

RFP NO. 2010:06
REQUEST FOR PROPOSALS
Installation of Cogeneration Heat and Power (CHP) System

Town of Hampton Falls, New Hampshire
Request for Proposals

The Town of Hampton Falls is seeking Request for Proposals for the replacement of an oil-fired furnace with a new combined heat and power unit (CHP) also known as cogeneration. Proposals must be received in the Selectmen's Office, 1 Drinkwater Road, Hampton Falls, New Hampshire 03844, on or before 6:30PM on Wednesday, August 4th, 2010. The envelope should be clearly labeled "Installation of Cogeneration Heat and Power (CHP) System." The Board of Selectmen reserves the right to reject any or all Proposals and to negotiate with the successful applicant in the best interest of the Town. All applicants must meet the Davis Bacon Wage Determination Rate schedule requirements to include reporting requirements. No faxes will be accepted. Women and Minority owned businesses are encouraged to apply. EOE.

Installation of Cogeneration Heat and Power (CHP) System: The project consists of replacing an oil-fired furnace in the Public Safety Complex with a cogeneration unit and any other equipment necessary to meet the thermal and electrical base loads of the facility. The Public Safety Complex, built in 1989, consists of 9,000 square feet of usable space, which consumed approximately 2,700 gallons of #2 heating oil and 56,000-KWh's of electricity in 2009. The Public Safety complex houses both the Police and Fire Departments and is located at 3 Drinkwater Road.

Scope of Work:

- 1.) Complete removal of the oil-fired furnace and unnecessary components of the current heating system.
- 2.) Install all components of a new cogeneration unit and supporting equipment necessary to meet the thermal and electrical base loads of the Public Safety Building.
- 3.) Compliance with ARRA components: A list of these components is listed in Exhibit A of this document. The successful vendor with also have to adhere to all Federal, State and Local regulations and guidelines as it pertains to the activities of their project.

Proposal Requirements: Proposals should include time to complete and total cost of project. The cost should be recorded with a separate labor and equipment cost list. Labor cost must be calculated using the applicable Davis Bacon Wage Determination rates for Rockingham County as follows:

General Decision Number: NH100013 05/21/2010 NH13
Superseded General Decision Number: NH20080013
State: New Hampshire
Construction Type: **Building**

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County: **Rockingham County in New Hampshire.**

Building construction projects (does not include single family homes and apartments up to and including 4 stories)

Modification Number Publication Date

- 0 03/12/2010
- 1 03/26/2010
- 2 04/30/2010
- 3 05/07/2010
- 4 05/14/2010
- 5 05/21/2010

BOIL0029-005 10/01/2009

Rates Fringes

BOILERMAKER.....\$ 32.14 26.6% + 8.96

 CARP0111-007 03/01/2010

ROCKINGHAM COUNTY (Salem only)

Rates Fringes

CARPENTER (includes
 acoustical ceiling, drapery
 blinds & hardwood floor
 installation, drywall
 hanging, form work, and
 scaffold building).....\$ 31.73 23.56

MILLWRIGHT.....\$ 31.73 23.56

 CARP0118-003 04/01/2010

ROCKINGHAM COUNTY (except Salem)

Rates Fringes

CARPENTER (includes
 acoustical ceiling, drapery
 blinds & hardwood floor
 installation, drywall
 hanging, form work, and
 scaffold building).....\$ 24.72 15.66

MILLWRIGHT.....\$ 24.72 15.66

CARPENTERS: Work on all designated hazardous material work

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sites, where the worker is in direct contact with hazardous material and when protective equipment is required for Levels A, B and C, as defined by the designated health and safety plan: 10% per hour additional.

Carpenters and millwrights:

Welding: \$1.00 per hour additional.

ELEC0490-001 01/01/2010

Rates Fringes

ELECTRICIAN.....\$ 26.75 3% + 14.45

Work performed from scaffolding suspended by ropes or cables 30 ft. in the air: 10% per hour additional. Work requiring the wearing of a canister respirator: 10% per hour additional.

