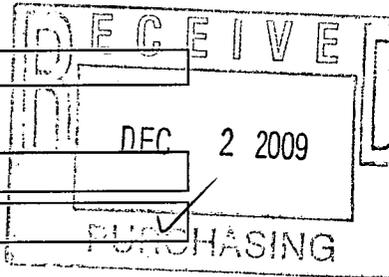


City of Durham North Carolina

Contract Authorization

(To be completed by Department)

Date of Contract
Department
Contract No. (If previously Assigned)
Durham Administrator (Must be MUNIS user)
Contract Type



Vendor Information

Vendor Name
Address 1
Address 2
City State Zip
Phone Fax Email

General Information

Capital Project Ordinance Number
Grant Project Ordinance Number
Payment Terms
Progress Payments

Advertising: Advertising was done Advertising not required

Where was advertising done?
When was advertising done?

Performance Bond: Enclosed Not Required Waived by Council for this project
Payment Bond: Enclosed Not Required Waived by Council for this project

Privilege License: Yes No Exempt

Privilege License Account Number Expiration Date

Insurance Requirements: Yes No

Attached per RFQ
Received in City Clerk's Office
12-7-09
(Date)

Contract Period Start Finish

Contract Funding Breakdown



CERTIFICATE OF LIABILITY INSURANCE

OP ID TN
CLEAN36

DATE (MM/DD/YYYY)

10/30/09

PRODUCER Selective Service Center P. O. Box 13325 Richmond VA 23225-0325 Phone: 877-744-3125	THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.												
INSURED Clean Energy Durham Po Box 2223 Durham NC 27702-2223	<table border="1" style="width: 100%;"> <tr> <th style="width: 80%;">INSURERS AFFORDING COVERAGE</th> <th style="width: 20%;">NAIC #</th> </tr> <tr> <td>INSURER A: Selective Ins Co of S Carolina</td> <td>19259</td> </tr> <tr> <td>INSURER B:</td> <td></td> </tr> <tr> <td>INSURER C:</td> <td></td> </tr> <tr> <td>INSURER D:</td> <td></td> </tr> <tr> <td>INSURER E:</td> <td></td> </tr> </table>	INSURERS AFFORDING COVERAGE	NAIC #	INSURER A: Selective Ins Co of S Carolina	19259	INSURER B:		INSURER C:		INSURER D:		INSURER E:	
INSURERS AFFORDING COVERAGE	NAIC #												
INSURER A: Selective Ins Co of S Carolina	19259												
INSURER B:													
INSURER C:													
INSURER D:													
INSURER E:													

COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR	ADD'L	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YYYY)	POLICY EXPIRATION DATE (MM/DD/YYYY)	LIMITS
A	X	GENERAL LIABILITY	S 1629949	01/14/09	01/14/10	EACH OCCURRENCE \$ 1000000
		<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC				DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100000 MED EXP (Any one person) \$ 10000 PERSONAL & ADV INJURY \$ 1000000 GENERAL AGGREGATE \$ 2000000 PRODUCTS - COMP/OP AGG \$ 2000000
A	X	AUTOMOBILE LIABILITY	S 1629949	01/14/09	01/14/10	COMBINED SINGLE LIMIT (Ea accident) \$ 1000000
		<input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS				BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
		GARAGE LIABILITY				AUTO ONLY - EA ACCIDENT \$ OTHER THAN EA ACC \$ AUTO ONLY: AGG \$
A	X	EXCESS / UMBRELLA LIABILITY	S 1629949	01/14/09	01/14/10	EACH OCCURRENCE \$ 1000000
		<input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> DEDUCTIBLE <input checked="" type="checkbox"/> RETENTION \$ zero				AGGREGATE \$ 1000000 \$ \$
A		WORKERS COMPENSATION AND EMPLOYERS' LIABILITY	WC 7942039	01/14/09	01/14/10	<input checked="" type="checkbox"/> WC STATU-TORY LIMITS <input type="checkbox"/> OTH-ER
		ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under SPECIAL PROVISIONS below				E.L. EACH ACCIDENT \$ 1000000 E.L. DISEASE - EA EMPLOYEE \$ 1000000 E.L. DISEASE - POLICY LIMIT \$ 1000000
		OTHER				

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS

Certificate holder is included as additional insured with respects to General Liability (ongoing operations) and Automobile Liability as required by written contract or agreement per form CG7202 and CA7735. Waiver of Subrogation applies to General Liability and Workers Compensation.

CERTIFICATE HOLDER

City of Durham, North Carolina
 Attn: Finance Director
 101 City Hall Plaza
 Durham NC 27701

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE

Deborah Dwyer

IMPORTANT

If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

DISCLAIMER

This Certificate of Insurance does not constitute a contract between the issuing insurer(s), authorized representative or producer, and the certificate holder, nor does it affirmatively or negatively amend, extend or alter the coverage afforded by the policies listed thereon.

NOTEPAD:

INSURED'S NAME Clean Energy Durham

CLEAN36

PAGE 3

OP ID TN

DATE 10/30/09

Workers Compensation coverage applies to employees, owners, partners and officers who work on this contract.

ELITEPAC General Liability Extension

COMMERCIAL GENERAL LIABILITY
CG 72 02 01 09

SUMMARY OF COVERAGES (including index)

This is a summary of the various additional coverages and coverage modifications provided by this endorsement. No coverage is provided by this summary. Refer to the actual endorsement (Pages 3-through-7) for changes affecting your insurance protection.

DESCRIPTION	PAGE FOUND
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ELITEPAC

General Liability Extension

COMMERCIAL GENERAL LIABILITY
CG 72 02 01 09

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

This endorsement modifies the insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

The **SECTIONS** of the Commercial General Liability Coverage Part identified in this endorsement will be amended as shown below. However, **when two or more Coverage Parts of this policy apply to a loss**, only the broadest coverage of this policy will apply, unless specifically stated otherwise within the particular amendment covering that loss.

COVERAGES - Amendments

COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY

EXCLUSIONS

- **Employer's Liability Amendment (Not Applicable in New York)**

The following is added to the **Employer's Liability** exclusion:

This exclusion also does not apply to any "temporary worker".

- **Non-Owned Aircraft, Auto or Watercraft**

The Aircraft, Auto or Watercraft Exclusion is amended as follows:

1. This exclusion does not apply to a watercraft you do not own that is less than 60 feet long, and not being used to carry persons or property for a charge. Any person is an insured who uses or is responsible for the use of such watercraft with your expressed or implied consent. However, if the insured has any other valid and collectible insurance for "bodily injury" or "property damage" that would be covered under this provision, or on any other basis, this coverage is then excess, and subject to the **Other Insurance** provisions of this policy for Excess Insurance.
2. This exclusion does not apply to any aircraft, not owned or operated by any insured, that is hired, chartered or loaned with a paid crew. However, if the insured has any other valid and collectible insurance for "bodily injury" or "property damage" that would be covered under this provision, or on any other basis, this coverage is then excess, and subject to the **Other Insurance** provisions of this policy for Excess Insurance.

- **Fire, Lightning Or Explosion Damage**

Exclusion j. Damage to Property in **COVERAGE A** dealing with Damage to premises while rented to you or temporarily occupied by you with the permission of the owner is amended as follows:

As used in this extension (only, including its use in **LIMITS OF INSURANCE**, the Declarations and the Other Insurance provisions), the term Damage shall include fire, lightning or explosion.

The Damage to Premises Rented to You Limit of **LIMITS OF INSURANCE** is amended as follows:

The Damage to Premises Rented to You Limit, for covered fire, lightning or explosion, is the higher of \$500,000, or the amount shown in the Declarations for the Damage to Premises Rented to You Limit. This limit is the most we will pay under **COVERAGE A** for damages because of "property damage" to any one premises rented to you or temporarily occupied by you with permission of the owner, for all such "property damage" proximately caused by the same event, whether such damage results from fire, lightning or explosion or any combination of the three. This Damage to Premises Rented to You Limit is subject to the Each Occurrence Limit.

- **Property Damage - "Golfing Facilities"**

If you operate a "golfing facility" **COVERAGE A** is extended to "property damage" to any property not owned by you, caused by golf balls originating from your premises, regardless of your legal liability for the damage. The most we will pay under this extension is \$1,500 per "occurrence" subject to no annual per policy term. No deductible applies to loss under this extension.

COVERAGE B. PERSONAL AND ADVERTISING INJURY LIABILITY

EXCLUSIONS

The exclusion of relating to liability assumed in a contract or agreement only applies to damages arising out of advertisement.

COVERAGE C. MEDICAL PAYMENTS

EXCLUSIONS

• Any Insured Amendment

The following is added to this section:

The exclusion applicable to any insured does not apply to:

1. "Golfing facility" members who are not paid a fee, salary, or other compensation; or
2. "Not-for-profit members".

• Product Amendment

The exclusion applicable to the "products-completed operations hazard" does not apply to "your products" sold for use or consumption on your premises, while such products are still on your premises, if you are a not-for-profit operation or a "golfing facility".

• Recreational Medical Payments - Amateur Golf

If you are a "golfing facility", the exclusion applicable to a person while taking part in athletics does not apply to a person as a result of their participation in amateur athletics that are recreational in nature.

