysis of existing roof including ability to structurally support proposed design.
- Provide Engineer's Conceptual Plan to include a site plan, building renderings, photovoltaic plan & cross section of the rack or mounting concepts and single line electrical drawings.
- Provide system energy output estimate.
- Provide shading analysis report.
- Provide Engineer's Estimate of cost for all portions of the project.
- Provide an update to the proposed schedule.
- Provide a completed Conceptual Plan for City Review and Approval.

After receiving approval from City staff the consultant team shall proceed with 75% Design Submittal.

Milestone Task #2 – 75% Design Submittal

Proceed with the 10% approved plan to 75% design that includes plans from all consultants for the systems required for the successful design, construction and operation of the project.

- Each consultant shall have all major components to their respective systems indicated.
- Design will include equipment information sheets on all major equipment and drawings illustrating any structural work, roof penetrations, foundation details, electrical conduit runs, equipment layout and electrical mounting drawings.
- The design team shall have a comprehensive estimate for all components of the Photovoltaic system.
- Coordination between the existing electrical utilities and utility companies shall be completed and indicated on the plans.

After a review and approval of the plans by the Public Works Department and Development Services Department staff, the consultant team shall proceed with 100% Plan Development.

Milestone Task #3 – 100% Plan Development

Proceed with the approved and coordinated 75% plans to 100% plan development.

- This plan set shall include all documents identified previously in this section and will be reviewed by Public Works, Development Services staff and comments returned to the consultant team prior to the plan check review. The consultant team shall deliver to the City, a completed and coordinated set of plans ready for Building Department / Fire Marshall Plan Check.

After the consultant team has acquired Building Department sign-off, the consultant shall proceed with the Bidding Phase.

Milestone Task #4 - Bidding Phase

Assist City staff with the advertising and bidding phase of the project.

- The consultant team shall review City provided RFB documents (Attachment "F") and incorporate technical specifications (contractor requirements, licenses, etc.) and plans into documents to the satisfaction of the City.
- The consultant team shall attend bidders conference and other meetings which may be requested by the City and answer Requests for Information (RFI) from the bidding contractors.
- Complete the required addendums and revisions necessary for a successful bid.
- Assess and analyze the submitted bids for completeness and accuracy with City staff.
- After the project has been awarded to the successful bidder, the consultant team shall proceed with support and administration of the Construction phase.

Milestone #5 - Construction

Assist City staff with the construction administration of the project to its full completion.

- The consultant team shall answer RFIs and provide any clarifications needed to the plans or specifications (in writing or in graphic form) as required to successfully complete the construction of the project.
- The consultant team shall assist City staff in the analysis of change orders and suggested modifications to the project as suggested by the contractor.
- The consultant shall be onsite with installation contractor for the system start-up to observe and verify systems performance, validate required minimum 90% facility demand. Failure to meet the minimum required demand shall result in a penalty to the designer of \$100.00 per day of kilowatt-hours not produced.

After the successful completion of the construction, system start-up and testing verifying 90% minimum facility demand output, the consultant team shall proceed with Record Drawings.

Milestone #6 – Record Drawings

Provide to the City a complete set of record drawings.

- The drawings shall incorporate all the addendums, supplemental instructions (either written or graphic), construction bulletins, and any other instructions to the contractor.

TIME AND PERFORMANCE

The following is a conceptual project schedule.

City advertises for RFP	December 28, 2009
City receives proposals	January 11, 2010
City Manager Approval of Consultant Agreement	January 29, 2010
Start Design	February 1, 2010
Architect Submits 10% Conceptual Design Interpretation	February 15, 2010
City completes concept review	February 19, 2010
Architect submits 75% plan package	March 8, 2010
City completes 75% submittal review	March 15, 2010
Utility companies complete review	March 21, 2010
Architect submits 100% plan package	April 5, 2010
City completes 100% submittal review	April 14, 2010
Architect submits plan check to Building Department	April 28, 2010
Plan check complete	May 5, 2010
Plan check resubmittal	May 12, 2010
Plan check complete	May 19, 2010

CONTENT OF SUBMITTAL

While the experience and resources of the successful firm are important, it is critical that the manager proposed for overall authority on the project have extensive relevant experience and capability. The Consultant will work closely with City staff to complete assigned tasks within budget and within the project schedule. The successful Consultant will execute a Consultant Agreement Contract with the City (Attachment G) for the completion of this work.

Proposal length, including resume, shall be one-sided 8½" x 11" pages. The proposal should demonstrate experience and proficiency with project management and quality product delivery. Key personnel expected to work on the project and their qualifications shall be described. This fee proposal shall include all costs for the proposed work and shall be organized in a form similar to the scope of work, identifying costs for each milestone task of the proposal. A proposed rate schedule will be included for all billable services. Identify sub-consultant costs as they will be billed. The Consultant shall also include any comments or revisions required to the enclosed Consultant Agreement.

Exceptions: Proposing Contractors taking exception to any part or section of the solicitation shall indicate such exceptions on the bid form. Failure to indicate any exception will be interpreted as the proposing contractor's intent to comply fully with the requirements as written. Conditional or qualified bids, unless specifically allowed, shall be subject to rejection in whole or in part.

Incorporated into this RFP is a copy of the City of Poway's standard Services Contract. Please review this document carefully and note in your proposal any exceptions or alterations to the contract that you are requesting. Alterations or changes to the contract that were not included in the proposal will not be made after the selection of the consultant. This includes alterations, exceptions, or changes to the insurance and indemnity provisions. By requiring these requests to be made up front, the City can compare all respondents on an equal basis and take contract exceptions into consideration in the selection process.

SELECTION CRITERIA

The Consultant will be ranked based on the written proposal submitted. The following criteria shall be applied to each submittal:

Approach to Work

- Understanding the project and objectives.
- Clearly defined and well-coordinated approach.
- Familiarity with problems that may be encountered.
- Responsiveness to RFP.

Experience of Key Staff

- Specialized experience and qualifications of the key staff.
- Depth of the project team's technical expertise.

- Availability and commitment of key staff.

Firm Experience

Experience on similar projects and record of performance

References

The City reserves the right to revise this RFP prior to the date that the proposals are due. Revisions to the RFP will be sent to all participants. The City reserves the right to procure or contract for work. All proposals submitted in response to this RFP become the property of the City and are public record. The City reserves the right to delay or cancel, in part or in its entirety, this RFP including, but not limited to: selection schedule, submittal date, and submittal requirements. All Consultants shall be notified of any cancellation or revisions prior to the submittal date. The City also reserves the right to request additional information and/or clarifications regarding any proposals received.

If you have any questions, please contact me at (858) 668-4716. All proposals must be received by **3:00 p.m. on January 11, 2010**, at the Public Works Department, Attn: Terry Zaragoza, 14467 Lake Poway Road, Poway, CA 92064.

The City would like to thank you in advance for your time and attention.

Sincerely,

PUBLIC WORKS DEPARTMENT



Terry Zaragoza

Public Works Program and Contracts Coordinator

SPECIAL TERMS AND CONDITIONS

1. RESOLUTION OF CONFLICTING CONDITIONS

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

2. AWARD AGREEMENT TERMS AND CONDITIONS

This assistance agreement consists of the Cover Page which includes the following:

- a. Special Terms and Conditions for use in most grants (clauses number 3 through 17)
- b. Special provisions related to work funded under American Recovery and Reinvestment Act of 2009 (May 2009) (Clauses 18 through 24)
- c. Grant Application package as approved by DOE (SF-424)
- d. National Policy Assurances to Be Incorporated as Award Terms in effect on date of award at http://management.energy.gov/business_doe/1374.htm.
- e. This award is a fixed obligation grant. The designated Authorized Representative of the recipient shall certify in writing to the Department of Energy, Contracting Officer at the end of the project that the activity was completed or the level of effort was expended, however should the activity or effort not be carried out, the recipient would be expected to make appropriate reimbursements.
- f. 100 percent of allocable funds to this fixed obligation grant was obligated at time of award. If a Energy Efficiency and Conservation Strategy (EECS) was not submitted with the application, the EECS must be submitted within 120 days of award. The recipient may only withdraw through ASAP an amount, not to exceed the estimated budget for the respective activity.

3. ELECTRONIC AUTHORIZATION OF AWARD DOCUMENTS

Acknowledgement of award documents by the Recipient's authorized representative through electronic systems used by the Department of Energy, specifically FedConnect, constitutes the Recipient's acceptance of the terms and conditions of the award. Acknowledgement via FedConnect by the Recipient's authorized representative constitutes the Recipient's electronic signature.

