



CITY OF
Tulsa
A New Kind of Energy™

CITY OF TULSA
OFFICE OF SUSTAINABILITY

REQUEST FOR PROPOSAL (RFP)
#10-440

***SUSTAINABILITY PLAN DEVELOPMENT
CONSULTING
SERVICES***

Submit proposals to:
Office of the City Clerk
City of Tulsa
175 E. 2ND St.
Suite 260
Tulsa, OK 74103

I. STATEMENT OF PURPOSE:

With this Request for Proposal (RFP), the City of Tulsa ("City") is seeking proposals from qualified consulting teams with expertise in all phases and aspects of sustainability planning to assist the City with the development of a comprehensive, long term sustainability plan. The plan should focus on publicly owned and/or operated facilities and properties, as well as municipal processes, projects and procedures. The purpose of the plan is to identify opportunities for the City to save money and resources, reduce our environmental impact, improve air quality, promote a green economy, provide sustainability education and outreach to citizens and businesses, guide decision and policy making, and help Tulsa become a regional leader in sustainable government. The plan should identify essential elements of sustainability and provide analysis and guidelines for activities that address these elements. Measurable sustainability indicators and planning principles should be included for key areas of City government and the community such as:

- Energy, renewable energy and energy efficiency
- Greenhouse gas emissions
- Fleets and fuel
- Transportation
- Land use and natural resource stewardship
- Community and economic development
- Education and outreach
- Purchasing and procurement
- Air quality
- Walkable communities
- Housing
- Green building codes and ordinances
- Performance contracting
- Infrastructure
- Community Awareness

These services shall be provided by a consultant that exhibits expertise in sustainable practices, planning, and best management principles; energy, energy efficiency, renewable energy; and sustainable design. The consultant must also have experience with federal grant programs, specifically the Energy Efficiency Conservation Block Grant (EECBG) program and others under the American Recovery and Reinvestment Act (ARRA).

II. BACKGROUND:

The City has received funding from the U.S Department of Energy as part of the Energy Efficiency Conservation Block Grant (EECBG) program for several activities, and has identified the development of a comprehensive, long term sustainability plan as one of these activities. This project will be funded using EECBG funds. The objectives of this project include:

- Develop well defined and measurable sustainability goals for the City along with potential implementation strategies
- Reduce costs, energy and resource consumption, and environmental impacts of City processes
- Identify opportunities to leverage fiscal and non-fiscal resources to support the City's sustainability objectives
- Identify and coordinate existing organizational sustainability efforts and build on these efforts
- Promote the development and use of renewable energy technologies
- Promote community wide support of the City's sustainability objectives by developing partnerships with local governments, businesses, individuals, foundations and sustainability groups
- Develop internal and external education and outreach plans for communicating the City's sustainability goals and objectives

The Sustainability Plan should outline methods to assist the City in reaching the following goals:

- Reduce City-wide energy consumption by at least 25% below current levels by December 2012
- Reduce GHG emissions by 15% below current levels by December 2012
- Obtain 10% of energy from renewable sources by December 2012
- Develop a plan to increase alternative fuel vehicles (specifically CNG, where applicable) to 20% of the total City fleet by December 2012

The City is seeking to develop a sustainability plan that serves as an overarching document to be used as a tool when making decisions and setting policy. It should be a living document that continually guides the City toward our sustainability objectives, and should reflect the creativity, resourcefulness and progressiveness of Tulsa. The City has recently adopted a new comprehensive plan known as PLANiTULSA. Therefore, the sustainability plan should not resemble a comprehensive plan, but should complement it, and integrate its goals and objectives. As the plan is developed, each section will be submitted to the City for review and approval.

III. INSTRUCTIONS FOR SUBMITTING A PROPOSAL:

A. General Requirements

1. The sealed proposal must be received by **November 17, 2010, 5:00 pm.** Please place proposals in an envelope or box clearly labeled "RFP #10-440 Sustainability Plan Development Consulting Services".
2. Proposals must be sent to:

**Office of the City Clerk
City of Tulsa
175 E. 2nd St.
Suite 260
Tulsa, OK 74103**

3. All interested Respondents are required to register with the Office of Sustainability, **Brett Fidler**, in order to receive updates, addenda or any additional information required. The City is not responsible for any failure to register.
4. Inquiries to the City requesting clarification regarding the Request for Proposal or the content therein must be made via e-mail and must be received prior to the end of the business day on **November 2, 2010**.