SUPPLEMENTARY PAYMENTS - COVERAGES A AND B

• Expenses For Bail Bonds And Loss Of Earnings

The provisions of **SUPPLEMENTARY PAYMENTS - COVERAGES A AND B** are amended as follows:

Subject to all other provisions of this section, the limitations for expenses for bail bonds and loss of earnings are increased as follows: we will pay up to \$3,000 for the cost of bail bonds, and up to \$1,000 a day for loss of earnings because of time off from work.

WHO IS AN INSURED - Amendments

• Not-for-Profit Organization Members

If you are an organization other than a partnership, joint venture, or a limited liability company, and you are a not-for-profit organization, **WHO IS AN INSURED** is amended to include as additional insureds your officials, trustees, board members, insurance managers, and "not-for-profit members", however only with respect to their liability for your activities or activities they perform on your behalf.

• Employees As Insureds Modified

The exclusion relating to injury to a co-"employee" does not apply to injury to, or property damage to the property of, a "temporary worker" caused by a co-"employee" who is not a "temporary worker". This exclusion also does not apply to a co-"employee" with respects to bodily injury only, in which damages are caused by cardio-pulmonary resuscitation or first aid services administered by such an "employee".

• Newly Formed Or Acquired Organizations

The following amendments are made to the insured provision relating to newly acquired or formed organizations, as granted under **WHO IS AN INSURED**:

Coverage under this provision is afforded only until the 180th day after you acquire or form the organization or the end of the policy period, whichever is earlier. However, **COVERAGE A** does not apply to "product recall expense" arising out of any withdrawal or recall that occurred before you acquired or formed any organization under this provision.

If you are engaged in the business of construction of dwellings three stories or less in height, or other buildings three stories or less in height and less than 25,000 square feet in area, you will also be an insured with respect to "your work" only, for the period of time described above, for your liability arising out of the conduct of any partnership or joint venture of which you are or were a member, even if that partnership or joint venture is not shown as a Named Insured. However, this provision only applies if you maintain or maintained an interest of at least fifty percent in that partnership or joint venture for the period of that relationship. This provision does not apply to any partnership or joint venture that has been dissolved or otherwise ceased to function for more than thirty-six months. This coverage extension will be excess over any other coverage, on any basis, available to the insured, and will be subject to the **Other Insurance** provisions of this policy for Excess Insurance.

(All other provisions of this section continue unchanged.)

- **Blanket Additional Insureds - Broad Form Vendors - As Required By Contract**

WHO IS AN INSURED is amended to include as an additional insured any person or organization with whom you have agreed in a written contract, written agreement or written permit that such person or organization be added as an additional insured on your policy. Such person or organization is an additional insured only with respect to liability for "bodily injury" or "property damage" caused, in whole or in part, by:

1. Your ongoing operations performed for that person or organization, "your product," or premises owned or used by you; however this provision does not include any architects, engineers, or surveyors with respect to any injury or damage arising out of the rendering or failure to render any professional services by or for you, including:
 - a. The preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
 - b. Supervisory, inspection, architectural or engineering activities.
2. Your maintenance, operation or use of equipment, other than aircraft, "auto" or watercraft, rented or leased to you by such person or organization. A person or organization's status as an additional insured under this endorsement ends when their contract or agreement with you for such rented or leased equipment ends. With respect to the insurance afforded to these additional insureds, this insurance does not apply to any "occurrence" which takes place after the rental agreement or equipment lease expires.
3. "Bodily injury" or "property damage" arising out of "your products" which are distributed or sold in the regular course of the vendor's business, however the insurance afforded the vendor does not apply to:
 - a. "Bodily injury" or "property damage" for which the vendor is obligated to pay damages by reason of the assumption of liability in a contract or agreement; however this exclusion does not apply to liability for damages that the vendor would have in the absence of the contract, agreement;
 - b. Any express warranty unauthorized by you;
 - c. Any physical or chemical change in the product made intentionally by the vendor;

- d. Repackaging, unless unpacked solely for the purpose of inspection, demonstration, testing, or the substitution of parts under instructions from the manufacturer, and then repackaged in the original container;
- e. Any failure to make such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business in connection with the sale of the product; or
- f. Products which, after distribution or sale by you, have been labeled or re-labeled or used as a container, part of ingredient of any other thing or substance by or for the vendor; however this insurance does not apply to any insured person or organization, from who you have acquired such products, or any ingredient, part or container, entering into, accompanying or containing such products.

This coverage shall be excess with respect to the person or organization included as an additional insured by its provisions; any other insurance that person or organization has shall be primary with respect to this insurance, unless this coverage is required to be primary and not contributory in the contract, agreement or permit referred to above.

The provisions of this coverage extension do not apply unless the written contract or written agreement has been executed (executed means signed by the named insured and additional insured) or written permit issued prior to the "bodily injury" or "property damage".

- **Incidental Malpractice**

With respect to the section of **WHO IS AN INSURED** dealing with employees as insureds, the exclusion relating to providing or failing to provide professional health care services does not apply to nurses, emergency medical technicians or paramedics. However this exception does not apply if you are in the business or occupation of providing any such professional services.

- **"Golfing Facilities" - Golf or Tennis Pros**

The following are also additional insureds under **WHO IS AN INSURED**:

If you operate a "golfing facility", any golf or tennis pros. Golf or tennis pros means any person, other than your "employees", whose primary responsibilities include golf or tennis instruction or operation of a golf or tennis pro shop, however only with respect to their liability for your activities, or activities they perform on your behalf, or their liability for the maintenance, use or operation of golf or tennis pro shop premises you rent or lease to them.

LIMITS OF INSURANCE

• Increased Medical Payments

The following is added to **LIMITS OF INSURANCE**:

The Medical Expense Limit under **COVERAGE C** will be \$15,000, or the amount shown in the Declarations for Medical Expense Limit, whichever is higher.

All other terms and conditions of **COVERAGE C. MEDICAL PAYMENTS** remain unchanged.

COMMERCIAL GENERAL LIABILITY CONDITIONS - Amendments

• Knowledge Of Occurrence, Claim, Suit Or Loss

The requirements for reporting and sending claim or "suit" information to us, including provisions related to the subsequent investigation of such claims or "suits", under **Duties In The Event Of Occurrence, Offense, Claim Or Suit** do not apply until after the "occurrence" or offense is known to:

1. You, if you are an individual;
2. A partner, if you are a partnership;
3. An "executive officer" or insurance manager, if you are a corporation;
4. Your members, managers or insurance manager, if you are a limited liability company; or
5. Your elected or appointed officials, trustees, board members, or your insurance manager if you are an organization other than a partnership, joint venture, or limited liability company.

• Unintentional Failure To Disclose Hazards

The following is added to **Representations**:

However, if you should unintentionally fail to disclose any existing hazards in your representations to us at the inception date of the policy, or during the policy period in connection with any additional hazards, we shall not deny coverage under this Coverage Part based upon such failure.

• Waiver Of Transfer Of Rights Of Recovery

We will amend the **Transfer Of Rights Of Recovery Against Others To Us** Condition to waive any right of recovery we may have against a person or organization because of payments we make for injury or damage arising out of your ongoing operations or "your work" done under a contract with that person or organization and included in the "products-completed operations hazard", if:

1. The waiver of such rights is required in a written contract or written agreement with that person or organization; and

2. The provisions of the Blanket Additional Insureds - Broad Form Vendors - As Required By Contract section of this form also apply to that same contract; and
3. You have assumed the liability of that person or organization in that same contract, and it is an "insured contract".

The section above only applies to that person or organization identified above, and only if the injury or damage occurs subsequent to the execution of the written contract or written agreement.

If you are a "golfing facility", we will also waive any right of recovery we may have against any of your members or their guests because of payments we make for injury or damage arising out of their actions at your premises to which this Coverage Part applies. However, this provision does not apply to injury or damage that is expected or intended by your member or their guest.

• Liberalization

If we revise this Coverage Part to provide more coverage without additional premium charge, subject to our filed company rules, your policy will automatically provide the additional coverage as of the day the revision is effective in your state.

DEFINITIONS

• Discrimination And Humiliation

(This provision does not apply in the state of New York.) The definition of "personal and advertising injury" is amended by the addition of the following offense:

Discrimination or humiliation that results in injury to the feelings or reputation of a natural person, however only if such discrimination or humiliation is:

1. Not done intentionally by or at the direction of:
 - a. The insured; or
 - b. Any "executive officer" director, stockholder, partner, manager or member of the insured; and
2. Not directly or indirectly related to the employment, prospective employment or termination of employment of any person or persons by any insured.
3. Not arising out of any advertisement by the insured.

• Employee Amendment

The definition of "employee" is replaced by the following:

"employee" includes a "leased worker", or a "temporary worker".

- **Golfing Facility**

The following definition is added:

“Golfing facility” or “golfing facilities” means a golf course, golf club, driving range, or miniature golf course.

- **Mental Anguish Amendment**

(This provision does not apply in New York.) The definition of “bodily injury” is amended to include mental anguish resulting from any bodily injury, sickness or disease sustained by a person. (In New York, mental anguish has been determined to be “bodily injury”.)

- **Not-for-profit Member**

“Not-for-profit members” means a person who is a member of a not-for-profit organization, including clubs and churches, who receive no financial or other compensation.

ElitePac Commercial Automobile Extension

BUSINESS AUTO
CA 77 35 07 05

SUMMARY OF COVERAGES (including index)

This is a summary of the various additional coverages and coverage modifications provided by this endorsement. No coverage is provided by this summary. Refer to the actual endorsement (Pages 2-through-6) for changes affecting your insurance protection.