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

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

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

5. MAXIMUM OBLIGATION

The maximum obligation of DOE is limited to the amount shown on Agreement Cover Page. You are not obligated to continue performance of the project beyond the total amount obligated.

6. CEILING ON ADMINISTRATIVE COSTS

- a. Local government and Indian Tribe Recipients may not use more than 10 percent of amounts provided under this program, or \$75,000, whichever is greater (EISA Sec 545 (b)(3)(A), for administrative expenses, excluding the costs of meeting the reporting requirements under Title V, Subtitle E of EISA. These costs should be captured and summarized for each activity under the Projected Costs within Budget: Administration.
- b. Recipients are expected to manage their administrative costs. DOE will not amend an award solely to provide additional funds for changes in administrative costs. The Recipient shall not be reimbursed on this project for any final administrative costs that are in excess of the designated 10 percent administrative cost ceiling.

7. LIMITATIONS ON USE OF FUNDS

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

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

8. REIMBURSABLE INDIRECT COSTS AND UNUSED FUNDS

- a. The Recipient is expected to manage their final negotiated project budgets, including their indirect costs and fringe benefit costs. DOE recognizes that the inability to obtain full reimbursement for indirect or fringe benefit costs means the Recipient must absorb the underrecovery.
- b. If actual allowable indirect and/or fringe benefit costs are less than those budgeted and funded under the award, the Recipient may use the difference to pay additional allowable direct costs during the project period. If at the completion of the award the Government's share of total allowable costs (i.e., direct and indirect), is less than the total costs reimbursed, the Recipient must refund the difference.

9. USE OF PROGRAM INCOME

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

10. STATEMENT OF FEDERAL STEWARDSHIP

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

11. SITE VISITS

DOE's authorized representatives have the right to make site visits at reasonable times to review project accomplishments and management control systems and to provide technical assistance, if required. You must provide, and must require your subawardees to provide, reasonable access to facilities, office space, resources, and assistance for the safety and convenience of the government representatives in the performance of their duties. All site visits and evaluations must be performed in a manner that does not unduly interfere with or delay the work.

12. REPORTING REQUIREMENTS

- a. Requirements. The reporting requirements for this award are identified on the Federal Assistance Reporting Checklist, DOE F 4600.2, attached to this award. Failure to comply with these reporting requirements is considered a material noncompliance with the terms of the award. Noncompliance may result in withholding of future payments, suspension or termination of the current award, and withholding of future awards.
- b. Additional Recovery Act Reporting Requirements are found in the Provision below labeled: "REPORTING AND REGISTRATION REQUIREMENTS UNDER SECTION 1512 OF THE RECOVERY ACT."

13. PUBLICATIONS

- a. You are encouraged to publish or otherwise make publicly available the results of the work conducted under the award.
- b. An acknowledgment of DOE support and a disclaimer must appear in the publication of any material, whether copyrighted or not, based on or developed under this project, as follows:

Acknowledgment: "This material is based upon work supported by the Department of Energy under Award Number(s) [enter the award number(s)]."

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

14. FEDERAL, STATE, AND MUNICIPAL REQUIREMENTS

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

15. HISTORIC PRESERVATION CLAUSE

Prior to the expenditure of Federal funds to alter any structure or site, the Recipient is required to comply with the requirements of Section 106 of the National Historic Preservation Act (NHPA), consistent with DOE's 2009 letter of delegation of authority regarding the NHPA. Section 106 applies to historic properties that are listed in or eligible for listing in the National Register of Historic Places. In order to fulfill the requirements of Section 106, the recipient must contact the State Historic Preservation Officer (SHPO), and, if applicable, the Tribal Historic Preservation Officer (THPO), to coordinate the Section 106 review outlined in 36 CFR Part 800. SHPO contact information is available at the following link:

<http://www.ncshpo.org/find/index.htm>. THPO contact information is available at the following link: <http://www.nathpo.org/map.html>.

The DOE Contracting Officer shall consider compliance with Section 106 of the NHPA complete only after the Recipient has submitted adequate background documentation to the SHPO/THPO for its review, and the SHPO/THPO has provided written concurrence to the Recipient that it does not object to its Section 106 finding or determination. Section 110(k) of the NHPA applies to DOE funded activities, therefore, Recipients shall avoid taking any action that results in an adverse effect to historic properties pending compliance with Section 106.

16.LOBBYING RESTRICTIONS

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

17.NATIONAL ENVIRONMENTAL POLICY ACT (NEPA) REQUIREMENTS

You are restricted from taking any action using Federal funds, which would have an adverse effect on the environment or limit the choice of reasonable alternatives prior to DOE providing either a NEPA clearance or a final NEPA decision regarding this project. This restriction does not preclude you from developing, establishing, planning, or an Energy Efficiency & Conservation Strategy (EECS).

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

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

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

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

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

Preamble

The American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, (Recovery Act) was enacted to preserve and create jobs and promote economic recovery, assist those most impacted by the recession, provide investments needed to increase economic efficiency by spurring technological advances in science and health, invest in transportation, environmental protection, and other infrastructure that will provide long-term economic benefits, stabilize State and local government budgets, in order to minimize and avoid reductions in essential services and counterproductive State and local tax increases. Recipients shall use grant funds in a manner that maximizes job creation and economic benefit.

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

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

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

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

Definitions

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

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

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

Special Provisions

A. Flow Down Requirement

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

B. Segregation of Costs

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

C. Prohibition on Use of Funds

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

D. Access to Records

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

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

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

E. Publication

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

Notice of Restriction on Disclosure and Use of Data

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

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

F. Protecting State and Local Government and Contractor Whistleblowers.

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

Prohibition on Reprisals: An employee of any non-Federal employer receiving covered funds under the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing, including a disclosure made in the ordinary course of an employee's duties, to the Accountability and

Transparency Board, an inspector general, the Comptroller General, a member of Congress, a State or Federal regulatory or law enforcement agency, a person with supervisory authority over the employee (or other person working for the employer who has the authority to investigate, discover or terminate misconduct), a court or grant jury, the head of a Federal agency, or their representatives information that the employee believes is evidence of:

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

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

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

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

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

G. Reserved

H. False Claims Act

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

I. Information in Support of Recovery Act Reporting

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

J. Availability of Funds

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

K. Certifications

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) *Domestic preference.* (1) This award term and condition implements Section 1605 of the American Recovery and Reinvestment Act of 2009 (Recovery Act) (Pub. L. 111–5), by requiring

that all iron, steel, and manufactured goods used in the project are produced in the United States except as provided in paragraph (b)(3) and (b)(4) of this section and condition.

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

To Be Determined

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

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

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

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

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

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

(B) Unit of measure;

(C) Quantity;

(D) Cost;

(E) Time of delivery or availability;

(F) Location of the project;

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

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

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

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

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

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

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

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

Foreign and Domestic Items Cost Comparison

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

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

Include other applicable supporting information.

*Include all delivery costs to the construction site.

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

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

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

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

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

(a) To maximize the transparency and accountability of funds authorized under the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5) (Recovery Act) as required by Congress and in accordance with 2 CFR 215.21 "Uniform Administrative Requirements for Grants and Agreements" and OMB Circular A-102 Common Rules provisions, recipients agree to maintain records that identify adequately the source and application of Recovery Act funds. OMB Circular A-102 is available at <http://www.whitehouse.gov/omb/circulars/a102/a102.html>.

(b) For recipients covered by the Single Audit Act Amendments of 1996 and OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations," recipients agree to separately identify the expenditures for Federal awards under the Recovery Act on the Schedule of Expenditures of Federal Awards (SEFA) and the Data Collection Form (SF-SAC) required by OMB Circular A-133. OMB Circular A-133 is available at

<http://www.whitehouse.gov/omb/circulars/a133/a133.html>. This shall be accomplished by identifying expenditures for Federal awards made under the Recovery Act separately on the SEFA, and as separate rows under Item 9 of Part III on the SF-SAC by CFDA number, and inclusion of the prefix "ARRA-" in identifying the name of the Federal program on the SEFA and as the first characters in Item 9d of Part III on the SF-SAC.

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

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

25. DAVIS BACON ACT REQUIREMENTS

A. Definitions. For purposes of this Clause, Clause 26, Contract Work Hours and Safety Standards Act, and Clause 27, Recipient Functions, the following definitions are applicable:

(1) *Award* means the Award by the Department of Energy (DOE) to a Recipient that includes a requirement to comply with the labor standards clauses and wage rate requirements of the Davis-Bacon Act (DBA) for work performed by all laborers and mechanics employed by Subrecipients, Contractors and subcontractors on projects funded by or assisted in whole or in part by and through the Federal Government pursuant to the Recovery Act.