Brett Fidler, Director of Sustainability, City of Tulsa
brettfidler@cityoftulsa.org

Any questions regarding this RFP will be handled as promptly and as directly as possible. If a question requires only clarification of instructions or specifications, it will be handled via e-mail. If any question results in a material change or addition to the RFP the changes or additions will be forwarded to all registered Respondents as quickly as possible by addendum.

5. Respondents shall designate a contact person, with appropriate contact information, to address any questions concerning their proposal. The Respondents shall also state the name and title of individuals who will make final decisions regarding contractual commitments and have legal authority to execute the contract on the Respondent's behalf.

B. General Notifications

1. The City of Tulsa notifies all possible respondents that no person shall be excluded from participation in, denied any benefits of, or otherwise discriminated against in connection with the award and performance of any contract on the basis of race, religious creed, color, national origin, ancestry, physical disability, sex, age, ethnicity, or on any other basis prohibited by law.
2. All responding entities shall comply with the Americans with Disabilities Act (ADA) and all proposals and a subsequent contract, if any, shall include the following statement:

“The Respondent shall take the necessary actions to ensure its facilities are in compliance with the requirements of the Americans with Disabilities Act. It is understood that the program of the Respondent is not a program or activity of the City of Tulsa. The Respondent agrees that its program or activity will comply with the requirements of the ADA. Any costs of such compliance will be the responsibility of the Respondent. Under no circumstances will the Respondent conduct any activity which it deems to not be in compliance with the ADA.”

3. The City of Tulsa also notifies all Respondents that the City has the right to modify the proposal and final selection of work product requirements as needed.
4. Although it is the City's intent to choose only the most qualified Respondents to interview, the City reserves the right to choose any number of qualified finalists for interview and/or final selection.
5. This Request for Proposal does not commit the City of Tulsa to pay any costs incurred in the submission of a proposal or the costs incurred in making necessary studies and designs for preparation thereof, or contract for service or supplies.

IV. SCOPE OF WORK:

A. REQUIRED SERVICES

The successful consultant will work with City staff to provide the following services:

1. Compile existing baseline data for and provide reports on:
 - (a) Energy use by type and location
 - (b) Fuel consumption by type and location
 - (c) Water consumption by location
 - (d) Natural gas consumption by location
 - (e) Other baseline data as required by the City
2. Help the City develop an internal sustainability team to ensure continued review and implementation of the plan
3. Compile a list and provide a report on all current sustainability initiatives being undertaken by City departments
4. Perform a renewable energy feasibility assessment on selected City facilities to identify opportunities for application
5. Develop and provide a comprehensive greenhouse gas emissions inventory
6. Recommend software to track sustainability-related data, cost & energy savings, etc.
7. Review and report on codes and ordinances that may advance or hinder Tulsa's sustainability objectives, and provide examples that encourage and allow alternative energy development and use within City limits
8. Develop a plan to increase employee use of alternative transportation building on existing plans and programs
9. Develop a plan to increase sustainable economic development building on existing plans and programs
10. Work with City staff to develop a sustainability education and outreach program designed for employees, citizens, businesses and elected officials
11. Provide regular updates as requested
12. Provide to the City a comprehensive sustainability plan including a compilation of sustainability best management practices, programs and potential implementation strategies and mechanisms, both traditional and innovative, specifically tailored to Tulsa. The plan should address the

following items:

- a) Energy, renewable energy and energy efficiency
- b) Greenhouse gas emissions
- c) Built environment
- d) Fleets and fuel
- e) Solid waste and recycling
- f) Transportation
- g) Land use and natural resource stewardship
- h) Economic development
- i) Education and outreach
- j) Purchasing and procurement
- k) Air quality
- l) Walkable communities
- m) Housing
- n) Green building
- o) Codes and ordinances
- p) Performance contracting
- q) Infrastructure
- r) Urban design
- s) Public health/nutrition
- t) Long term goals

13. Provide other services related to sustainability planning as identified by the City

To help facilitate the development of the sustainability plan, the City will provide access to or copies of relevant information with respect to energy bills and resource usage data; current ordinances, plans and data; participate in and provide guidance in regularly scheduled meetings; review and provide comment on draft deliverables in a timely manner; aid in efforts to secure stakeholder input and support; other services required to complete the project, as identified by the City.