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Public Entities - Reimbursement of Deductible Coverage	Page 5
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Losses under Multiple Coverage Parts (of this policy) from One Accident	Page 5
Employees Non-Ownership	Page 3
Extended Coverage Territory	Page 6
Fellow Employee Exclusion Amendment	Page 3
Hired Car Physical Damage Coverage	Page 4
Knowledge of Accident, Claim, Suit or Loss	Page 5
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Limited Liability Companies	Page 3
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Mobile Equipment Definition Amended (not applicable in New York)	Page 6
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Non-Ownership Extension - Public Entities	Page 3
Permanently Attached Equipment Definition	Page 6
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Unintentional Failure to Disclose Hazards	Page 6
Volunteer Workers	
Employer's Liability Exclusion Amendment	Page 3
Volunteer Workers Defined	Page 6

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ElitePac Commercial Automobile Extension

BUSINESS AUTO
CA 77 35 07 05

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

This endorsement modifies the insurance provided under the following:

BUSINESS AUTO COVERAGE PART

The **SECTIONS** of the Business Auto Coverage Part identified in this endorsement will be amended as shown below. But, **when two or more Coverage Parts of this policy apply to a loss**, only the broadest coverage of this policy will apply unless specifically stated otherwise within the particular amendment covering that loss.

LIABILITY COVERAGE - Amendments

COVERAGE

WHO IS AN INSURED - AMENDMENTS

The following is added to WHO IS AN INSURED:

- **Limited Liability Companies**

If you are a limited liability company, you are an insured for any covered "auto." The provisions of WHO IS AN INSURED applicable to anyone else using a covered "auto" you own, hire or borrow, also apply to limited liability companies. Your members and managers are also "insureds" while using a covered "auto" you don't own, hire or borrow during the course of their duties for you. But, members or managers are not an insured for any covered "autos" owned by them or members of their household.

- **Newly Acquired Or Formed Organizations**

Any organization you newly acquire or form, other than a partnership, joint venture or limited liability company, and over which you maintain ownership or majority interest, will qualify as a Named Insured if there is no similar insurance available to that organization. However:

1. Coverage under this provision is afforded only until the 180th day after you acquire or form the organization or the end of the policy period, whichever is earlier;
2. Coverage does not apply to "bodily injury" or "property damage" resulting from an "accident" that occurred before you acquired or formed the organization.

No person or organization is an "insured" with respect to the conduct of any current or past partnership, joint venture or limited liability company that is not shown as a Named Insured in the Declarations.

- **Employees - Non-Ownership**

Any employee of yours is an "insured" while using a covered "auto" you don't own, hire or borrow in your business or your personal affairs.

- **Non-Ownership Extension - Public Entities**

Any board member or other elected or appointed official, member of the administrative staff, student teacher or other authorized volunteer or member is an "insured" while using a covered "auto" you don't own, hire or borrow during the course of their duties for you as a Board of Education, Municipality or other Governmental Entity, or Volunteer Emergency Services Organization. Anyone who supplies that "auto" is also an "insured."

- **Blanket Additional Insureds**

Any person or organization with whom you agreed, because of a written contract, agreement or permit, to provide insurance such as is afforded under this Coverage Part, but only with respect to your ownership, maintenance or use of a covered "auto." This provision only applies if the written contract or agreement has been executed or permit issued prior to the "bodily injury" or "property damage."

This coverage shall be primary and not contributory with respect to the person or organization included as an "insured" under this section. Any other insurance that person or organization has shall be excess and not contributory with respect to this insurance, but this provision only applies if it is required in the written contract, agreement or permit identified in this section, and is permitted by law.

COVERAGE EXTENSIONS

- **Expenses For Bail Bonds And Loss Of Earnings**

Supplementary Payments is amended as follows:

We will pay up to \$2,500 for the cost of bail bonds (including bonds for related traffic law violations) required because of an "accident" we cover. We do not have to furnish these bonds.

We will pay all reasonable expenses incurred by the "insured" at our request, including actual loss of earnings up to \$500 a day, because of time off from work.

EXCLUSIONS

• Employer's Liability Amendment

The following will be added to the Employee Indemnification And Employer's Liability exclusion:

This exclusion also does not apply to any "volunteer worker."

• Fellow Employee Amendment

For "insureds" Other Than Volunteer Fire Companies, Volunteer Ambulance Squads and Volunteer Rescue Squads, the **Fellow Employee** exclusion does not apply if the "bodily injury" results from the use of a covered "auto."

For Volunteer Fire Companies, Volunteer Ambulance Squads and Volunteer Rescue Squads, the **Fellow Employee, Employee Indemnification And Employer's Liability and EMERGENCY VEHICLES - VOLUNTEER FIREFIGHTERS AND WORKERS INJURIES** exclusions do not apply if the "bodily injury" results from the use of a covered "auto" you own, hire or borrow. But, this coverage extension is only provided to:

1. Members of the "insured" Volunteer Fire Company, Volunteer Ambulance or Volunteer Rescue Squad, while such member is operating within the scope of their official duties, with respect to claims made or suits brought against such member for injuries to a fellow member of the "insured" volunteer organization, or for injuries to members of other Volunteer Fire Companies, Volunteer Ambulance Squads or Volunteer Rescue Squads; and
2. The "insured" volunteer organization with respect to claims made or suits brought against the "insured" volunteer organization for injuries to members of other Volunteer Fire Companies, Volunteer Ambulance Squads or Volunteer Rescue Squads.

• Care, Custody Or Control Extension

The **Care, Custody Or Control** exclusion does not apply to property not owned by any insured, subject to the following:

1. The most we will pay under this exception for any one accident is \$1,000; and
2. A deductible of \$500 per accident applies to this exception.

PHYSICAL DAMAGE INSURANCE - Amendments COVERAGE

• Hired Car Physical Damage Coverage

If Comprehensive, Specified Causes of Loss or Collision coverage is provided by this policy, you may extend that coverage to apply to Physical Damage "loss" to hired "autos." We will provide coverage equal to the broadest coverage available to any covered "auto" shown in the Declarations. But, the most we will pay for "loss" to a hired "auto" in any one "accident" is the lesser of:

1. \$50,000; or
2. The actual cash value of the damaged or stolen property as of the time of the "loss"; or
3. The actual cost of repairing or replacing the damaged or stolen property with other property of like kind or quality. For each hired "auto" our obligation to pay "loss" will be reduced by a deductible equal to the highest deductible applicable to any owned "auto" for that coverage. No deductible will be applied to "loss" caused by fire or lightning. We will also pay up to \$500 per "accident" for loss of use of the hired "auto" if it results from an "accident" for which you are legally liable. The lessor must suffer an actual financial "loss" for this coverage to apply.

Hired Car Physical Damage Coverage provided by this extension is excess over any other collectible insurance.

• Loan/Lease Gap Coverage

(Lease Gap provision does not apply in New York.) If a long-term leased or financed "auto" is a covered "auto" for the Physical Damage Coverage applicable to a total "loss," and the lessor or financial institution is an additional insured under this Coverage Part, we will pay the difference between amounts you owe the lessor or financial institution under the lease or loan terms and the amount of insurance paid the lessor or financial institution for the total "loss" of the covered "auto" minus: any payments overdue at the time of the loss; any financial penalties imposed due to wear and tear, high mileage or similar charges; any security deposits not refunded by the lessor or financial institution; any costs for credit life, health and accident, or disability insurance; any costs for extended warranties; or any carry-over balances from previous leases or loans. You are responsible for the deductible applicable to the "loss" for the covered "auto."

• Additional Transportation Expense

The Coverage Extension for transportation expense is replaced by the following:

We will pay up to \$50 per day to a maximum of \$1,500 for temporary transportation expense incurred by you because of any "losses" to covered "autos," but only if the covered "autos" carry the coverages and meet the requirements described in 1. or 2. below:

1. We will pay the above temporary transportation expense for total theft of a covered "auto" if you carry either Comprehensive or Specified Causes of Loss Coverage. We will only pay for such expenses incurred during the period beginning 48 hours after the theft and ending, regardless of the policy's expiration, when the covered "auto" is returned to use or we pay for its "loss."
2. For "loss" other than the total theft to a covered "auto" under Comprehensive Coverage or Specified Causes of Loss Coverage, or for any "loss" under Collision Coverage to a covered "auto," we will pay the above temporary transportation expense if the amount of "loss" to that covered "auto" is greater than \$5,000. We will only pay for those expenses incurred during the policy period beginning 24 hours after the "loss" and ending, regardless of the policy's expiration, with the lesser of the number of days reasonably required to repair or replace the covered "auto," or 30 days. This provision 2. of this extension does not apply while there are spare or reserve "autos" available to you for your operations.

• Public Entities - Reimbursement Of Deductible Coverage

If you are a Board of Education, Municipality or other Governmental Entity, or Volunteer Emergency Services Organization, we will pay up to \$1,000 or the amount of the deductible under any auto policy available to your volunteer or employee, whichever is less, for any "loss" described in this section to any "auto" owned or used by a volunteer or employee while en route to and during any official duty authorized by you. In no event will we pay for any "loss" under this Coverage to any "auto" owned, hired, or borrowed by your organization.