(2) "*Construction, alteration or repair*" means all types of work done by laborers and mechanics employed by the Subrecipient, construction contractor or construction subcontractor on a particular building or work at the site thereof, including without limitation—

(a) Altering, remodeling, installation (if appropriate) on the site of the work of items fabricated off-site;

(b) Painting and decorating; or

(b) Manufacturing or furnishing of materials, articles, supplies, or equipment on the site of the building or work.

(3) *Contract* means a written procurement contract executed by a Subrecipient for the acquisition of property and services for construction, alteration, and repair under a Subaward.

For purposes of these Clauses, a Contract shall include subcontracts and lower-tier subcontracts under the Contract.

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

(5) *Contractor* means an entity that enters into a Contract. For purposes of these Clauses, Contractor shall include subcontractors and lower-tier subcontractors.

(6) *Recipient* means any entity other than an individual that receives Recovery Act funds in the form of a grant directly from the Federal Government. This includes the State that receives an Award from DOE and is financially accountable for the use of any DOE funds or property, and is legally responsible for carrying out the terms and conditions of the program and Award.

(7) *"Site of the work"*—

(a) Means--

(i) The physical place or places where the construction called for in the Award, Subaward, or Contract will remain when work on it is completed; and

(ii) Any other site where a significant portion of the building or work is constructed, provided that such site is established specifically for the performance of the project; (b) Except as provided in paragraph (c) of this definition, the site of the work includes any fabrication plants, mobile factories, batch plants, borrow pits, job headquarters, tool yards, etc., provided—

(i) They are dedicated exclusively, or nearly so, to performance of the project; and

(ii) They are adjacent or virtually adjacent to the site of the work as defined in paragraph (7)(a)(i) or (7)(a)(ii) of this definition;

(c) Does not include permanent home offices, branch plant establishments, fabrication plants, or tool yards of a Contractor or subcontractor whose locations and continuance in operation are determined wholly without regard to a particular contract or Federal Award or project. In addition, fabrication plants, batch plants, borrow pits, job headquarters, yards, etc., of a commercial or material supplier which are established by a supplier of materials for the project before opening of bids and not on the Project site, are not included in the "site of the work." Such permanent, previously established facilities are not a part of the "site of the work" even if the operations for a period of time may be dedicated exclusively or nearly so, to the performance of an Award, Subaward, or Contract.

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

(9) *Subrecipient* means a none-Federal entity that expends Federal awards received from a pass-through entity [Recipient] to carry out a Federal program, but does not include an individual that is a beneficiary of such a program. This includes a Community Action Agency (CAA), local agency, or other entity to which a Subaward under the Award is made by a Recipient that includes a requirement to comply with the labor standards clauses and wage rate requirements of the DBA work performed by all laborers and mechanics employed by contractors and subcontractors on projects funded by or assisted in whole or in part by and through the Federal Government pursuant of the Recovery Act.

B. Davis-Bacon Act

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

(i) Applicable to Recipient Only: Prior to the issuance of the Subaward or Contract, the Recipient shall notify the Contracting Officer of the site of the work in order for the appropriate wage determination to be obtained by the Contracting Officer from the Secretary of Labor.

(ii) If the Subaward or Contract is or has been issued without a wage determination, the Recipient shall notify the Contracting Officer immediately of the site of the work under the Subaward or Contract in order for the appropriate wage determination to be obtained by the Contracting Officer from the Secretary of Labor.

(b) Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the DBA on behalf of laborers or mechanics are considered wages paid to such laborers and mechanics, subject to the provisions of paragraph B(4) below; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such period.

(c) Such laborers and mechanics shall be paid not less than the appropriate wage rate and fringe benefits in the wage determination for the classification of work actually performed, without regard to skill, except as provided in the paragraph entitled Apprentices and Trainees. Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein; provided that the employer's payroll records accurately set forth the time spent in each classification in which work is performed.

(d) The wage determination (including any additional classifications and wage rates conformed under paragraph B(2) of this Clause) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Subrecipient and Contractor at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(2)(a) The Contracting Officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the Subaward or 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 all the following criteria have been met:

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

(ii) The classification is utilized in the area by the construction industry.

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

(b) If the Subrecipient (and Contractor, when applicable) and the laborers and mechanics to be employed in the classification (if known), or their representatives agree on the classification and wage rate (including the amount designated for fringe benefits, where appropriate), the Subrecipient shall notify the Recipient. The Recipient shall notify the Contracting Officer of this agreement. If the Contracting Officer agrees with 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 Subrecipient (and Contractor, when applicable), and the laborers or mechanics to be employed in the classification, or their representatives, do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the Subrecipient shall notify the Recipient. The Recipient shall notify the Contracting Officer of the disagreement. The Contracting Officer shall refer the questions, including the views of all interested parties and the recommendation of the Contracting Officer, to the Administrator of the Wage and Hour Division for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.

(d) The wage rate (including fringe benefits, where appropriate) determined pursuant to subparagraphs B(2)(b) or B(2)(c) of this Clause shall be paid to all workers performing work in the classification under the Award, Subaward, or Contract from the first day on which work is performed in the classification.

(3) Whenever the minimum wage rate prescribed in the Award, Subaward, or Contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Subrecipient and 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.

(4) If the Subrecipient or Contractor does not make payments to a trustee or other third person, the Subrecipient or 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 Subrecipient or Contractor that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Subrecipient or Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

C. Rates of Wages

(1) The minimum wages to be paid laborers and mechanics under the Subaward or Contract involved in performance of work at the project site, as determined by the Secretary of Labor to be prevailing for the corresponding classes of laborers and mechanics employed on projects of a character similar to the contract work in the pertinent locality, are included as an attachment to the Award, Subaward, or Contract.

(2) If the Subaward or Contract has been issued without a wage determination, the Recipient shall notify the Contracting Officer immediately of the site of the work under the Subaward or Contract in order for the appropriate wage determination to be obtained by the Contracting Officer from the Secretary of Labor.

D. Payrolls and Basic Records

(1) Payrolls and basic records relating thereto shall be maintained by the Recipient, Subrecipient and Contractor during the course of the work and preserved for a period of 3 years thereafter for all laborers and mechanics working at the site of the work. 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 paragraph (4) of the provision entitled Davis-Bacon Act, 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 Subrecipient or 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. The Subrecipient or Contractor 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.

(2)(a) The Contractor shall submit weekly for each week in which any Contract work is performed a copy of all payrolls to the Subrecipient. The Subrecipient shall submit weekly for each week in which any Subaward or Contract work is performed a copy of all payrolls to the Recipient. The Recipient shall submit weekly for each week in which any Subaward or Contract work is performed a copy of all payrolls to the Contracting Officer. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under paragraph D(1) of this Clause, except that the 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.

(b) The Recipient is responsible for ensuring all Subrecipients and Contractors submit copies of payrolls and basic records as required by paragraph D, Payrolls and Basic Records, of this Clause. The Subrecipient is responsible for ensuring all Contractors, including lower tier subcontractors submit copies of payrolls and basic records as required by paragraph D, Payrolls and Basic Records, of this clause. Subrecipients and Contractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request for transmission to the Contracting Officer, the Recipient, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. The Recipient shall also obtain and provide the full social security number and current address of each covered worker upon request by the Contracting Officer or the Wage and Hour Division of

the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements.

(c) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Recipient, Subrecipient or Contractor or his or her agent who pays or supervises the payment of the persons employed under the Subaward or Contract and shall certify --

(i) That the payroll for the payroll period contains the information required to be maintained under paragraph D(2)(a) of this Clause, the appropriate information is being maintained under paragraph D(1) of this Clause, and that such information is correct and complete;

(ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the Subaward or 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 the Regulations, 29 CFR Part 3; and

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

(d) 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 D(2)(c) of this Clause.

(e) The falsification of any of the certifications in Paragraph D, Payrolls and Basic Records, of this Clause may subject the Recipient, Subrecipient or Contractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 3729 of Title 31 of the United States Code.

(3) The Recipient, Subrecipient, or Contractor shall make the records required under paragraph D(1) of this Clause available for inspection, copying, or transcription by the Contracting Officer, authorized representatives of the Contracting Officer, or the Department of Labor. The Subrecipient or Contractor shall permit the Contracting Officer, authorized representatives of the Contracting Officer or the Department of Labor to interview employees during working hours on the job. If the Recipient, Subrecipient, or Contractor fails to submit the required records or to make them available, the Contracting Officer may, after written notice to the Recipient, Subrecipient, or Contractor 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.