B. ADDITIONAL SERVICES – ON REQUEST

- 1. Identify potential additional funding for sustainability activities and help develop and submit funding applications
- 2. Make recommendations for the future structure of the City of Tulsa Office of Sustainability

V. FIRM AND PROPOSAL REQUIREMENTS:

To be considered, interested firms should submit or address the following:

- A.** One (1) original and six (6) copies of the proposal, including all exhibits, pertinent work samples and reference materials required by the Request for Proposals. All submitted material should also be sent in electronic format via CD or flash drive.

- B.** Proposal is to be submitted in four (4) parts in the order listed and should use the following headings for section titles:

1. Letter of Transmittal shall include:

- Name, title, address, e-mail address, and phone number of the person submitting the proposal.
- Name, title, address, e-mail address, and phone number of the individual authorized to commit the responding firm to a contract for these services.
- Exact legal name of responding firm's company, type of entity (Corporation, LLC, LP, etc.), and state in which entity is organized.
- Dun & Bradstreet (DUNS) number and Central Contractor Registration (CCR) number as required under the American Recovery and Reinvestment Act (ARRA).
- Name, address, e-mail address, and phone number of three (3) applicable references for which responding firm has provided a similar scope of services. Include details on services provided to each reference, the length of service, and current status of any related contracts.

2. Technical Response shall include:

- An Executive Summary describing significant features of the proposal including technical strategies anticipated and the Respondent's relevant experience.
- A Work plan providing a detailed description of how the Respondent intends to achieve the "Scope of Work", including major steps in the process, key personnel to be involved, and methodology for measuring results. This section should also indicate expectations for City of Tulsa resources, if any, to be committed to the effort.
- A description of any relevant litigation in which the Respondent is currently, or has been previously, involved.
- A Qualifying Statement demonstrating the Respondent's qualifications including: a description in the form of a detailed resume of all persons that will be involved in the project; and a statement of the relevant experience of the Respondent including contact names and addresses where similar services have been performed indicating why the Respondent(s) are qualified to undertake this project.

3. Financial Supplement using the price sheet included within this RFP shall include:

- A breakdown of all costs necessary to perform the scope of work. Include a Total Monthly Charge for required services, and hourly rates for additional services.

4. Certifications

- Certification Regarding Lobbying for Contracts, Grants, Loans, and Cooperative Agreements
 - Certification Regarding Debarment, Suspension, and Other Responsibility Matters
 - Certification Regarding Drug Workplace Requirements
- C.** Each page of the proposal shall be numbered consecutively from the beginning of the proposal through and including any appended material and exhibits. Font should be 11 pt. Times New Roman or Arial with 1" margins. The body of the proposal should not exceed 12 pages, excluding appended material.
- D.** At the discretion of the City, one or more Respondents may be invited to be interviewed for purposes of clarification or discussion of the proposal.
- E.** Any expenses incurred by the Respondent(s) in appearing for an interview or in any way in providing additional information as part of the response to this Request for Proposals are solely the responsibility of the Respondent. The City of Tulsa is not liable for any costs incurred by Respondents in the preparation of proposals or any work performed by the Respondent prior to the approval of an executed contract by the City of Tulsa.

VII. EVALUATION OF PROPOSALS:

A review panel consisting of representatives of the Office of Sustainability, Mayor's Office, Public Works Department, Department of Grants Administration and the City Purchasing Agent will evaluate proposals. Selection shall be determined to be in the best interest of the City as evaluated by the City of Tulsa. The approval of the selected firm will be subject to the final determination of the City and commencement of services will be contingent on the successful completion of a contract between the City and the successful Respondent. Final selection will be made by the Mayor of the City of Tulsa.

VIII. AWARD OF PROPOSAL:

The City shall evaluate proposals based on those criteria identified in the Mayor's Executive Order No. 90-08 as factors to be considered in the review of proposals including:

- A.** Professional qualifications, specialized experienced and technical competence of the personnel assigned with respect to the types of service required;
- B.** Capacity and capability of the firm with respect to such factors as cost control, quality of work and ability to meet deadlines;
- C.** Record of past performance with the City and other jurisdiction; (please provide references).

- D. Proximity to and familiarity with the area of service;
- E. Qualifications and experience of the managing professional and key staff professionals selected for the project;
- F. Experience of the professional and technical staff with respect to the magnitude of the assignment;
- G. Financial standing.