LIMIT OF INSURANCE

• Amendment For Limits Applicable To Certain Public Entities

(This provision does not apply in New York.) The following replaces **LIMIT OF INSURANCE**:

The most we will pay for a "loss" in any one "accident" is the lesser of:

1. The actual cash value of the damaged or stolen property as of the time of the "loss"; or
2. The cost of repairing or replacing the damaged or stolen property with other property of like kind and quality; or
3. If you are a Municipality or other Governmental Entity, or a Volunteer Emergency Services Organization:
 - a. The cost to replace the entire covered "auto" and its "permanently attached equipment," for covered "autos" designated in the schedule as being insured on an agreed value basis as of the time of the "loss," with a comparable new "auto" and "permanently attached equipment" manufactured to current standards set by nationally recognized organizations such as, but not limited to, NFPA or the US Department of Transportation; but, the most we will pay under this paragraph for owned or leased "autos" you acquire after the policy begins and not described in the declarations is the least of items 1., 2., or 3.a. of this section; or
 - b. (This provision does not apply in New York.) The additional repair or replacement costs necessary to customize the damaged covered "auto" with permanently installed equipment of like kind and quality, without deduction for depreciation, if the "auto" is specifically outfitted for use by chiefs, captains, police, administrators and others in comparable positions and is scheduled, but the "auto" is not designated on the schedule as being insured on an agreed-value basis. We will also pay under this provision for the cost of installation onto a replacement "auto" if the covered "auto" is not repairable, and we will pay for property owned by "you" that is permanently installed in an "auto" not owned by you.

DEDUCTIBLE

• Additional Deductible Provisions

The following paragraphs are added:

If a Comprehensive or Specified Causes of Loss Coverage "loss" from one "accident" involves two or more "covered autos," only the highest deductible applicable to those coverages will be applied to the "accident," if the cause of the loss is covered for those vehicles. This provision only applies if you carry Comprehensive or Specified Causes of Loss Coverage for those vehicles, and does not extend coverage to any "covered autos" for which you do not carry such coverage.

If a "loss" covered under this Coverage Part also involves a "loss" to other property from the same "accident," which is covered under a Commercial Property or Inland Marine Coverage Part issued by us or any member company of ours for you, only the highest deductible applicable to those coverages will be applied to the "accident."

BUSINESS AUTO CONDITIONS - Amendments

LOSS CONDITIONS

• Knowledge Of Accident, Claim, Suit Or Loss

The requirements for reporting and sending claim or "suit" information to us, including provisions related to the subsequent investigation of such claims or "suits," under DUTIES IN THE EVENT OF ACCIDENT, CLAIM, SUIT OR LOSS, do not apply until the "accident" or "loss" is known to:

1. You, if you are an individual;
2. A partner, if you are a partnership;
3. An executive officer or insurance manager, if you are a corporation;
4. Your members, managers or insurance manager, if you are a limited liability company;
5. Your elected or appointed officials, trustees, board members, or your insurance manager, if you are an organization other than a partnership, joint venture, or limited liability company.

But, this section does not amend the provisions relating to notification of police, protection or examination of the property which was subject to the "loss."

GENERAL CONDITIONS

• Unintentional Failure To Disclose Hazards

The following is added to CONCEALMENT, MISREPRESENTATION OR FRAUD:

But, if you should unintentionally fail to disclose any existing hazards in your representations to us at the inception date of the policy, or during the policy period in connection with any additional hazards, we shall not deny coverage under this Coverage Part based upon such failure.

• Extended Coverage Territory

The definition of coverage territory is amended to include anywhere in the world for covered "autos" hired on a short term (30 days or less) basis. The "insured's" responsibility to pay damages must be determined in a "suit" brought in:

1. The United States of America;
2. The territories or possessions of the United States of America;
3. Puerto Rico; or
4. Canada; or

in a settlement we agree to.

DEFINITIONS - Amendments

• Mental Anguish

(This provision does not apply in New York.) For jurisdictions other than New York, the definition of "bodily injury" is amended to include mental anguish resulting from any bodily injury, sickness or disease sustained by a person. (In New York, mental anguish has been determined to be "bodily injury.")

• Mobile Equipment Clarification

(This provision does not apply in New York.) The following is added to the part of the "mobile equipment" definition dealing with equipment designed primarily for snow removal, road maintenance, or street cleaning:

But, this section of this definition does not include self-propelled vehicles of less than 1,000 pounds gross vehicle weight.

• Permanently Attached Equipment

The following definition is added:

"Permanently attached equipment" means equipment that is welded, bolted, or permanently screwed to the dashboard, fire wall or body of the "auto." Equipment inserted on permanently installed side brackets with or without the use of setscrews or tension, or portable fire fighting and/or rescue related equipment, shall not be construed as "permanently attached equipment."

• Volunteer Worker

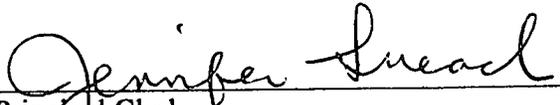
"Volunteer worker" is a person who performs business duties for you, for no financial or other compensation.

AFFIDAVIT OF PUBLICATION

Request for Proposals
by City of Durham -
Program development
for a residential energy
efficiency program
(EECBG-R1). Pre-Bid
Conference on 11/10 at
10:00 a.m. at 807 E.
Main Street, Suite 2-
200, Durham. Bid
packages at www.durhamnc.gov/departmentspurchasing/bids.cfm.
H-S Sept. 7, 2009

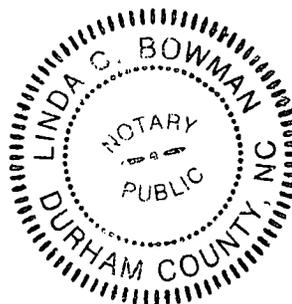
State of North Carolina
County of Durham

Jennifer Snead, being duly sworn, says that she is the Principal Clerk of PMG, LLC, doing business as The Herald-Sun, a newspaper published in and of general circulation in said County, and that a notice of which the annexed is a True Copy, was published in said newspaper one time on the 7th day of September, 2009.


Principal Clerk

Sworn to and subscribed before me this 8th day of
September, 2009.


Notary Public



My Commission Expires: 8-15-14
Durham County, North Carolina

City of Durham Privilege License

2010

Ordinance
NP

Description
NON PROFIT

Units
1

Clean Energy Durham
Business
Address: 331 W Main Street Suite 204

Clean Energy Durham
P.O. Box 2223,
Durham, NC 27702-2223

*Licenses must comply with all local ordinances or the license may be forfeited.
This license must be posted conspicuously where business is conducted.*

Issued By: City Collector of Revenue

page 1 of 1

Account No
22613

Date Issued
05/27/2009

Tax Year Beginning
07-01-2009

Tax Year Ending
06-30-2010

Receipt No
85205

**STATE OF NORTH CAROLINA
COUNTY OF DURHAM**

CONTRACT FOR RESIDENTIAL ENERGY EFFICIENCY IMPROVEMENT PROJECT

This contract is made and entered into as of the 9th day of December, 2009, by the City of Durham ("City") and Clean Energy Durham ("Contractor"), a non-profit corporation organized and existing under the laws of the State of North Carolina.

Sec. 1. Background and Purpose.

The City is using a grant from the U.S. Department of Energy's ("DOE") Energy Efficiency and Conservation Block Grant Program funded through the American Recovery and Reinvestment Act (ARRA) to fund a residential energy-efficiency retrofit program to enhance energy conservation in the community. The City requires the Contractor to assist in developing and implementing the project, including: recruiting, training, and coordinating volunteers; organizing community info and training sessions; producing outreach resources; and coordinating home retrofits.

Sec. 2. Services and Scope to be Performed. The Contractor shall perform, or cause to be performed, the services outlined in Attachment A, entitled "Scope of Work," which is made an integral part of this Agreement. The services to be performed by the Contractor in the attached Scope of Work shall commence effective December 4, 2009 and those services shall be completed no later than July 24, 2012. In this contract, "Work" means the services that the Contractor is required to perform pursuant to this contract and all of the Contractor's duties to the City that arise out of this contract.

Sec. 3. Complete Work without Extra Cost. Except to the extent otherwise specifically stated in this contract, the Contractor shall obtain and provide, without additional cost to the City, all labor, materials, equipment, transportation, facilities, services, permits, and licenses necessary to perform the Work.

Sec. 4. Compensation.

All expenditures and expenses shall be incurred in accordance with the provisions of this Agreement. A rate schedule for hours worked shall be included as a part of this Agreement in Attachment C. Payments shall be made based upon this rate schedule and shall only be made after the Contractor has presented documentation of hours worked, accomplishments, and expenses that meet City approval. It is expressly understood and agreed by the Contractor that payment by the City will not exceed the maximum sum of \$314,700.00 for all of the services specified under Attachment A, Scope of Work. Further, the Contractor agrees that any payment made under this Agreement by the City is limited to funds made available under the grant referenced above. Payments shall be made by the City in accordance with the provisions of this Agreement and only for activities specified in this contract.

Sec. 5. Contractor's Billings to City. The City shall pay the Contractor for the Work as follows: Payments by the City under this Agreement are limited to reimbursement of eligible expenditures made or eligible expenses incurred by the Contractor, except where advance payments are explicitly authorized in writing by the City at the sole discretion of the City. The Contractor shall send invoices to the Sustainability Manager on a monthly basis for the amounts to be paid pursuant to this contract. Each invoice shall document, to the reasonable satisfaction of the City, information on hours worked under the grant per employee, how many hours were worked by employees hired specifically to conduct work under this contract, how many hours were worked by existing employees who otherwise would not have been employed with the Contractor absent this project, a narrative description of progress towards fulfilling the

scope of the project during the billing period, explanations of discrepancies between progress and the project timeline included in this Agreement in Attachment D, and any other documentation that the City-County Sustainability Manager ("Sustainability Manager") may require from the Contractor. All such documentation shall be in the form and of substance satisfactory to the Sustainability Manager. Within twenty days after the City receives an invoice, the City shall send the Contractor a check in payment for all undisputed amounts contained in the invoice.