E. Withholding of Funds

(1) The DOE Contracting Officer shall, upon his or her or its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the any other contract or Federal Award with the same Recipient, on this or any other federally assisted Award subject to Davis-Bacon prevailing wage requirements, which is held by the same Recipient 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 Subrecipient or a Contractor the full amount of wages required by the Award or Subaward or a 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, all or part of the wages required by the Award or Subaward or a Contract, the Contracting Officer may, after written notice to the Recipient take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(2) The Recipient shall, upon his or her or its own action or upon written request of the DOE Contracting Officer or an authorized representative of the Department of Labor, withhold or cause to be withheld from any Subrecipient or 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 Subrecipient or Contractor the full amount of wages required by the Subaward or 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, all or part of the wages required by the Subaward or Contract, the Recipient may, after written notice to the Subrecipient or Contractor, 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 or the Government may cause the suspension of any further payment under any other contract or Federal award with the same Subrecipient or Contractor, on any other federally assisted Award subject to Davis-Bacon prevailing wage requirements, which is held by the same Subrecipient or Contractor

F. Apprentices and Trainees

(1) Apprentices.

(a) An apprentice will be permitted to work at less than the predetermined rate for the work they performed when they are employed—

(i) 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 and Training, Employer, and Labor Services (OATELS) or with a State Apprenticeship Agency recognized by the OATELS; or

(ii) In the first 90 days of probationary employment as an apprentice in such an apprenticeship program, even though not individually registered in the program, if certified by the OATELS or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice.

(b) 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 Subrecipient or Contractor as to the entire work force under the registered program.

(c) Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated in paragraph F(1) of this Clause, shall be paid not less than the applicable 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.

(d) Where a Subrecipient or 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 Subrecipient's or Contractor'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 journeyman hourly rate specified in the applicable wage determination.

(e) 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.

(f) In the event OATELS, or a State Apprenticeship Agency recognized by OATELS, withdraws approval of an apprenticeship program, the Subrecipient or 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.

(2) Trainees.

(a) 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 (OATELS). The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by OATELS.

(b) 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 in the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship/training program associated with the

corresponding journeyman wage rate in 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 OATELS shall be paid not less than the applicable wage rate in 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 in the wage determination for the work actually performed.

(c) In the event OATELS withdraws approval of a training program, the Subrecipient or 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.

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

G. Compliance with Copeland Act Requirements

The Recipient, Subrecipient or Contractor shall comply with the requirements of 29 CFR Part 3 which are hereby incorporated by reference in the Award, Subaward or Contract.

H. Subawards and Contracts

(1) The Recipient, the Subrecipient and Contractor shall insert in the Subaward or any Contracts this Clause entitled "Davis Bacon Act Requirements" and such other clauses as the Contracting Officer may require. The Recipient shall be responsible for ensuring compliance by any Subrecipient or Contractor with all of the requirements contained in this Clause. The Subrecipient shall be responsible for the compliance by Contractor with all of the requirements contained in this Clause.

(2) Within 14 days after issuance of a Subaward, the Recipient shall deliver to the Contracting Officer a completed Standard Form (SF) 1413, Statement and Acknowledgment, for each Subaward and Contract for construction within the United States, including the Subrecipient's and Contractor's signed and dated acknowledgment that this Clause has been included in the Subaward and any Contracts. The SF 1413 is available from the Contracting Officer or at [http://contacts.gsa.gov/webforms.nsf/0/70B4872D16EE95A785256A26004F7EA8/\\$file/sf1413_e.pdf](http://contacts.gsa.gov/webforms.nsf/0/70B4872D16EE95A785256A26004F7EA8/$file/sf1413_e.pdf). Within 14 days after issuance of a Contract or lower-tier subcontract, the Subrecipient shall deliver to the Recipient a completed Standard Form (SF) 1413, Statement and Acknowledgment, for each Contract and lower-tier subcontract for construction within the United States, including the Contractor and lower-tier subcontractor's signed and dated acknowledgment that this Clause has been included in any Contract and lower-tier subcontracts. SF 1413 is available from the Contracting Officer or at [http://contacts.gsa.gov/webforms.nsf/0/70B4872D16EE95A785256A26004F7EA8/\\$file/sf1413_e.pdf](http://contacts.gsa.gov/webforms.nsf/0/70B4872D16EE95A785256A26004F7EA8/$file/sf1413_e.pdf). The Recipient shall immediately provide to the DOE Contracting Officer the completed Standard Forms (SF) 1413.

I. Contract Termination -- Debarment

A breach of these provisions may be grounds for termination of the Award, Subaward, or Contract and for debarment as a Contractor or subcontractor as provided in 29 CFR 5.12.

J. Compliance with Davis-Bacon and Related Act Regulations

All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are hereby incorporated by reference in the Award, Subaward or Contract.

K. Disputes Concerning Labor Standards

The United States Department of Labor has set forth in 29 CFR Parts 5, 6, and 7 procedures for resolving disputes concerning labor standards requirements. Such disputes shall be resolved in accordance with those procedures and shall not be subject to any other dispute provision that may be contained in the Award, Subaward, and Contract. Disputes within the meaning of this Clause include disputes between the Recipient, Subrecipient (including any Contractor) and the Department of Energy, the U.S. Department of Labor, or the employees or their representatives.

L. Certification of Eligibility.

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

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

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

M. Approval of Wage Rates

All straight time wage rates, and overtime rates based thereon, for laborers and mechanics engaged in work under an Award, Subaward or Contract must be submitted for approval in writing by the head of the federal contracting activity or a representative expressly designated for this purpose, if the straight time wages exceed the rates for corresponding classifications contained in the applicable Davis-Bacon Act minimum wage determination included in the Award, Subaward or Contract. Any amount paid by the Subrecipient or Contractor to any laborer or mechanic in excess of the agency approved wage rate shall be at the expense of the Subrecipient or Contractor and shall not be reimbursed by the Recipient or Subrecipient. If the Government refuses to authorize the use of the overtime, the Subrecipient or Contractor is not

released from the obligation to pay employees at the required overtime rates for any overtime actually worked.

Clause 26. Contract Work Hours and Safety Standards Act

This Clause entitled "Contract Work Hours and Safety Standards Act (CWHSSA)" shall apply to any Subaward or Contract in an amount in excess of \$100,000. As used in this CWHSSA Clause, the terms laborers and mechanics include watchmen and guards.

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

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

C. Withholding for unpaid wages and liquidated damages. The DOE Contracting Officer shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Recipient under any Subaward or Contract on this or any other Federal Award or Federal contract with the same Recipient on any other federally-assisted Award or contract subject to the CWHSSA, which is held by the same Recipient such sums as may be determined to be necessary to satisfy any liabilities of such Recipient for unpaid wages and liquidated damages as provided in the clause set forth in CWHSSA, paragraph B of this Clause.

D. Subcontracts. The Subrecipient shall insert in a Contract and a Contractor shall insert in any lower tier subcontracts, the clauses set forth in these CWHSSA paragraphs (A) through (D) and also a provision requiring the Contractors to include this CWHSSA Clause in any lower tier subcontracts. The Recipient shall be responsible for compliance by any Subrecipient or Contractor, with the CWHSSA paragraphs A through D. The Subrecipient shall be responsible for compliance by any Contractor (including lower- tier subcontractors).

E. The Subrecipient or Contractor shall maintain payrolls and basic payrolls in accordance with Clause 25, Davis- Bacon Act Requirements, for all laborers and mechanics, including

guards and watchmen working on the Subaward or Contracts. These records are subject to the requirements set forth in Clause 25 Davis Bacon Requirements.

Clause 27 RECIPIENT FUNCTIONS

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

- (a) Obtain, maintain, and monitor all DBA certified payroll records submitted by the Subrecipients and Contractors at any tier under this Award;
- (b) Review all DBA certified payroll records for compliance with DBA requirements, including applicable DOL wage determinations;
- (c) Notify DOE of any non-compliance with DBA requirements by Subrecipients or Contractors at any tier, including any non-compliances identified as the result of reviews performed pursuant to paragraph (b) above;
- (d) Address DBA any Subrecipient's and any Contractors' non-compliance issues; if DBA non-compliance issues cannot be resolved in a timely manner, forward complaints, summary of investigations and all relevant information to DOE;
- (e) Provide DOE with detailed information regarding the resolution of any DBA non-compliance issues;
- (f) Perform services in support of DOE investigations of complaints filed regarding noncompliance by Subrecipients and Contractors with DBA requirements;
- (g) Perform audit services as necessary to ensure compliance by Subrecipients and Contractors with DBA requirements and as requested by the Contracting Officer; and
- (h) Provide copies of all records upon request by DOE or DOL in a timely manner.