Criteria will be evaluated and each respondent will be given a numeric score based on the following values:

Qualifications, Experience, Competence	20
Capability, Quality of Work, Capacity	20
References & Record of Past Performance	5
Quality of Proposal Submitted	5
Approach to Statement of Work	20
Proximity to & Familiarity with Area of Service	10
Cost	20
TOTALS	100

IX. MISCELLANEOUS

- A. Your response to this RFP and any subsequent correspondence related to this proposal process will be considered part of the contract, if one is awarded to you.
- B. The use of the City of Tulsa's name in any way as a potential customer is strictly prohibited except as authorized in writing by the City of Tulsa.
- C. Your proposal must clearly indicate the name of the responding organization, including the firm's e-mail address and web site information, if applicable, as well as the name, address, telephone number and e-mail address of the organization's primary contact for this proposal. Your proposal must include the name, address, telephone number and e-mail address of the consultant and/or team of consultants to be assigned to the City account.
- D. The City assumes no responsibility or liability for any costs you may incur in responding to this RFP, including attending meetings or contract negotiations.
- E. The City is bound to comply with Oklahoma's Open Records Act, and information submitted with your proposal, with few exceptions, is a matter of public record. For specifics, see the provisions of the City of Tulsa Open Records Policy, available via the following link:

www.cityoftulsa.org/OurCity/documents/OpenRecordsActPolicy.pdf

- F.** The City expects to enter into a written Agreement (the “Agreement”) with the chosen vendor that shall incorporate this RFP and your proposal. In addition to any terms and conditions included in this RFP, and all applicable requirements set forth in the City’s EECBG grant award issued by the Department of Energy, including provisions required by the American Recovery and Reinvestment Act, the City may include in the Agreement other terms and conditions as deemed necessary.
- G.** Responding firm will be bound to comply with the provisions set forth herein.
- H.** City will not be obligated to return any Proposal materials submitted.

NON-COLLUSION AFFIDAVIT

(Required by Oklahoma law, 74 O.S. §85.22-85.25)

STATE OF _____)

COUNTY OF _____)

I, _____, of lawful age, being first duly sworn, state that:

(Seller's Authorized Agent)

1. I am the authorized agent of Seller herein for the purposes of certifying facts pertaining to the existence of collusion between and among Respondents and municipal officials or employees, as well as facts pertaining to the giving or offering of things of value to government personnel in return for special consideration in the letting of any contract pursuant to the bid to which this statement is attached.
2. I am fully aware of the facts and circumstances surrounding the making of Seller's Bid to which this statement is attached, and I have been personally and directly involved in the proceedings leading to the submission of such bid; and
3. Neither the Seller nor anyone subject to the Seller's direction or control has been a party:
 - a. to any collusion among Respondents in restraint of freedom of competition by agreement to bid at a fixed price or to refrain from bidding,
 - b. to any collusion with any municipal official or employee as to quantity, quality, or price in the prospective contract, or as to any other terms of such prospective contract, nor
 - c. in any discussions between Respondents and any municipal official concerning exchange of money or other thing of value for special consideration in the letting of a contract.

By: _____

Signature

Title: _____

Subscribed and sworn to before me this _____ day of _____, 20____.

Notary Public

My Commission Expires: _____

Notary Commission Number: _____

The Affidavit must be signed by an authorized agent and notarized

AFFIDAVIT OF CLAIMANT

STATE OF _____)
)ss.
COUNTY OF _____)

The undersigned person, of lawful age, being first duly sworn on oath, says that all invoices to be submitted pursuant to this agreement with the City of Tulsa will be true and correct. Affiant further states that the work, services or material furnished will be completed or supplied in accordance with the plans, specifications, orders, requests or contract furnished or executed by the affiant. Affiant further states that (s)he has made no payment directly or indirectly to any elected official, officer or employee of the City of Tulsa or of any public trust where the City of Tulsa is a beneficiary, of money or any other thing of value to obtain payment of the invoice or procure the contract or purchase order pursuant to which an invoice is submitted. Affiant further certifies that (s)he has complied with all applicable laws regarding equal employment opportunity.

Company: _____

TIN: _____

Remit to
Address: _____

City, State
Zip: _____

Phone: _____

Name (print): _____

Signature: _____

Title: _____

Subscribed and sworn to before me this _____ day of _____, 20____.

Notary Public

My commission expires: _____

My commission number: _____

The Affidavit must be signed by an authorized agent and notarized

Price Sheet Summary

1. Monthly Charge for Required Services: \$_____

Provide detail that is included in the monthly charge.