Section 6. Financial Records.

The Contractor shall establish and maintain a financial management system, which will account for all funds received under this Agreement and expenditures made in furtherance of the project and that such system shall be created and maintained in accordance with generally accepted accounting practices and procedures. The system shall include the following:

1. A general ledger (balance sheet and statement of revenue and expenses) in which to record a summary of all accounting transactions shall be maintained. In addition, the Contractor shall maintain a cash receipt and disbursement register in which receipts and disbursements will be documented. Funds disbursed by the Contractor shall be made by pre-numbered checks, used in numerical sequence and must be supported by appropriate documentation. This documentation includes items such as payroll, time and attendance records, invoices, contracts, travel payments, information evidencing the nature and propriety of each payment, and notation showing the approval of an authorized official of the Contractor.
2. The Contractor shall maintain such records and accounts, including property, personal and financial records so as to assure a proper accounting for all project funds. The Contractor shall retain these records for five (5) years after the date of final payment under this Agreement from the City to the Contractor. However, at any time after the Agreement termination, the Contractor may turn these records over to the City for retention after completion and acceptance of required audits.
3. On request of the City, the Contractor shall provide an accounting for all funds paid to it by the City under this Agreement. More specifically, the Contractor's financial management system shall provide for:
 - a. Accurate, current and complete disclosure of the financial results of activities under this Agreement in accordance with generally accepted business practices. If the Contractor's accounting records are maintained on a cash basis, the Contractor must develop information of accounts payable and accounts receivable through an analysis of the documents in the file, or on the basis of its best estimates.
 - b. Records that adequately identify the source and application of funds under this Agreement. These records shall contain information pertaining to agreement awards and authorizations, encumbrances and unencumbered balances, assets, liabilities, outlays and income.
 - c. Effective control over and accountability for all funds, property and other assets attributable to the Agreement. The Contractor shall adequately safeguard all such assets and shall assure that they are used solely for the performance of the Agreement.
 - d. Comparison of actual expenditures with budgeted amounts for those expenditures and comparison of financial information with performance or productivity data, including the production of unit cost information whenever required by SM.

- e. Procedures for determining the allowability and allocability of costs.
- 4. The Contractor shall provide any information that DCD may reasonably request pertaining to the Contractor's financial management under this Agreement.

Section 7. Audits and Inspections.

At any time during normal business hours and as often as the City, DOE, or the Comptroller General of the United States may deem necessary, the Contractor shall make available to the City, DOE, or representatives of the Comptroller General for examination, all of the Contractor's records with respect to matters covered by this Agreement, and the City, DOE or representatives of the Comptroller shall be permitted to audit, examine and make excerpts or transcripts from such records and to make audits of all contracts, invoices, materials payable, records or personnel, and other data relative to all matters covered by this Agreement.

The City may request a certified audit of the funds received by the Contractor under this Agreement within sixty (60) days after the end of the agreement period, or from the termination authorized by this section, whichever comes first, and such certified audit must be completed within one-hundred and twenty (120) days of commencement. Such audit shall be performed by an auditor obtained by the Contractor, and after approval has been obtained from the Sustainability Manager. Such audit shall also be at the expense of the Contractor.

Sec 8. Program Income.

Any income earned or received by the Contractor as a direct result of an activity funded by this Agreement is considered program income. Program income can be expended by the Contractor on activities described in Attachment A, with prior approval from the Sustainability Manager. The Contractor shall report the expenditures of program income to Sustainability Manager during the month following in which the program incomes was generated.

Sec. 9. Insurance.

Contractor shall purchase and maintain insurance coverage for not less than the following:

Commercial Auto Liability, covering:

Symbol 1, all vehicles

Combined single limit of \$1,000,000

City of Durham must be named additional insured, and an original of the endorsement to effect the coverage must be attached to the certificate (if by blanket endorsement, then agent may so indicate in the AL section of the certificate, in lieu of an original endorsement)

Workers' Compensation Insurance, covering:

Statutory benefits;

Covering employees; covering owners partners, officers, and relatives (who work on this contract) (this must be stated on the certificate)

Employers' liability, \$1,000,000

Waiver of subrogation in favor of the City of Durham

Insurance shall be provided by companies authorized to do business in the State of North Carolina with Best rating of A-, VII or better.

Insurance shall be evidenced by a certificate providing notice to the City of not less than 30 days prior to cancellation or reduction of coverage. The insurance certificate and the additional

insured endorsement must be originals and must be approved by the City's Finance Director before Contractor can begin any work under this contract. Certificates shall be addressed to:
City of Durham, North Carolina
Attention: Finance Director
101 City Hall Plaza
Durham, NC 27701

Sec. 10. Performance of Work by City. If the Contractor fails to perform the Work in accordance with the schedule referred to in section 2 above, the City may, in its discretion, in order to bring the project closer to the schedule, perform or cause to be performed some or all of the Work, and doing so shall not waive any of the City's rights and remedies. Before doing so, the City shall give the Contractor notice of its intention. The Contractor shall reimburse the City for additional costs incurred by the City in exercising its right to perform or cause to be performed some or all of the Work pursuant to this section.

Section 11. Identification Of Documents.

All reports, maps and other documents created as a product of this Agreement, other than documents used in the administration of the Agreement, such as reports to the City, shall have placed thereon by the Contractor the following statement:

“The preparation of this document was financed in whole or part through funds from the City of Durham's Energy Efficiency and Conservation Block Grant Program. This grant was made available to the City of Durham under provisions of the American Recovery and Reinvestment Act of 2009”

Section 12. Reporting.

The Contractor shall submit monthly or quarterly reports to the City within seven (7) days following the closure of the month or quarter for which the activity is being reported. The appropriate reporting period and format for each Contractor's activities shall be established by the City in collaboration with the Contractor prior to execution of the Contractor's Agreement. The Contractor shall provide to the City any other information determined by the City to be necessary or appropriate for the proper monitoring of this Agreement. Delays by the Contractor in making any report to the City required by this Agreement may, at the City's sole discretion, result in delays in payment to the Contractor of part of all of the Contractor's request for funds. A delay in making a disbursement by the City to the Contractor does not change the time requirements of the Contractor to submit reports to the City.

The Contractor shall submit quarterly reports to the Federal Government within ten (10) days following the closure of the quarter for which the activity is being reported. Reports shall be submitted through www.FederalReporting.gov.

Section 13. Records to be maintained

The Contractor shall maintain all records required by the Federal regulations specified in 10 CFR part 600 and Pub.L. 111-5 that are pertinent to the activities to be funded under this agreement. These records shall be retained for a period of three years beginning at the time the Contractor receives notice in writing from the City that this project is complete. Such records shall include, but not be limited to:

- a. This agreement and any amendments;
- b. 10 CFR part 600 regulations;
- c. Records providing a full description of each activity undertaken;
- d. Records demonstrating that each activity undertaken meets one of the National Objectives of the EECBG program;

Section 14. Attachments. The following exhibits are made a part of this contract:
Attachment A – Scope of Work containing (1 page)
Attachment B – Schedule of Milestones (1 page)
Attachment C – Payment Rate Per Employee
Attachment D- Timeline for Completing Project
Attachment E – Special Provisions Relating To Work Funded Under American Recovery and Reinvestment Act Of 2009 (May 2009) (15 pages)
Attachment F – Policy to Promote Environmentally Sound Practices by City of Durham Vendors (3 pages)

In case of conflict between an attachment and the text of this contract excluding the attachment, the text of this contract shall control.

Section 15. Termination for Convenience (“TFC”). (a) *Procedure*. Without limiting any party’s right to terminate for breach, the City may, without cause, and in its discretion, terminate this contract for convenience by giving the Contractor written notice that refers to this section. TFC shall be effective at the time indicated in the notice. The City Manager may terminate under this section without City Council action. (b) *Obligations*. Upon TFC, all obligations that are still executory on both sides are discharged except that any right based on prior breach or performance survives, and the indemnification provisions and the section of this contract titled Trade Secrets and Confidentiality shall remain in force. At the time of TFC or as soon afterwards as is practical, the Contractor shall give the City all Work, including partly completed Work. In case of TFC, the Contractor shall follow the City’s instructions as to which subcontracts to terminate. (c) *Payment*. The City shall pay the Contractor an equitable amount for the costs and charges that accrue because of the City’s decisions with respect to the subcontracts, but excluding profit for the Contractor. Within 20 days after TFC, the City shall pay the Contractor a one hundred dollar TFC fee and for all Work performed except to the extent previously paid for. Work shall be paid for in accordance with the method (unit prices, hourly fees, etc.) to be used for payment had the Work been completed except to the extent it would be inequitable to either party, and if Work was to be paid for on a lump-sum basis, the City shall pay the part of the lump sum that reflects the percentage of completion attained for that Work. The Contractor shall not be entitled to any payment except as stated in this section because of TFC, whether on the basis of overhead, profit, damages, other economic loss, or otherwise.