(2) All records maintained on behalf of the DOE in accordance with paragraph (1) above are federal government (DOE) owned records. DOE or an authorized representative shall be granted access to the records at all times.

(3) In the event of, and in response to any Freedom of Information Act, 5 U.S.C. 552, requests submitted to DOE, Recipient shall provide such records to DOE within 5 business days of receipt of a request from DOE.

ATTACHMENT 1 – INTELLECTUAL PROPERTY PROVISIONS
Intellectual Property Provisions (NRD-1003)
Nonresearch and Development

Nonprofit organizations are subject to the intellectual property requirements at 10 CFR 600.136(a), (c) and (d). All other organizations are subject to the intellectual property requirements at 10 CFR 600.136(a) and (c).

600.136 Intangible property.

(a) Recipients may copyright any work that is subject to copyright and was developed, or for which ownership was purchased, under an award. DOE reserves a royalty-free, nonexclusive and irrevocable right to reproduce, publish or otherwise use the work for Federal purposes, and to authorize others to do so.

(c) DOE has the right to:

(1) Obtain, reproduce, publish or otherwise use the data first produced under an award; and

(2) Authorize others to receive, reproduce, publish, or otherwise use such data for Federal purposes.

(d) In addition, in response to a Freedom of Information act (FOIA) request for research data relating to published research findings produced under an award that were used by the Federal Government in developing an agency action that has the force and effect of law, the DOE shall request, and the recipient shall provide, within a reasonable time, the research data so that they can be made available to the public through the procedures established under the FOIA. If the DOE obtains the research data solely in response to a FOIA request, the agency may charge the requester a reasonable fee equaling the full incremental cost of obtaining the research data. This fee should reflect the costs incurred by the agency, the recipient, and applicable subrecipients. This fee is in addition to any fees the agency may assess under the FOIA (5 U.S.C. 552(a)(4)(A)).

NATIONAL POLICY ASSURANCES TO BE INCORPORATED AS AWARD TERMS

(August 2008)

To the extent that a term does not apply to a particular type of activity or award, it is self-deleting.

I. Nondiscrimination Policies

You must comply with applicable provisions of the following national policies prohibiting discrimination:

- 1 On the basis of race, color, or national origin, in Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.), as implemented by DOE regulations at 10 CFR part 1040;
- 2 On the basis of sex or blindness, in Title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.), as implemented by DOE regulations at 10 CFR parts 1041 and 1042;
- 3 On the basis of age, in the Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.), as implemented by Department of Health and Human Services regulations at 45 CFR part 90 and DOE regulations at 10 CFR part 1040;
- 4 On the basis of disability, in Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), as implemented by Department of Justice regulations at 28 CFR part 41 and DOE regulations at 10 CFR part 1041;
- 5 On the basis of race, color, national origin, religion, disability, familial status, and sex under Title VIII of the Civil Rights Act (42 U.S.C. 3601 et seq.) as implemented by the Department of Housing and Urban Development at 24 CFR part 100; and
- 6 On the basis of disability in the Architectural Barriers Act of 1968 (42 U.S.C. 4151 et seq.) for the design, construction, and alteration of buildings and facilities financed with Federal funds.

II. Environmental Policies

You must:

- 1 Comply with applicable provisions of the Clean Air Act (42 U.S.C. 7401, et. seq.) and Clean Water Act (33 U.S.C. 1251, et. seq.), as implemented by Executive Order 11738 [3 CFR, 1971-1975 Comp., p. 799] and Environmental Protection Agency rules at 40 CFR part 32, Subpart J.
- 2 Immediately identify to us, as the awarding agency, any potential impact that you find this award may have on:
 - a. The quality of the human environment, including wetlands, and provide any help we may need to comply with the National Environmental Policy Act (NEPA, at 42 U.S.C. 4321 et. seq.) and assist us to prepare Environmental Impact Statements or other environmental documentation. In such cases, you may take no action that will have an adverse environmental impact (e.g., physical disturbance of a site such as breaking of ground) or limit the choice of reasonable alternatives until we provide written notification of Federal compliance with NEPA, as implemented by DOE at 10 CFR part 1021.

- b. Flood-prone areas, and provide any help we may need to comply with the National Flood Insurance Act of 1968 and Flood Disaster Protection Act of 1973 (42 U.S.C. 4001 et seq.), which require flood insurance, when available, for Federally assisted construction or acquisition in flood-prone areas, as implemented by DOE at 10 CFR part 1022.
- c. Use of land and water resources of coastal zones, and provide any help we may need to comply with the Coastal Zone Management Act of 1972(16 U.S.C. 1451, et. seq.).
- d. Coastal barriers along the Atlantic and Gulf coasts and Great Lakes' shores, and provide help we may need to comply with the Coastal Barriers Resource Act (16 U.S.C. 3501 et. seq.), concerning preservation of barrier resources.
- e. Any existing or proposed component of the National Wild and Scenic Rivers system, and provide any help we may need to comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. 1271 et seq.).
- f. Underground sources of drinking water in areas that have an aquifer that is the sole or principal drinking water source, and provide any help we may need to comply with the Safe Drinking Water Act(42 U.S.C. 300h-3).

3 Comply with applicable provisions of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821-4846), as implemented by the Department of Housing and Urban Development at 24 CFR part 35. The requirements concern lead-based paint in housing owned by the Federal Government or receiving Federal assistance.

4 Comply with section 6002 of the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6962), and implementing regulations of the Environmental Protection Agency, 40 CFR Part 247, which require the purchase of recycled products by States or political subdivision of States.

III. Live Organisms

1 **Human research subjects.** You must protect the rights and welfare of individuals that participate as human subjects in research under this award in accordance with the Common Federal Policy for the Protection of Human Subjects (45 CFR part 46), as implemented by DOE at 10 CFR part 745.

2 Animals and plants.

a. You must comply with applicable provisions of Department of Agriculture rules at 9 CFR parts 1-4 that implement the Laboratory Animal Welfare Act of 1966 (7 U.S.C. 2131-2156) and provide for humane transportation, handling, care, and treatment of animals used in research, experimentation, or testing under this award.

b. You must follow the guidelines in the National Academy of Sciences(NAS) Publication "Guide for the Care and Use of Laboratory Animals"(1996, which may be found currently at <http://www.nap.edu/readingroom/books/labrats/>) and comply with the Public Health Service Policy and Government principles Regarding the Care and use of animals (included as Appendix D to the NAS Guide).

c. You must immediately identify to us, as the awarding agency, any potential impact that you find this award may have on endangered species, as defined by the Endangered Species Act of 1973, as amended ("the Act," 16 U.S.C. 1531-1543), and implementing regulations of the Departments of the Interior (50 CFR parts 10-24) and Commerce (50 CFR parts 217-227). You also must provide any help we may need to comply with 16 U.S.C. 1536(a)(2). This is not in lieu of responsibilities you have to comply with provisions of the Act that apply directly to you as a U.S. entity, independent of receiving this award.

IV. Other National Policies

1 **Debarment and suspension.** You must comply with requirements regarding debarment and suspension in Subpart C of 2 CFR parts 180 and 901.

2 **Drug-free workplace.** You must comply with drug-free workplace requirements in Subpart B of 10 CFR part 607, which implements sec. 5151-5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100-690, Title V, Subtitle D; 41 U.S.C. 701, et seq.).

3 **Lobbying.**

a. You must comply with the restrictions on lobbying in 31 U.S.C. 1352, as implemented by DOE at 10 CFR part 601, and submit all disclosures required by that statute and regulation.

b. If you are a nonprofit organization described in section 501(c)(4) of title 26, United States Code (the Internal Revenue Code of 1968), you may not engage in lobbying activities as defined in the Lobbying Disclosure Act of 1995 (2 U.S.C., Chapter 26). If we determine that you have engaged in lobbying activities, we will cease all payments to you under this and other awards and terminate the awards unilaterally for material failure to comply with the award terms and conditions. By submitting an application and accepting funds under this agreement, you assure that you are not an organization described in section 501(c)(4) that has engaged in any lobbying activities described in the Lobbying Disclosure Act of 1995 (2 U.S.C. 1611).

c. You must comply with the prohibition in 18 U.S.C. 1913 on the use of Federal funds, absent express Congressional authorization, to pay directly or indirectly for any service, advertisement or other written matter, telephone communication, or other device intended to influence at any time a Member of Congress or official of any government concerning any legislation, law, policy, appropriation, or ratification.

4. **Officials not to benefit.** You must comply with the requirement that no member of Congress shall be admitted to any share or part of this agreement, or to any benefit arising from it, in accordance with 41 U.S.C. 22.