2. Cost per hour for Additional Services: \$_____

Provide itemized detail of additional services costs.

Respondent's Company Name _____

Authorized Signature Here _____

Printed Name _____

Note: Prices are inclusive of all costs necessary to provide scope of work herein.

City of Tulsa General Contract Terms

It is anticipated that the City of Tulsa will enter into a contract with the selected vendor for an initial term of one (1) year from the date of its execution by the City's Mayor, with an additional one-year renewal available at the option of the City. All contracts entered into by the City of Tulsa shall include, but not be limited to, the following general terms:

1. **Renewals.** Contractor understands and acknowledges that any future contracts or renewals are neither automatic nor implied by this Agreement. The continuing purchase by City of the Services set forth in this Agreement is subject to City's needs and to City's annual appropriation of sufficient funds in City's fiscal year (July 1st to June 30th) in which such Services are purchased. In the event City does not appropriate or budget sufficient funds to perform this Agreement, this Agreement shall be null and void without further action by City.
2. **No Indemnification or Arbitration by City.** Contractor understands and acknowledges that City is a municipal corporation that is funded by its taxpayers to operate for the benefit of its citizens. Accordingly, and pursuant to Oklahoma law, City shall not indemnify nor hold Contractor harmless for loss, damage, expense or liability arising from or related to this Agreement, including any attorneys' fees and costs. In addition, Contractor shall not limit its liability to City for actual loss or direct damages for any claim based on a breach of this Agreement and the documents incorporated herein. City reserves the right to pursue all legal and equitable remedies to which it may be entitled. City will not agree to binding arbitration of any disputes.
3. **Intellectual Property Indemnification by Contractor.** Contractor agrees to indemnify, defend, and save harmless City and its officers, employees and agents from all suits and actions of every nature brought against them due to the use of patented, trademarked or copyright-protected appliances, products, materials or processes provided by Contractor hereunder. Contractor shall pay all royalties and charges incident to such patents, trademarks or copyrights.
4. **General Liability.** Contractor shall hold City harmless from any loss, damage or claims arising from or related to the performance of the Agreement herein. Contractor must exercise all reasonable and customary precaution to prevent any harm or loss to all persons and property related to this Agreement.
5. **Liens.** Pursuant to City's Charter (Art. XII, §5), no lien of any kind shall exist against any property of City. Contractor agrees to indemnify and hold the City harmless from all claims, demands, causes of action or suits of whatever nature arising out of the services, labor, and material furnished by Contractor or Contractor's subcontractors under the scope of this Agreement.
6. **No Confidentiality.** Contractor understands and acknowledges that City is subject to the Oklahoma Open Records Act (51 O.S. §24A.1 *et seq.*) and therefore cannot assure the confidentiality of contract terms or other information provided by Contractor pursuant to this Agreement that would be inconsistent with City's compliance with its statutory requirements thereunder.
7. **Compliance with Laws.** Contractor shall take the necessary actions to ensure its operations in performance of this contract and employment practices are in compliance with the requirements of the Americans with Disabilities Act. Contractor is responsible for any costs of such compliance. Contractor shall be responsible for complying with all applicable federal, state and local laws, including but not limited to U.S. immigration laws.

8. **Right to Audit.** The parties agree that books, records, documents, accounting procedures, practices, price lists or any other items related to the Services provided hereunder are subject to inspection, examination, and copying by City or its designees. Contractor shall retain all records related to this Agreement for the duration of the contract term and a period of three years following completion and/or termination of the contract. If an audit, litigation or other action involving such records begins before the end of the three year period, the records shall be maintained for three years from the date that all issues arising out of the action are resolved or until the end of the three year retention period, whichever is later.
9. **Governing Law and Venue.** This Agreement is executed in and shall be governed by and construed in accordance with the laws of the State of Oklahoma without regard to its choice of law principles, which shall be the forum for any lawsuits arising under this Agreement or incident thereto. The parties stipulate that venue is proper in a court of competent jurisdiction in Tulsa County, Oklahoma and each party waives any objection to such venue.
10. **No Waiver.** A waiver of any breach of any provision of this Agreement shall not constitute or operate as a waiver of any other provision, nor shall any failure to enforce any provision hereof operate as a waiver of the enforcement of such provision or any other provision.
11. **Entire Agreement/No Assignment.** This Agreement and any documents incorporated herein constitute the entire agreement of the parties and supersede any and all prior agreements, oral or otherwise, relating to the subject matter of this Agreement. This Agreement may only be modified or amended in writing and signed by both parties. Notwithstanding anything to the contrary herein, the City does not agree to the terms of any future agreements, revisions or modifications that may be required under this Agreement unless such terms, revisions or modifications have been reduced to writing and signed by both parties. Contractor may not assign this Agreement or use subcontractors to provide the Goods and/or Services without City's prior written consent. Contractor shall not be entitled to any claim for extras of any kind or nature.