Section 16. Notice. (a) All notices and other communications required or permitted by this contract shall be in writing and shall be given either by personal delivery, fax, or certified United States mail, return receipt requested, addressed as follows:

To the City:
Sustainability Manager
120 E. Parrish St.
1st Floor
Durham, NC 27701
The fax number is (919) 560-0740.

To the Contractor:
Executive Director
Clean Energy Durham
P.O. Box 2223
Durham, NC 27702-2223
The fax number is 877-817-6293.

(b) Change of Address. Date Notice Deemed Given. A change of address, fax number, or person to receive notice may be made by either party by notice given to the other party. Any notice or other communication under this contract shall be deemed given at the time of actual delivery, if it is personally delivered or sent by fax. If the notice or other communication is sent by United States mail, it shall be deemed given upon the third calendar day following the day on which such notice or other communication is deposited with the United States Postal Service or upon actual delivery, whichever first occurs.

Section 17. Trade Secrets and Confidentiality. The request for proposals section titled "Trade Secrets and Confidentiality" shall apply to any Trade Secrets disclosed to the City during the process leading to the parties' entering into this Contract (including all of the Contractor's responses to the RFP). This section shall remain in force despite termination of this contract (whether by expiration of the term or otherwise) and termination of the services of the Contractor under this contract. The word "Proposer" used in that section shall mean the "Contractor." Sec. 12. Indemnification. (a) To the maximum extent allowed by law, the Contractor shall defend, indemnify, and save harmless Indemnitees from and against all Charges that arise in any manner from, in connection with, or out of this contract as a result of acts or omissions of the Contractor or subcontractors or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable. In performing its duties under this subsection "a," the Contractor shall at its sole expense defend Indemnitees with legal counsel reasonably acceptable to City. (b) Definitions. As used in subsections "a" above and "c" below -- "Charges" means claims, judgments, costs, damages, losses, demands, liabilities, duties, obligations, fines, penalties, royalties, settlements, and expenses (included without limitation within "Charges" are (1) interest and reasonable attorneys' fees assessed as part of any such item, and (2) amounts for alleged violations of sedimentation pollution, erosion control, pollution, or other environmental laws, regulations, ordinances, rules, or orders -- including but not limited to any such alleged violation that arises out of the handling, transportation, deposit, or delivery of the items that are the subject of this contract). "Indemnitees" means City and its officers, officials, independent contractors, agents, and employees, excluding the Contractor (c) Other Provisions Separate. Nothing in this section shall affect any warranties in favor of the City that are otherwise provided in or arise out of this contract. This section is in addition to and shall be construed separately from any other indemnification provisions that may be in this contract. (d) Survival. This section shall remain in force despite termination of this contract (whether by expiration of the term or otherwise) and termination of the services of the Contractor under this contract. (e) Limitations of the Contractor's Obligation. If this section is in, or is in connection with, a contract relative to the design, planning, construction, alteration, repair or maintenance of a building, structure, highway, road, appurtenance or appliance, including moving, demolition and excavating connected therewith, then subsection "a" above shall not require the Contractor to indemnify or hold harmless Indemnitees against liability for damages arising out of bodily injury to persons or damage to property proximately caused by or resulting from the negligence, in whole or in part, of Indemnitees.

Section 18. Miscellaneous

(a) Choice of Law and Forum. This contract shall be deemed made in Durham County, North Carolina. This contract shall be governed by and construed in accordance with the law of North Carolina. The exclusive forum and venue for all actions arising out of this contract shall be the North Carolina General Court of Justice, in Durham County. Such actions shall neither be commenced in nor removed to federal court. This section shall not apply to subsequent actions to enforce a judgment entered in actions heard pursuant to this section.

(b) Waiver. No action or failure to act by the City shall constitute a waiver of any of its rights or remedies that arise out of this contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.

(c) Performance of Government Functions. Nothing contained in this contract shall be deemed or construed so as to in any way stop, limit, or impair the City from exercising or performing any regulatory, policing, legislative, governmental, or other powers or functions.

(d) Severability. If any provision of this contract shall be unenforceable, the remainder of this contract shall be enforceable to the extent permitted by law.

(e) Assignment, Successors and Assigns. Without the City's written consent, the Contractor shall not assign (which includes to delegate) any of its rights (including the right to payment) or duties that arise out of this contract. The City Manager may consent to an assignment without action by the City Council. Unless the City otherwise agrees in writing, the Contractor and all assignees shall be subject to all of the City's defenses and shall be liable for all of the Contractor's duties that arise out of this contract and all of the City's claims that arise out of this contract. Without granting the Contractor the right to assign, it is agreed that the duties of the Contractor that arise out of this contract shall be binding upon it and its heirs, personal representatives, successors, and assigns.

(f) Compliance with Law. In performing all of the Work, the Contractor shall comply with all applicable law.

(g) City Policy. THE CITY OPPOSES DISCRIMINATION ON THE BASIS OF RACE AND SEX AND URGES ALL OF ITS CONTRACTORS TO PROVIDE A FAIR OPPORTUNITY FOR MINORITIES AND WOMEN TO PARTICIPATE IN THEIR WORK FORCE AND AS SUBCONTRACTORS AND VENDORS UNDER CITY CONTRACTS.

(h) EEO Provisions. During the performance of this Contract the Contractor agrees as follows: (1) The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, political affiliation or belief, age, or handicap. The Contractor shall take affirmative action to insure that applicants are employed and that employees are treated equally during employment, without regard to race, color, religion, sex, national origin, political affiliation or belief, age, or handicap. Such action shall include but not be limited to the following: employment, upgrading, demotion, transfer, recruitment or advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The Contractor shall post in conspicuous places, available to employees and applicants for employment, notices setting forth these EEO provisions. (2) The Contractor shall in all solicitations or advertisement for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin, political affiliation or belief, age, or handicap. (3) The Contractor shall send a copy of the EEO provisions to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding. (4) In the event of the Contractor's noncompliance with these EEO provisions, the City may cancel, terminate, or suspend this contract, in whole or in part, and the City may declare the Contractor ineligible for further City contracts. (5) Unless exempted by the City Council of the City of Durham, the Contractor shall include these EEO provisions in every purchase order for goods to be used in performing this contract and in every subcontract related to this contract so that these EEO provisions will be binding upon such subcontractors and vendors.

(i) SDBE. The Contractor shall comply with all applicable provisions of Chapter 26 of the Durham City Code (Equal Business Opportunities Ordinance), as amended from time to time. The failure of the Contractor to comply with that chapter shall be a material breach of contract which may result in the rescission or termination of this contract and/or other appropriate remedies in accordance with the provisions of that chapter, this contract, and State law. The Participation Plan submitted in accordance with that chapter is binding on the Contractor. Section 26-10(f) of that chapter provides, in part, "If the City Manager determines that the Contractor has failed to comply with the provisions of the Contract, the City Manager shall notify the Contractor in writing of the deficiencies. The Contractor shall have 14 days, or such time as specified in the Contract, to cure the deficiencies or establish that there are no deficiencies." It is

stipulated and agreed that those two quoted sentences apply only to the Contractor's alleged violations of its obligations under Chapter 26 and not to the Contractor's alleged violations of other obligations.

(j) Prompt Payment to Subcontractors. Within 7 days of receipt by the Contractor of each payment from the City under this contract, the Contractor shall pay all subcontractors (which term includes subconsultants and suppliers) based on work completed or service provided under the subcontract. Should any payment to the subcontractor be delayed by more than 7 days after receipt of payment by the Contractor from the City under this contract, the Contractor shall pay the subcontractor interest, beginning on the 8th day, at the rate of 1% per month or fraction thereof on such unpaid balance as may be due. By appropriate litigation, Subcontractors shall have the right to enforce this subsection (a) directly against the Contractor, but not against the City of Durham. If the City's Project Manager determines that it is appropriate to enforce this subsection (a), the City of Durham may withhold the sums estimated by the Project Manager to be sufficient to pay this interest from progress or final payments to the Contractor. (b) Nothing in this section shall prevent the Contractor at the time of invoicing, application, and certification to the City from withholding invoicing, application, and certification to the City for payment to the subcontractor for unsatisfactory job progress; defective goods, services, or construction not remedied; disputed work; third-party claims filed or reasonable evidence that such a claim will be filed; failure of the subcontractor to make timely payments for labor, equipment, and materials; damage to the Contractor or another subcontractor; reasonable evidence that the subcontract cannot be completed for the unpaid balance of the subcontract sum; or a reasonable amount for retainage not to exceed 10%. (c) The City's Project Manager may require, as a prerequisite to making progress or final payments, that the Contractor provide statements from any subcontractors designated by the Project Manager regarding the status of their accounts with the Contractor. The statements shall be in such format as the Project Manager reasonably requires, including notarization if so specified.

(k) No Third Party Rights Created. This contract is intended for the benefit of the City and the Contractor and not any other person.

(l) Principles of Interpretation and Definitions. In this contract, unless the context requires otherwise: (1) The singular includes the plural and the plural the singular. The pronouns "it" and "its" include the masculine and feminine. References to statutes or regulations include all statutory or regulatory provisions consolidating, amending, or replacing the statute or regulation. References to contracts and agreements shall be deemed to include all amendments to them. The words "include," "including," etc. mean include, including, etc. without limitation. (2) References to a "Section" or "section" shall mean a section of this contract. (3) "Contract" and "Agreement," whether or not capitalized, refer to this instrument. (4) Titles of sections, paragraphs, and articles are for convenience only, and shall not be construed to affect the meaning of this contract. (5) "Duties" includes obligations. (6) The word "person" includes natural persons, firms, companies, associations, partnerships, trusts, corporations, governmental agencies and units, and other legal entities. (7) The word "shall" is mandatory. (8) The word "day" means calendar day.