5 **Hatch Act.** If applicable, you must comply with the provisions of the Hatch Act (5 U.S.C. 1501-1508 and 7324-7326), as implemented by the Office of Personnel Management at 5 CFR part 151, which limits political activity of employees or officers of State or local governments whose employment is connected to an activity financed in whole or part with Federal funds.

6 **Native American graves protection and repatriation.** If you control or possess Native American remains and associated funerary objects, you must comply with the requirements of 43 CFR part 10, the Department of the Interior implementation of the Native

American Graves Protection and Repatriation Act of 1990 (25 U.S.C., chapter 32).

7 **Fly America Act.** You must comply with the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118), commonly referred to as the "Fly America Act," and implementing regulations at 41 CFR 301-10.131 through 301-10.143. The law and regulations require air transport of people or property to, from, between or within a country other than the United States, the cost of which is supported under this award, to be performed by or under a cost-sharing arrangement with a U.S. flag carrier, if service is available.

8. **Use of United States-flag vessels.**

a. Pursuant to Pub. L. 664 (43 U.S.C. 1241(b)), at least 50 percent of any equipment, materials or commodities procured, contracted for or otherwise obtained with funds under this award, and which may be transported by ocean vessel, must be transported on privately owned United States-flag commercial vessels, if available.

b. Within 20 days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph 9.a of this section shall be furnished to both our award administrator (through you in the case of your contractor's bill-of-lading) and to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590.

9 **Research misconduct.** You must comply with the government-wide policy on research misconduct issued by the Office of Science and Technology Policy (available in the Federal Register at 65 FR 76260, December 6, 2000, or on the Internet at www.ostp.gov), as implemented by DOE at 10 CFR part 733 and 10 CFR 600.31.

10 **Requirements for an Institution of Higher Education Concerning Military recruiters and Reserve Officers Training Corps (ROTC).**

a. As a condition for receiving funds under an award by the National Nuclear Security Administration of the Department of Energy, you agree that you are not an institution of higher education that has a policy or practice placing any of the restrictions specified in 10 U.S.C. 983. as implemented by 32 CFR part 216, on:

i. Maintenance, establishment, or operation of Senior ROTC units, or student participation in those units; or

ii. Military recruiters' access to campuses, students on campuses, or information about students.

b. If you are determined, using the procedures in 32 CFR part 216, to be such an institution of higher education during the period of performance of this award, we:

i. Will cease all payments to you of funds under this award and all other awards subject to the requirements in 32 CFR part 216; and

ii. May suspend or terminate those awards unilaterally for material failure to comply with the award terms and conditions.

11. Historic preservation. You must identify to us any:

- a. Any property listed or eligible for listing on the National Register of Historic Places that will be affected by this award, and provide any help we may need, with respect to this award, to comply with Section 106 of the National Historic Preservation Act of 1966 (16 U.S.C. 470f), as implemented by the Advisory Council on Historic Preservation regulations at 36 CFR part 800 and Executive Order 11593, "Identification and Protection of Historic Properties," [3 CFR, 1971-1975 Comp., p. 559].
- b. Potential under this award for irreparable loss or destruction of significant scientific, prehistorical, historical, or archeological data, and provide any help we may need, with respect to this award, to comply with the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1, et seq.).

12 Relocation and real property acquisition. You must comply with applicable provisions of 49 CFR part 24, which implements the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601, et seq.) and provides for fair and equitable treatment of persons displaced by federally assisted programs or persons whose property is acquired as a result of such programs.

13 Confidentiality of patient records. You must keep confidential any records that you maintain of the identity, diagnosis, prognosis, or treatment of any patient in connection with any program or activity relating to substance abuse education, prevention, training, treatment, or rehabilitation that is assisted directly or indirectly under this award, in accordance with 42 U.S.C. 290dd-2.

14 Constitution Day. You must comply with Public Law 108-447, Div. J, Title I, Sec. 111 (36 U.S.C. 106 note), which requires each educational institution receiving Federal funds in a Federal fiscal year to hold an educational program on the United States Constitution on September 17th during that year for the students served by the educational institution.

15 Trafficking in Persons

a. Provisions applicable to a recipient that is a private entity.

1. You as the recipient, your employees, subrecipients under this award, and subrecipients' employees may not—
 - i. Engage in severe forms of trafficking in persons during the period of time that the award is in effect;
 - ii. Procure a commercial sex act during the period of time that the award is in effect;
or
 - iii. Use forced labor in the performance of the award or subawards under the award.
2. We as the Federal awarding agency may unilaterally terminate this award, without penalty, if you or a subrecipient that is a private entity –

- i. Is determined to have violated a prohibition in paragraph a.1 of this award term;
or
 - ii. Has an employee who is determined by the agency official authorized to terminate the award to have violated a prohibition in paragraph a.1 of this award term through conduct that is either—
 - A. Associated with performance under this award; or
 - B. Imputed to you or the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR part 180, "OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," as implemented by our agency at 2 CFR part 901.
- b. Provision applicable to a recipient other than a private entity. We as the Federal awarding agency may unilaterally terminate this award, without penalty, if a subrecipient that is a private entity—
- 1. Is determined to have violated an applicable prohibition in paragraph a.1 of this award term; or
 - 2. Has an employee who is determined by the agency official authorized to terminate the award to have violated an applicable prohibition in paragraph a.1 of this award term through conduct that is either—
 - i. Associated with performance under this award; or
 - ii. Imputed to the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR part 180, "OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," as implemented by our agency at 2 CFR part 901.
- c. Provisions applicable to any recipient.
- 1. You must inform us immediately of any information you receive from any source alleging a violation of a prohibition in paragraph a.1 of this award term.
 - 2. Our right to terminate unilaterally that is described in paragraph a.2 or b. of this section:
 - i. Implements section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended (22 U.S.C. 7104(g)), and
 - ii. Is in addition to all other remedies for noncompliance that are available to us under this award.
 - 3. You must include the requirements of paragraph a.1 of this award term in any subaward you make to a private entity.

d. Definitions. For purposes of this award term:

1. "Employee" means either:

- i. An individual employed by you or a subrecipient who is engaged in the performance of the project or program under this award; or
- ii. Another person engaged in the performance of the project or program under this award and not compensated by you including, but not limited to, a volunteer or individual whose services are contributed by a third party as an in-kind contribution toward cost sharing or matching requirements.

2. "Forced labor" means labor obtained by any of the following methods: the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

3. "Private entity":

- i. Means any entity other than a State, local government, Indian tribe, or foreign public entity, as those terms are defined in 2 CFR 175.25.

ii. Includes:

A. A nonprofit organization, including any nonprofit institution of higher education, hospital, or tribal organization other than one included in the definition of Indian tribe at 2 CFR 175.25(b).

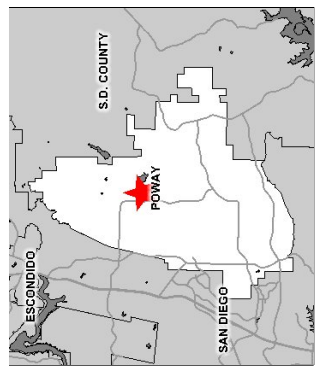
B. A for-profit organization.

4. "Severe forms of trafficking in persons," "commercial sex act," and "coercion" have the meanings given at section 103 of the TVPA, as amended (22 U.S.C. 7102).

V. National Policy Requirements for Subawards.

Recipient responsibility. You must include in any subaward you make under this award the requirements of the national policy requirements in Sections I through IV of this document that apply, based on the type of subawardee organization and situation.

Operations solar project site map



Legend

- Buildings
- City Parks
- Lakes
- Imagery (March 2005)

Scale: 1:631



This map is a user generated static output from an Internet mapping site and is for general reference only. Data layers that appear on this map may or may not be accurate, current, or otherwise reliable. THIS MAP IS NOT TO BE USED FOR NAVIGATION.