ELEC0490-004 09/01/2007

Rates Fringes

Teledata System Installer.....\$ 19.01 3% + 10.80

Work on radio, fiber-optics, holovision, video, recording voice, sound, nurse calls, emergency call, microwave and visual production and reproduction apparatus, telecommunication systems; fire alarm systems; burglar alarm, surveillance systems, CCTV, CATV, card access Systems RS 232 Ethernet; any local area network system associated with computer installation

ENGI0004-019 12/01/2009

Rates Fringes

Power equipment operators:

GROUP 1.....\$ 24.75 21.32
GROUP 1-A.....\$ 25.70 21.32
GROUP 1-B.....\$ 26.57 21.32
GROUP 1-C.....\$ 27.52 21.32
GROUP 1-D.....\$ 28.35 21.32
GROUP 1-E.....\$ 29.55 21.32
GROUP 2.....\$ 24.57 21.32

PAID HOLIDAYS:

New Year's Day, President's Day, Memorial Day, Fourth of July, Labor Day, Columbus Day, Veteran's Day, Thanksgiving Day and Christmas Day.

GROUP DEFINITIONS:

GROUP 1: Backhoe; crane and truck crane, boom length (jib up to 150 ft.); excavator; forklift; front end loader (except when pushing)

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GROUP 1-A: Crane, and truck crane, boom length (jib over 150 ft. up to 185 ft.)
 GROUP 1-B: Crane, and truck crane, boom length (jib over 185 ft. up to 210 ft.)
 GROUP 1-C: Crane, and truck crane, boom length (jib over 210 ft. up to 250 ft.)
 GROUP 1-D: Crane, and truck crane, boom length (jib over 250 ft. up to 350 ft.)
 GROUP 1-E: Crane, and truck crane, boom length (jib over 350 ft.)

GROUP 2:
 Bulldozer, mechanic, roller

 * IRON0007-009 03/16/2010
 Rates Fringes
 IRONWORKER (Reinforcing &
 Structural).....\$ 20.15 19.09

LABO0022-016 06/01/2007
 Town of Salem:
 Rates Fringes
 Laborer, general.....\$ 24.00 14.60

LABO0327-001 06/01/2007
 Does not include the town of Salem:
 Rates Fringes
 Laborer, general.....\$ 18.43 13.80
 Work with hazardous waste, and handling of hazardous material, including acids, chlorine, epoxies, asbestos, and lead abatement: \$2.50 per hour additional.

PAIN0035-018 01/01/2010
 Rates Fringes
 DRYWALL FINISHER/TAPER
 New construction and power
 plants.....\$ 24.47 13.41
 Remodel.....\$ 21.79 13.41
 PAINTER (BRUSH & ROLLER)
 New construction and power
 plants.....\$ 24.47 13.41
 Repaint work.....\$ 21.79 13.41

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Drywall finisher:

Work using power vacuum, drywall sander, bazooka or box and wipers working behind them: \$1.40 per hour above the new construction rate.

 PLAS0534-008 01/01/2009

Rates Fringes

CEMENT MASON/CONCRETE FINISHER

(1) Projects of 50,000 sq. ft. or less.....\$ 30.40 19.26
 (2) All other work.....\$ 30.50 20.44

Work on a suspended staging, which is not supported from the ground: \$.35 per hour additional.

 SHEE0017-013 01/01/2010

Rates Fringes

SHEET METAL WORKER (Including

HVAC Duct Work).....\$ 26.62 19.45

 SUNH2005-006 11/01/2005

Rates Fringes

Pipefitter (Includes HVAC piping).....\$ 23.65 11.35

Plumber (Excludes HVAC Piping).....\$ 18.77 4.62

 WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

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 Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR 5.5(a)(1)(ii)).

 In the listing above, the "SU" designation means that rates listed under the identifier do not reflect collectively bargained wage and fringe benefit rates. Other designations indicate unions whose rates have been determined to be prevailing.

INSURANCE REQUIREMENTS: By signing and submitting a proposal under this solicitation, the Proposer certifies that if awarded the contract, he/she will provide a current certificate of liability and vehicle insurance, naming the Town of Hampton Falls as "Additional Insured" and demonstrating that the Proposer has coverage for worker's compensation insurance (if not a sole Proprietor), employer's liability insurance, comprehensive general and automobile liability insurance, contractual liability insurance with limits not less than \$1,000,000 per occurrence. The Contractor further certifies that it will maintain these insurance coverages during the entire term of the project, and that all insurance coverage will be provided by insurance companies authorized to sell insurance in New Hampshire.