(m) Modifications. Entire Agreement. A modification of this contract is not valid unless signed by both parties and otherwise in accordance with requirements of law. Further, a modification is not enforceable against the City unless the City Manager or a deputy or assistant City Manager signs it for the City. This contract contains the entire agreement between the parties pertaining to the subject matter of this contract. With respect to that subject matter, there are no promises, agreements, conditions, inducements, warranties, or understandings, written or oral, expressed or implied, between the parties, other than as set forth or referenced in this contract.

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the date first written above.

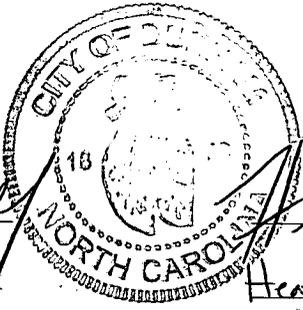
CITY OF DURHAM

By: Thomas J. Bonfield (SEAL)
Thomas J. Bonfield City Manager

By: Judith E. Kincaid
Judith E. Kincaid Executive Director

ATTEST:

D Ann Gray
City Clerk



ATTEST:

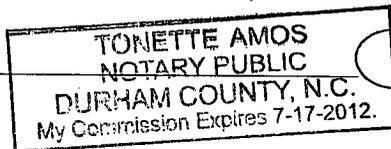
Heather K. Hosterman
Secretary

(Please affix corporate seal.)

NORTH CAROLINA
DURHAM COUNTY

I, Tonette Amos, a Notary Public for the County and State aforesaid, do hereby certify that D Ann Gray personally appeared before me this day and acknowledged that she is City Clerk for the City of Durham, and that by authority duly given, the foregoing agreement was signed in its name by its City Manager, sealed with its corporate seal and attested by her as its City Clerk. Witness my hand and official seal, this 9th day of Dec, 20 09.

My commission expires:



Tonette Amos
Notary Public

STATE OF North Carolina
Durham COUNTY

I, Joycelyn L. Dennis, a Notary Public for the County and state aforesaid, do hereby certify that Heather Hosterman personally appeared before me this day and acknowledged that he/she is the _____ Secretary of Clean Energy Durham, a non-profit corporation, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its _____ Executive Director, sealed with its corporate seal and attested by him/her as its

Secretary. Witness my hand and official seal this 30th day of November, 2009.

My commission expires: May 14, 2011

[Signature]
Notary Public

[Faint, illegible text]

[Faint, illegible text]

This instrument has been preaudited in the manner required by the Local Government Budget and Fiscal Control Act.

[Signature] 12-2-09
FINANCE OFFICER DATE

Attachment A Scope of Work

Contractor shall provide project development and management services to develop, implement, and manage a neighborhood-based residential energy efficiency retrofit program.

The consultant/contractor will:

- Develop and implement at least 4 two-hour trainings for neighborhood volunteers, resulting in a core group of no fewer than 20 neighborhood volunteers who are competent in effective door-to-door outreach, energy-efficiency education, and implementing simple weatherization projects.
- Organize and hold at least 7 neighborhood meetings to introduce the program, answer questions, and assist with planning logistics.
- Develop at least 6 different program-related outreach and educational pieces, including, but not limited to, promotional flyers, educational brochures, factsheets, pre- and post- program participation surveys, and energy-efficiency technology demonstration models.
- Develop and implement a process for overseeing neighborhood volunteer outreach efforts including, but not limited to, scheduling, troubleshooting, and monitoring.
- Enroll no fewer than 350 homes in the program.
- Create and maintain a database of program participants.
- Coordinate at least 350 household participant schedules with contractors and inspectors.
- Run at least 5 do-it-yourself, hands-on residential energy efficiency workshops.
- Contact at least 2 materials suppliers to discuss bulk discounts.
- Gather and analyze energy bill data and household data provided by Duke Energy and PSNC from at least 325 homes. The data will cover at least 1 year prior and 2 years after the retrofits are completed, or through the end of the contract period, whichever is first.
- Develop, gather, and analyze pre- and post-project evaluation forms from at least 250 participants.
- Coordinate project activities with activities of Operation Breakthrough and other City and non-profit agencies conducting similar work.
- Assist the City in developing a neighborhood and household recognition program.
- Fulfill all necessary Federal, State, and City reporting requirements in a timely manner.

Attachment B Schedule of Milestones

December 31, 2009

- [a] Final promotional materials, survey and factsheets submitted to City
- [b] Report on recognition program submitted to City

March 31, 2010

- [c] All neighborhood informational meetings complete
- [d] Report on efforts to secure materials discounts submitted to City
- [e] Volunteer training and evaluation on door to door outreach completed
- [f] Demonstration model complete

April 30, 2010

- [g] Volunteer training on do-it-yourself workshops complete.

June 30, 2010

- [h] Door-to-door outreach and household recruitment complete

September 30, 2010

- [i] Excel database listing participating households, contacts, addresses, and utility account information complete

December 31, 2010

- [j] Do-it-yourself workshops complete
- [k] Pre-retrofit surveys complete

January 31, 2011

- [l] Pre-retrofit energy bill data organization and analysis complete

July 31, 2011

- [m] Post retrofit surveys complete

March 31, 2012

- [n] Neighborhood activity update report for the period August 2011-February 2012 submitted to the City

July 31, 2012

- [o] Neighborhood activity update report for the period March 2012-June 2012 submitted to the City

July 24, 2012

- [p] Submit final participant excel data base, energy data database and analysis, analysis of pre- and post- surveys, and final report

On-going throughout the Project

- [q] Federal reports **January 5, 2010; April 5, 2010; July 5, 2010; October 5, 2010; January 5, 2011; April 5, 2011; July 5, 2011; October 5, 2011; January 5, 2012; April 5, 2012; July 5, 2012; or as required by Federal agencies.**

Attachment C
Rate Schedule per Employee

<u>Position</u>	<u>Hourly Rate</u>
Program Manager	\$24.04
Senior Advisor	\$24.04
Systems Manager	\$24.04
Energy Trainer	\$21.63
Volunteer Coordinator	\$19.23

Reimbursable expenses

Supplies

Printing

Mileage within the City of Durham at a rate consistent with the City's rate of travel reimbursement

Attachment D
Timeline for Completing Project

Attachment E

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.

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. L. 111-5, www.Recovery.gov, for specific requirements of this section and prescribed language for the notices.).

G. Reserved

H. False Claims Act

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

I. Information in Support of Recovery Act Reporting

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

J. Availability of Funds

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

1. 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.

2. 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.

3. 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.

4. REQUIRED USE OF AMERICAN IRON, STEEL, AND MANUFACTURED GOODS (COVERED UNDER INTERNATIONAL AGREEMENTS) – SECTION 1605 OF THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009

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

Designated country — (1) A World Trade Organization Government Procurement Agreement country (Aruba, Austria, Belgium, Bulgaria, Canada, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea (Republic of), Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland,

Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, and United Kingdom;

(2) A Free Trade Agreement (FTA) country (Australia, Bahrain, Canada, Chile, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Israel, Mexico, Morocco, Nicaragua, Oman, Peru, or Singapore); or

(3) A United States-European Communities Exchange of Letters (May 15, 1995) country: Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovak Republic, Slovenia, Spain, Sweden, and United Kingdom.

Designated country iron, steel, and/or manufactured goods — (1) Is wholly the growth, product, or manufacture of a designated country; or

(2) In the case of a manufactured good that consist in whole or in part of materials from another country, has been substantially transformed in a designated country into a new and different manufactured good distinct from the materials from which it was transformed.

Domestic iron, steel, and/or manufactured good — (1) Is wholly the growth, product, or manufacture of the United States; or

(2) In the case of a manufactured good that consists in whole or in part of materials from another country, has been substantially transformed in the United States into a new and different manufactured good distinct from the materials from which it was transformed. There is no requirement with regard to the origin of components or subcomponents in manufactured goods or products, as long as the manufacture of the goods occurs in the United States.

Foreign iron, steel, and/or manufactured good means iron, steel and/or manufactured good that is not domestic or designated country iron, steel, and/or manufactured good.

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

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

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

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

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

(b) *Iron, steel, and manufactured goods.* (1) The award term and condition described in this section implements—

(i) Section 1605(a) of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111–5) (Recovery Act), by requiring that all iron, steel, and manufactured goods used in the project are produced in the United States; and

(ii) Section 1605(d), which requires application of the Buy American requirement in a manner consistent with U.S. obligations under international agreements. The restrictions of section 1605 of the Recovery Act do not apply to designated country iron, steel, and/or manufactured goods. The Buy American requirement in section 1605 shall not be applied where the iron, steel or manufactured goods used in the project are from a Party to an international agreement that obligates the recipient to treat the goods and services of that Party the same as domestic goods and services. This obligation shall only apply to projects with an estimated value of \$7,443,000 or more.

(2) The recipient shall use only domestic or designated country iron, steel, and manufactured goods in performing the work funded in whole or part with this award, except as provided in paragraphs (b)(3) and (b)(4) of this section.