Customer Name	Account Name	Account Nbr	Service Address	City State Zip	Bill Year	Bill Month Desc	Nbr of Days Used	Billed Rate	Billed Service Type Desc	Billed Meter	Total Billed Consumption Qty	Max Demand of group	Total Billed Amt	Average Unit Cost
CITY OF POWAY	POWAY PUB WKS WTR UTILITIES	2580825692	14445 LAKE POWAY RD	POWAY CA 92064	2009	November	29	ALTOU	ELECTRIC	01665860	5,920	21	\$977.44	\$0.17
						October	31	ALTOU		01665860	7,000	26	\$1,343.89	\$0.19
						September	30	ALTOU		01665860	7,440	27	\$1,531.10	\$0.21
						August	29	ALTOU		01665860	7,360	24	\$1,467.39	\$0.20
						July	32	ALTOU		01665860	7,480	26	\$1,497.06	\$0.20
						June	30	ALTOU		01665860	6,160	21	\$1,234.97	\$0.20
						May	30	ALTOU		01665860	5,760	22	\$1,100.70	\$0.19
						April	31	ALTOU		01665860	5,560	19	\$946.26	\$0.17
						March	30	ALTOU		01665860	5,600	18	\$930.99	\$0.17
						February	29	ALTOU		01665860	6,280	22	\$1,061.87	\$0.17
						January	33	ALTOU		01665860	6,960	19	\$1,040.66	\$0.15
						2008 December	31	ALTOU		01665860	6,440	21	\$1,005.02	\$0.16
CITY OF POWAY										ELECTRIC		77,960	\$14,137.35	\$0.18

2.581E+09

City of Poway Solar Power Requirements - Photovoltaic Systems

1. Commercial

- A. *Panel clusters shall be limited to a 50' X 50' area and separated by 4'.*
- B. *Placement of panels shall be 4' from the roof's edge, ridge, eaves and parapets walls.*
- C. *Hazardous transmission lines shall be labeled "CAUTION – Electrical Hazard".*
 - a. *Hazards occur when a demand is placed on the system. The system is passive with no load.*
- D. *Electrical panel shall be labeled "Solar Power Enhanced."*
- E. *All electrical panel shut-offs shall be designed to shut off all power (Solar and Domestic) after the panel.*
 - a. *Shut-offs sometimes can be located on the roof, generally after an array. If so, the shut-off shall be labeled.*
- F. *All Solar plans shall be reviewed by the Poway Fire Department for:*
 - a. *Signage*
 - b. *Placement of equipment*
 - c. *Equipment type, approvals, etc.*
 - d. *Listings*
- G. *Signage requirements:*
 - a. *Weather resistant material*
 - b. *Durable adhesive*
 - c. *UL 969 as standard to weather rating (UL listing of markings not required)*
 - d. *Minimum 3/8" letter height*
 - e. *Placed within the main service disconnect*
 - f. *Placed on the outside of the cover when disconnect is operable with service panel closed*
- H. *Marking requirements:*

Markings placed on ALL interior and exterior DC conduit, raceways, enclosures, and cable assemblies at least every 10 feet, at turns and above/below penetrations and all combiner/junction boxes

**THIS DOCUMENT (65 PAGES) WILL BE PROVIDED
ELECTRONICALLY AS REQUESTED TO PROSPECTIVE
DESIGN PROPOSERS**

NOTICE INVITING BIDS
CITY OF POWAY

Sealed bids will be received at the Office of the City Clerk, City Hall, City of Poway, 13325 Civic Center Drive, Poway, California 92064, until **00:00** p.m. on **Month ##, 2010**, at which time they will be publicly opened by the Assistant Director of Administrative Services and read. They shall be submitted in sealed envelopes marked on the outside with the project title:

NAME OF PROJECT
BID NO. ##-###

PROJECT DESCRIPTION:

Enter description here.

No bid will be received unless it is made on a proposal form which is included as part of the Special Provisions for the project.

Construction surveying and staking will be provided by the City. The Contractor must obtain a Right-of-Way Permit from the City, at no cost, before construction begins.

Plans, specifications, and other contract documents are available at the Development Services permit counter, located on the first floor of City Hall. A non-refundable fee of \$##.00 is required for each set of contract documents. PLEASE MAKE YOUR CHECK PAYABLE TO CITY OF POWAY AND SEND IT TO DEVELOPMENT SERVICES – 1ST FLOOR, CITY OF POWAY, P.O. BOX 789, POWAY, CA 92074.

A pre-bid meeting is scheduled for **Month ##**, at **00.00 a.m./p.m.** in the Poway City Hall Training Room, 13325 Civic Center Drive, Poway, California. The meeting is to answer bidders' questions on the construction project. Attendance at the pre-bid meeting **is/is not** mandatory.

Please direct all questions during the bidding process to **Project Manager Name, Title**, at (858) 668-46## or (858) 668-4668.

PRELIMINARY ENGINEER'S ESTIMATE: \$###,### to \$###,###

CITY OF POWAY

Date: _____
Frank Casteleneto, City Engineer

ATTACHMENT F

"SPECIAL PROVISIONS"

EXHIBIT "A"

A. Scope of Services.

Consultant agrees to perform consulting services as required by City. Consultant shall provide the necessary qualified personnel to perform the services. In performance of the services Consultant shall:

1.

2.

3.

4.

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B. Compensation and Reimbursement.

City shall pay Consultant a fee as follows: _____

Consultant's fee shall include and Consultant shall be responsible for the payment of all federal, state, and local taxes of any kind which are attributable to the compensation received.

In addition to said consulting fee, Consultant shall be reimbursed for all reasonable expenses, including lodging, telephone, and travel (air, auto, rail) necessarily incurred in performance of the services. Consultant shall bill City for such expenses as incurred, referencing this Agreement. All expenses shall be itemized and supported by receipts for amounts in excess of Twenty-Five Dollars (\$25.00). Statements for reimbursement of expenses shall be paid within ten (10) days of approval by City. All air travel shall be billed at coach or special fare rates. Only lodging outside San Diego County shall be reimbursable. Consultant shall receive prior authorization for air travel and lodging expenses. All other expenses shall be reimbursed in accordance with City's cash disbursement policies in effect at the time incurred.

C. Term of Agreement.

This Agreement shall be effective from the period commencing _____, 20__ and ending _____, 20__, unless sooner terminated by City as provided in the section of this Agreement entitled "Termination." Upon expiration or termination of this Agreement, Consultant shall return to City any and all equipment, documents or materials and all copies made thereof which Consultant received from City or produced for City for the purposes of this Agreement.

D. Consultant's Insurance.

1. Coverages:

Consultant shall obtain and maintain during the life of this Agreement all of the following insurance coverages:

(a). Comprehensive General Liability, including premises-operations, products/completed, broad form property damage, and blanket contractual liability with the following coverages:

General Liability	\$1,000,000 per person per occurrence/ \$2,000,000 aggregate per occurrence \$1,000,000 property damage per occurrence
-------------------	--

(b) Automobile Liability, including owned, hired, and non-owned vehicles with the following insurance coverages:

Auto Liability	\$ 1,000,000 combined single limit
----------------	------------------------------------

(c) Consultant shall obtain and maintain, during the life of the Agreement, a policy of Professional Errors and Omissions Liability Insurance with policy limits of not less than \$1,000,000.00 combined single limits, per claim and annual aggregate.

(d) Workers' Compensation insurance in statutory amount. All of the endorsements which are required above shall be obtained for the policy of Workers' Compensation insurance.

2. Endorsements:

Endorsements shall be obtained so that each policy contains the following three provisions:

(a) Additional Insured. (Not required for Professional Errors and Omissions Liability Insurance or Workers' Compensation.)

"City of Poway and its elected and appointed boards, officers, agents, and employees are additional insureds with respect to this subject project and contract with City."

(b) Notice.

"Said policy shall not terminate, nor shall it be canceled, until thirty (30) days after written notice is given to City."

(c) Primary Coverage.

"The policy provides primary coverage to City and its elected and appointed boards, officers, agents, and employees. It is not secondary or in any way subordinate to any other insurance or coverage maintained by City."

3. Insurance Certificates:

Consultant shall provide City certificates of insurance showing the insurance coverages described in the paragraphs above, in a form and content approved by City, prior to beginning work under this Agreement.

E. Notices.

All notices, billings and payments hereunder shall be in writing and sent to the following addresses:

To _____:
Department Name

City of Poway
13325 Civic Center Drive
P.O. Box 789
Poway, CA 92074

To Consultant:

**STANDARD AGREEMENT FOR PROFESSIONAL/DESIGN
CONTRACT SERVICES**

This Agreement, entered into this ____ day of _____, 20__, by and between the CITY OF POWAY (hereinafter referred to as "City") and _____ (hereinafter referred to as "Consultant" or "Contractor").

RECITALS

WHEREAS, City desires to obtain the services of a private consultant to perform

_____; and

WHEREAS, Consultant is a(n) _____ consultant and has represented that Consultant possesses the necessary qualifications to provide such services; and

WHEREAS, City has authorized the preparation of an agreement to retain the services of Consultant as hereinafter set forth.