ENERGY EFFICIENCY AND CONSERVATION BLOCK GRANT (EECBG) PROGRAM SUBAWARDEE REQUIREMENTS

Seller shall also be referred to as Subawardee. Subawardees who receive federal funds under an assistance agreement shall comply with the requirements specified in the "Special Provisions Relating to Work Funded under American Recovery and Reinvestment Act of 2009" which apply to this award. Additionally, as required by 10 CFR 600.2(b), 10 CFR 600.236, and 10 CFR 600.237, any new, continuation, or renewal award and any subsequent subaward shall comply with any applicable Federal statute, Federal rule, Office of Management and Budget (OMB) Circular and Government-wide guidance in effect as of the date of such award. These requirements include, but are not limited to the following:

- a. DOE Assistance Regulations, 10 CFR Part 600 at <http://ecfr.gpoaccess.gov>.
- b. In addition to 10 CFR 600, Appendix A, Generally Applicable Requirements, the National Policy Assurances to Be Incorporated as Award Terms in effect on date of award at http://management.energy.gov/business_doe/1374.htm apply.
- c. 48 CFR Subpart 31.2 – Contracts with Commercial Organizations.
- d. Subawardee Application/proposal as approved by the City.

In addition, Subwardee shall comply with the following requirements:

Federal, State, and Municipal Requirements

Seller must obtain any required permits, ensure the safety and structural integrity of any repair, replacement, construction and/or alteration, and comply with applicable federal, state, and municipal laws, codes, and regulations for work performed under this award, if applicable.

Lobbying Restrictions

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

National Environmental Policy Act (NEPA) Requirements

This consulting project has been categorically excluded by the DOE from further NEPA review.

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 Seller 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, separate records must be kept 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. Details will be provided as they become available. The Seller 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. Segregation of Costs

Seller 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.

B. 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.

C. 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.

D. 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.

It is encouraged to publish or otherwise make publicly available the results of the work conducted under the award. An acknowledgement of DOE support and a

disclaimer must appear in the publication of any material, whether copyrighted or not, based on or developed under this project, as follows:

Acknowledgment: “This material is based upon work supported by the Department of Energy [National Nuclear Security Administration] [add name(s) of other agencies, if applicable] under Award Number(s) [enter the award number(s)].”

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

E. Protecting State and Local Government and Contractor Whistleblowers.

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

Prohibition on Reprisals: An employee of any non-Federal employer receiving covered funds under the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing, including a disclosure made in the ordinary course of an employee's duties, to the Accountability and Transparency Board, an inspector general, the Comptroller General, a member of Congress, a State or Federal regulatory or law enforcement agency, a person with supervisory authority over the employee (or other person working for the employer who has the authority to investigate, discover or terminate misconduct), a court or 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.).

F. Reserved

G. False Claims Act

Seller 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.

H. Information in Support of Recovery Act Reporting

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

I. Availability of Funds

Funds obligated to this award are available for reimbursement of costs until 60 days after the award date.

J. Additional Funding Distribution and Assurance of Appropriate Use of Funds

Certification by Governor – For funds provided to any State or agency thereof by the American Reinvestment and Recovery Act of 2009, Pub. L. 111-5, the Governor of the State shall certify that: 1) the state will request and use funds provided by the Act; and 2) the funds will be used to create jobs and promote economic growth.

Acceptance by State Legislature -- If funds provided to any State in any division of the Act are not accepted for use by the Governor, then acceptance by the State legislature, by means of the adoption of a concurrent resolution, shall be sufficient to provide funding to such State.

Distribution -- After adoption of a State legislature's concurrent resolution, funding to the State will be for distribution to local governments, councils of government, public entities, and public-private entities within the State either by formula or at the State's discretion.