(3) The requirement in paragraph (b)(2) of this section does not apply to the iron, steel, and manufactured goods listed by the Federal Government as follows:

To Be Determined

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

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

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

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

(c) *Request for determination of inapplicability of section 1605 of the Recovery Act or the Buy American Act.* (1)(i) Any recipient request to use foreign iron, steel, and/or manufactured goods in accordance with paragraph (b)(4) of this section shall include adequate information for Federal Government evaluation of the request, including—

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

(B) Unit of measure;

(C) Quantity;

(D) Cost;

(E) Time of delivery or availability;

(F) Location of the project;

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

(H) A detailed justification of the reason for use of foreign iron, steel, and/or manufactured goods cited in accordance with paragraph (b)(4) of this section.

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

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

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

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

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

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

Foreign and Domestic Items Cost Comparison

Description	Unit of measure	Quantity	Cost (dollars)*
<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.

5. 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.

6. 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.

7. DAVIS-BACON ACT REQUIREMENTS

Note: Where necessary to make the context of these articles applicable to this award, the term "Contractor" shall mean "Recipient" and the term "Subcontractor" shall mean "Subrecipient or Subcontractor" per the following definitions.

Recipient means the organization, individual, or other entity that receives an award from DOE and is financially accountable for the use of any DOE funds or property provided for the performance of the project, and is legally responsible for carrying out the terms and conditions of the award.

Subrecipient means the legal entity to which a subaward is made and which is accountable to the recipient for the use of the funds provided. The term may include foreign or international organizations (such as agencies of the United Nations).

Davis-Bacon Act

(a) Definition.--"Site of the work"--

(1) Means--

(i) The primary site of the work. The physical place or places where the construction called for in the award will remain when work on it is completed; and

(ii) The secondary site of the work, if any. Any other site where a significant portion of the building or work is constructed, provided that such site is--

(A) Located in the United States; and

(B) Established specifically for the performance of the award or project;

(2) Except as provided in paragraph (3) of this definition, includes any fabrication plants, mobile factories, batch plants, borrow pits, job headquarters, tool yards, etc., provided--

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

(ii) They are adjacent or virtually adjacent to the "primary site of the work" as defined in paragraph (a)(1)(i), or the "secondary site of the work" as defined in paragraph (a)(1)(ii) of this definition;

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

(b) (1) All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, or as may be incorporated for a secondary site of the work, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics. Any wage determination incorporated for a secondary site of the work shall be effective from the first day on which work under the award was performed at that site and shall be incorporated without any adjustment in award price or estimated cost. Laborers employed by the construction Contractor or construction subcontractor that are transporting portions of the building or work between the secondary site of the work and the primary site of the work shall be paid in accordance with the wage determination applicable to the primary site of the work.

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

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

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

(c) (1) The Contracting Officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the award shall be classified in conformance with the wage determination. The Contracting Officer shall approve an additional classification and wage rate and fringe benefits therefore only when all the following criteria have been met:

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

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

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

(2) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives and the Contracting Officer agree on the classification and wage rate (including the amount designated for fringe benefits, where appropriate), a report of the action taken shall be sent by the Contracting Officer to the Administrator of the:

Wage and Hour Division
Employment Standards Administration
U.S. Department of Labor
Washington, DC 20210

The Administrator or an authorized representative will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.

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

(4) The wage rate (including fringe benefits, where appropriate) determined pursuant to

subparagraphs (c)(2) and (c)(3) of this article shall be paid to all workers performing work in the classification under this award from the first day on which work is performed in the classification.

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

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

Rates of Wages - Prior Approval for Proceeding with Davis-Bacon Construction Activities

If the Recipient determines at any time that any construction, alteration, or repair activity as defined by 29 CFR 5.2(j) (<http://cfr.vlex.com/vid/5-2-definitions-19681309>) will be performed during the course of the project, the Recipient shall request approval from the Contracting Officer prior to commencing such work. If the Contracting Officer concurs with the Recipient's determination, the Recipient must receive Contracting Officer approval to proceed with such activity, and must comply with all applicable Davis-Bacon requirements, prior to commencing such work. A modification to the award which incorporates the appropriate Davis-Bacon wage rate determination(s) will constitute the Contracting Officer's approval to proceed. If the Contracting Officer does not concur with the Recipient's determination, the Contracting Officer will so notify the Recipient in writing.

Attachment F
Policy to Promote Environmentally Sound Practices by
City of Durham Vendors

In case of any conflict between this policy and a contract, the contract shall control.

I. DEFINITIONS

1. Vendor - includes contractors to the City and suppliers to the City.
2. City - the City of Durham.
3. Environmentally Responsible Products - products that are acknowledged to have minimal impact on the environment. Such products should reduce environmental impact through their composition and/or recyclability or by reduction in quantity and toxicity of waste products, energy use or water consumption.
4. Recycled – Refers to products made with an identifiable percentage (1% - 100%) of post consumer material content or of discarded virgin materials salvaged from the industrial waste stream. High-content recycled products contain a minimum of 50% of post consumer material.
5. Non-Toxic Product(s) - Any item that is not considered hazardous waste and that does not otherwise pose a threat to short or long-term human health during its use.
6. Energy-Efficient – Refers to products that meet the US Environmental Protection Agency's Energy Star qualifications or US Department of Energy's Federal Energy Management Program (FEMP) and vehicles that meet the US Environmental Protection Agency's SmartWay qualifications.
7. Life-Cycle Cost – The total cost of a product including procurement, use, maintenance, and disposal.

II. IN GENERAL

The City urges vendors to give preference to environmentally friendly products whose quality, function, and cost are equal or superior to more traditional products in performing under their contracts with the City. The City urges vendors to:

- a) conserve natural resources
- b) minimize pollution
- c) reduce the use of water and energy
- d) eliminate or reduce environmental health hazards to workers and our community
- e) support strong recycling markets
- f) reduce materials that will be landfilled
- g) increase the use and availability of environmentally preferable products
- h) reduce adverse environmental impacts in their production and distribution systems and services
- i) support locally produced goods and services

It is not the intent of this policy to require a vendor to: take any action that conflicts with local, state or federal requirements; procure products that do not perform adequately for their intended use; or pursue products not available at a reasonable price in a reasonable period of time.

Vendors are urged to reduce the amount and toxicity of solid waste they generate, recycle materials recoverable from their operations, and maximize the procurement of recycled, energy efficient, and non-toxic products.

III. PURCHASING

Vendors are urged to make every reasonable effort to reduce the impact of purchased products and to purchase environmentally responsible products.

1. Vendors are urged to purchase products that are made with recycled, non-toxic, and/or recyclable materials and that minimize environmentally harmful processes and products in their production, as long as those items meet or exceed specifications and required quality levels set forth by the City, and meet cost guidelines laid out in this policy. Special emphasis should be given to products and materials made from post-consumer recycled materials.
2. Strong consideration should be given to durable items, items having minimal packaging, and items that are readily recycled when discarded.
3. Vendors are urged to make every reasonable effort to procure chemicals and products that have low toxicity or are non-toxic, except for water treatment purposes. Products with the following attributes should be favored:
 - a) Have the fewest adverse health effects such as skin, eye, nose, throat, and lung irritation from toxic compounds.
 - b) Contain the fewest chemicals that can enter the food chain to be consumed by aquatic plants and animals.
 - c) Contain the fewest volatile organic compounds (VOC's) that can escape during product use.
 - d) Avoid unnecessary additives such as fragrances and dyes.
 - e) Reduce product packaging and use recovered/recoverable materials when packaging is necessary.
4. Vendors are urged to purchase and use rechargeable batteries where applicable.
5. Vendors are urged to purchase and use recycled paper (minimum 20% post-consumer recycled content) for all documents whenever possible. Vendors are urged to use recycled paper whose packaging shows the recycling symbol.
6. Vendors are urged to make 100% post consumer recycled paper the goal, depending on availability and quality.
7. Vendors are urged to switch to business cards printed on recycled card stock and that display the recycling symbol.
8. Vendors should use up their existing supplies of products that do not conform to this policy instead of discarding them. However, consideration should be given to safely disposing of or recycling products that do not meet this policy's standards with respect to products that are discouraged because of the product's direct effect on humans or the environment, such as because of toxicity, VOC's, etc.

IV. ENERGY EFFICIENCY

Vendors are urged to see that new and replacement equipment for lighting, heating, ventilation, refrigeration and air conditioning systems, water consuming fixtures and process equipment and all such components meets or exceeds Federal Energy Management Program (FEMP) recommended levels, whenever practicable.

1. Vendors are urged to see that all products provided to the City of Durham and for which the U.S. EPA Energy Star certification is available meet Energy Star certification. See www.energystar.gov. When Energy Star labels are not available, vendors are urged to see that products meet or exceed the FEMP recommended levels. See www1.eere.energy.gov/femp/procurement/eep_requirements.html

2. Vendors are urged to purchase solar thermal or on-demand water heaters whenever practicable. Where renewable forms of energy are unavailable or not practicable, vendors are urged to use natural gas in lieu of electricity for water heating.

V. COST

Generally, for non-paper products, if the life-cycle cost of the environmentally responsible product does not exceed the cost of the alternative by more than 10%, and the product meets all necessary specifications, vendors are urged to purchase the environmentally responsible product. Vendors are urged to purchase recycled paper whenever possible, regardless of incremental cost.

VI. CONTRACTORS

Vendors providing written materials to the City are urged to do so using both sides of the paper and on recycled paper meeting minimum standards of the US EPA Guidelines and labeled as such. In addition, the use of binders, plastic covers, and other items that impede the recycling process are especially discouraged.

Policy as of 5-26-2009