NOW, THEREFORE, IT IS MUTUALLY AGREED THAT CITY DOES HEREBY RETAIN CONSULTANT ON THE FOLLOWING TERMS AND CONDITIONS:

1. Scope of Services.

Consultant shall provide services as described in Exhibit "A" entitled "Special Provisions" attached hereto and made a part hereof.

2. Compensation and Reimbursement.

City shall compensate and reimburse Consultant as provided in Exhibit "A" entitled "Special Provisions" attached hereto and made a part hereof.

3. Term of Agreement.

The term of this Agreement shall be as described on Exhibit "A" entitled "Special Provisions" attached hereto and made a part hereof.

4. Termination.

This Agreement may be terminated with or without cause by City. Termination without cause shall be effective only upon 60-day written notice to Consultant. During said 60-day period Consultant shall perform all consulting services in accordance with this Agreement. This Agreement may be terminated by City for cause in the event of a material breach of this Agreement, misrepresentation by Consultant in connection with the formation of this Agreement or the performance of services, or the failure to perform services as directed by City. Termination for cause shall be effected by delivery of written notice of termination to Consultant. Such termination shall be effective upon delivery of said notice.

5. Confidential Relationship.

City may from time to time communicate to Consultant certain information to enable Consultant to effectively perform the services. Consultant shall treat all such information as confidential, whether or not so identified, and shall not disclose any part thereof without the prior written consent of the City. Consultant shall limit the use and circulation of such information, even within its own organization, to the extent necessary to perform the services. The foregoing obligation of this Paragraph 5, however, shall not apply to any part of the information that (i) has been disclosed in publicly available sources of information; (ii) is, through no fault of Consultant, hereafter disclosed in publicly available sources of information; (iii) is now in the possession of Consultant without any obligation of confidentiality; or (iv) has been or is hereafter rightfully disclosed to Consultant by a third party, but only to the extent that the use or disclosure thereof has been or is rightfully authorized by that third party.

Consultant shall not disclose any reports, recommendations, conclusions or other results of the services or the existence of the subject matter of this contract without the prior written consent of the City. In its performance hereunder, Consultant shall comply with all legal obligations it may now or hereafter have respecting the information or other property of any other person, firm or corporation.

6. Office Space and Clerical Support.

Consultant shall provide its own office space and clerical support at its sole cost and expense.

7. Covenant Against Contingent Fees.

Consultant declares that it has not employed or retained any company or person, other than a bona fide employee working for Consultant, to solicit or secure this Agreement, that it has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift or any other consideration, contingent upon or resulting from the award or making of the Agreement. For breach of violation of this warranty, City shall have the right to annul this Agreement without liability, or, at its sole discretion, to deduct from the Agreement price or

consideration, or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.

8. Ownership of Documents.

All memoranda, reports, plans, specifications, maps and other documents prepared or obtained under the terms of this Agreement shall be the property of City and shall be delivered to City by Consultant upon demand.

9. Conflict of Interest and Political Reform Act Obligations.

During the term of this Agreement Consultant shall not act as consultant or perform services of any kind for any person or entity whose interests conflict in any way with those of the City of Poway. Consultant shall at all times comply with the terms of the Political Reform Act and the local conflict of interest ordinance. Consultant shall immediately disqualify itself and shall not use its official position to influence in any way any matter coming before the City in which the Consultant has a financial interest as defined in Government Code Section 87103. Consultant represents that it has no knowledge of any financial interests which would require it to disqualify itself from any matter on which it might perform services for the City.

"Consultant" means an individual who, pursuant to a contract with a state or local agency:

(A) Makes a governmental decision whether to:

1. Approve a rate, rule or regulation;
2. Adopt or enforce a law;
3. Issue, deny, suspend, or revoke any permit, license, application, certificate, approval, order, or similar authorization or entitlement;
4. Authorize the City to enter into, modify, or renew a contract provided it is the type of contract that requires City approval;
5. Grant City approval to a contract that requires City approval and to which the City is a party, or to the specifications for such a contract;
6. Grant City approval to a plan, design, report, study, or similar item;
7. Adopt, or grant City approval of, policies, standards, or guidelines for the City, or for any subdivision thereof; or

(B) Serves in a staff capacity with the City and in that capacity participates in making a governmental decision as defined in Regulation 18702.2 or performs the same or substantially all the same duties for the City that would otherwise be performed by an individual holding a position specified in the City's Conflict of Interest Code.

DISCLOSURE DETERMINATION:

- ☐ 1. Consultant/Contractor will not be "making a government decision" or "serving in a staff capacity" as defined in Sections A and B above.
No disclosure required.
- ☐ 2. Consultant/Contractor will be "making a government decision" or "serving in a staff capacity" as defined in Sections A and B above. As a result, Consultant/Contractor shall be required to file a Statement of Economic Interest with the City Clerk of the City of Poway in a timely manner as required by law.

DEPARTMENT DIRECTOR

10. No Assignments.

Neither any part nor all of this Agreement may be assigned or subcontracted, except as otherwise specifically provided herein, or to which City, in its sole discretion, consents to in advance thereof in writing. Any assignment or subcontracting in violation of this provision shall be void.

11. Maintenance of Records.

Consultant shall maintain all books, documents, papers, employee time sheets, accounting records, and other evidence pertaining to costs incurred and shall make such materials available at its office at all reasonable times during the contract period and for three (3) years from the date of final payment under this Agreement, for inspection by City and copies thereof shall be furnished, if requested.

12. Independent Contractor.

At all times during the term of this Agreement, Consultant shall be an independent contractor and shall not be an employee of the City of Poway or City. City shall have the right to control Consultant only insofar as the results of Consultant's services rendered pursuant to this Agreement; however, City shall not have the right to control the means by which Consultant accomplishes such services.

13. Licenses, Permits, Etc.

Consultant represents and declares to City that it has all licenses, permits, qualifications, and approvals of whatever nature that are legally required to practice its

profession. Consultant represents and warrants to City that Consultant shall, at its sole cost and expense, keep in effect at all times during the term of this Agreement, any license, permit, or approval which is legally required for Consultant to practice its profession.

14. Consultant's Insurance.

Consultant shall provide insurance as set forth in Exhibit "A" entitled "Special Provisions" attached hereto and made a part hereof.

15. Indemnity.

To the fullest extent permitted by law (including, without limitation, California Civil Code sections 2782 and 2782.6), Consultant shall defend (with legal counsel reasonably acceptable to the City), indemnify and hold harmless City and its officers, agents, officials, representatives, and employees from and against any and all claims, loss, cost, damage, injury, expense, and liability of every kind, nature and description (including, without limitation, incidental and consequential damages, court costs, attorney's fees, litigation expenses and fees of expert consultants or expert witnesses and costs of investigation) that arise out of, pertain to, or relate to, directly or indirectly, in whole or in part, the negligence, recklessness, or willful misconduct of Consultant.

16. Consultant Not an Agent.

Except as City may specify in writing, Consultant shall have no authority, expressed or implied, to act on behalf of City in any capacity whatsoever as an agent. Consultant shall have no authority, expressed or implied, pursuant to this Agreement to bind City to any obligation whatsoever.

17. Personnel.

Consultant shall assign qualified and certified personnel to perform requested services. The City shall have the right to review and disapprove personnel for assignment to Poway projects.

City shall have the unrestricted right to order the removal of any person(s) assigned by Consultant by giving oral or written notice to Consultant to such effect.

Consultant's personnel shall at all times comply with City's drug and alcohol policies then in effect.

18. Notices.

Notices shall be given as described on Exhibit "A" entitled "Special Provisions" attached hereto and made a part hereof.

19. Arbitration.

In the event of a dispute between City and Consultant concerning the terms of this Agreement or its performance, the parties agree to submit such dispute to arbitration before the American Arbitration Association or other mutually acceptable arbitrator. In the event that the subject of such arbitration is compensation claimed by Consultant in the event of termination, Consultant's damages shall be limited to compensation for the 60-day period for which Consultant would have been entitled to receive compensation if terminated without cause. In the event of arbitration, each party shall bear its own attorneys' fees and costs incurred.

20. Gender.

Whether referred to in the masculine, feminine, or as "it," "Consultant" shall mean the individual or corporate consultant and any and all employees of consultant providing services hereunder.

21. Entire Agreement.

This Agreement shall constitute the entire understanding between Consultant and City relating to the terms and conditions of the services to be performed by Consultant.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement on the date first above written.

City of Poway

Dated: _____

By: _____

Its: _____

Approved as to form:
Office of the City Attorney

Company Name: _____

Dated: _____

Dated: _____

By: _____

By: _____

Its: Lisa A. Foster, City Attorney

Its: _____

"SPECIAL PROVISIONS"

EXHIBIT "A"

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