K. Certifications

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

L. Recovery Act – Reporting

(a) This award requires the Seller 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 five calendar days after each calendar quarter in which the Seller receives assistance funded in whole or in part by the Recovery Act. The reports must contain information about the status of the project, including an

evaluation of the status of the project, number of jobs created and/or retained because of the project, and the total recovery funds received to date.

(c) Seller must maintain current registrations in the Central Contractor Registration (<http://www.ccr.gov>) and have an active DUNS profile at all times during which they have active federal awards funded with Recovery Act funds.

M. Notice Regarding the Purchase of American-Made Equipment and Products

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. Seller shall comply with Section 1605 of the American Recovery and Reinvestment Act of 2009, as applicable.

N. Recovery Act Transactions

(1) Seller agrees to maintain records that identify adequately the source and application of Recover Act funds, to maximize the transparency and accountability of funds authorized under the Recovery Act as required by the Act and in accordance with 2 CFR 215.

(2) Seller agrees to separately identify thee 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. This only applies if the Seller is covered by the Single Audit Act and Amendments of 1996 and OMB Circular A-133.

O. Recovery Act – One-time funding

The Seller understands and agrees that awards under the Recovery Act will be one-time awards and accordingly that its' proposed project activities and deliverables are to be accomplished without additional DOE funding.

P. Recovery Act – Subawards – Monitoring

The Seller understands that the City will monitor this contract under this Recovery Act award in accordance with all applicable statutes, regulations, OMB circulars, and guidelines. Seller also understands that authorized representatives of the DOE may make site visits at reasonable times to review project accomplishments. Reasonable access to facilities, office space, resources, and assistance shall be provided, if requested.

Q. Recovery Act – Misuse of award funds

The Seller understands and agrees that misuse of award funds may result in a range of penalties, including suspension of current and future funds, suspension or debarment from federal grants, recoupment of monies provided under an award, and civil and/or criminal penalties.

R. Recovery Act – Additional Requirements and Guidance

The Seller agrees to comply with any modifications or additional requirements that may be imposed by law and future DOE (including government-wide) guidance and clarifications of Recovery Act requirements.

**Certification Regarding Lobbying
for Contracts, Grants, Loans,
And Cooperative Agreements**

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an Officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all sub awards at all tiers (including subcontracts, sub grants and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

EECBG

Name of Contractor

Program/Title

Typed Name of Certifying Official

Signature

Date

**Certification Regarding Debarment, Suspension,
and Other Responsibility Matters
Primary Covered Transactions**

Organization

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 29 CFR Part 98, Section 98.510—Participants' Responsibilities. These regulations were published as Part VII of the May 26, 1988 Federal Register on pages 19160 through 19211. These regulations were amended in Volume 60 of the Federal Register, pages 33040 through 33052 on June 26, 1995.

1. The prospective primary participant, (i.e., grantee) certifies to the best of its knowledge and belief, that it and its principals:
 - A. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
 - B. Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
 - C. Are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(B) of this certification; and
 - D. Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.
2. Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Signature

Date

Typed Name & Title of Authorized Representative

Certification Regarding Drug Workplace Requirements

This certification is required by the regulations implementing the Drug-Free Workplace Act of 1988, 29 CFR Part 98, section 98.305, section 98.320 and Subpart F, as amended in Volume 60 of the Federal Register on June 26, 1995 at 29 CFR section 98.600. The grantee certifies that it will or will continue to provide a drug-free workplace by—

- A. Publishing a policy statement notifying employees that the unlawful manufacture, distribution dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition.
- B. Establishing an ongoing drug-free awareness program to inform employees about—
 - 1. The dangers of drug abuse in the workplace;
 - 2. The grantee's policy of maintaining a drug-free workplace;
 - 3. Any available drug counseling, rehabilitation, and employee assistance programs; and
 - 4. The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace.
- C. Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph A.
- D. Notifying all employees in the Statement required by paragraph A that, as a condition of employment under the grant, the employee will —
 - 1. Abide by the terms of the statement; and
 - 2. Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction.
- E. Notifying the agency in writing within ten calendar days after receiving notice under paragraph D2 from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant.
- F. Taking one of the following actions, within 30 calendar days of receiving notice under paragraph D2 with respect to any employee who is so convicted —
 - 1. Taking appropriate personnel action against such an employee, up to and including termination consistent with the requirement of the Rehabilitation Act of 1973, as amended; or
 - 2. Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;
- G. Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs A, B, C, D, E, and F.

Typed Name of Certifying Official

Signature

Date