PROJECT TIMEFRAME: The successful proposer will be able to begin once the proposal is accepted, with completion date of no later than November 15th, 2010.

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RFP INFORMATION: For further information, or to make an appointment to visit the facility, please contact Hampton Falls Energy Committee Vice-Chair, Shawn Hanson at (603) 205-6032. email: shawn.hanson@comcast.net

SUBMITTAL OF PROPOSALS: Proposals will be accepted at the Town Hall, 1 Drinkwater Road, Hampton Falls, NH 03844, no later than 6:30 p.m., August 4th, 2010. Proposals will be opened that evening at the Selectmen's meeting. The RFP must be submitted in one sealed envelope clearly marked "Installation of Cogeneration Heat and Power (CHP) System."

ACCEPTANCE OF PROPOSALS: The Town reserves the right to reject any or all proposals or any part thereof, to waive any informality in the process and to accept the Proposal considered in the best interest of the Town. Failure to submit all information called for may disqualify a proposal.

This project is an ARRA ECGBB Project:

This project is funded by the American Recovery and Reinvestment Act (ARRA) of 2009 through the New Hampshire Energy Efficiency and Conservation Block Grant (EECBG) Program, Sub-grants Sponsored by the Department of Energy (DOE) through the Office of Energy and Planning (OEP)

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Town of Hampton Falls
PROPOSAL FORM

Installation of Cogeneration Heat and Power (CHP) System
Board of Selectmen
Town of Hampton Falls
1 Drinkwater Road,
Hampton Falls, NH 03844

In accordance with the specifications, the undersigned hereby submits the following proposal:

Labor Cost: _____

Equipment Cost: _____

The undersigned is submitting this bid without collusion with any other individual or corporation.

Name: _____

Contact Person: _____ Contact

Number: _____

Address: _____ Email

Address: _____

Due: August 4th, 2010 by 6:30 pm at the Hampton Falls Town Hall.

Label Sealed Envelope: "RFP 2010:06-Installation of Cogeneration Heat and Power (CHP) System"

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Exhibit A
Special Provisions
American Recovery and Reinvestment Act Standard Terms:
Energy Efficiency and Conservation Block Grant Program

The Town of Hampton Falls shall comply, and require any Vendor(s) to comply with all applicable statutes, laws, regulations, and orders of federal, state, county or municipal authorities which shall impose any obligation or duty upon the Sub-recipient and Vendor(s), including, but not limited to:

a. The Town of Hampton Falls shall comply with, and shall require any Vendor(s) to comply with, applicable provisions of the American Recovery and Reinvestment Act (ARRA) of 2009, Public Law 111-5 (“ARRA”), and applicable federal, rules, orders, regulations and guidelines issued pursuant thereto, as amended from time to time, including, but not limited to:

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

Definitions

“**Sub-recipient**” means any entity that receives Recovery Act funds (including Recovery Act funds received through grant, loan, or contract) other than an individual and includes a State that receives Recovery Act Funds. The Sub-recipient is the Town of Hampton Falls

For purposes of this clause, “**Covered Funds**” mean 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 March 10, 2012.

“**Non-Federal employer**” means any employer with respect to covered funds – Sub-recipient, Vendor(s) as the case may be, if the Sub-recipient, Vendor(s) 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 Sub-recipient or Vendor(s) 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.

Special Provisions

A. Flow Down Requirement

Sub-recipients must include these special terms and conditions in any Sub-contract.

B. Segregation of Costs

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Sub-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. (1) to examine any records of the Sub-recipient, any of its Vendors, or any State or local agency administering such contract that pertain to, and involve transactions relation to, the Sub-contract; and
2. (2) to interview any officer or employee of the Sub-recipient, Vendor(s) 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 Sub-recipient 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 Sub-recipient 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 Sub-recipient.

Information about this agreement may 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:

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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 grand jury, the head of a Federal agency, or their representatives information that the employee believes is evidence of:

- gross management of an agency agreement or grant relating to covered funds;
- gross waste of covered funds
- substantial and specific danger to public health or safety related to the implementation or use of covered

funds;

- abuse of authority related to the implementation or use of covered funds; or
- violation of law, rule, or regulation related to an agency agreement (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

Non-enforceability of Certain Provisions Waiving Rights and Remedies or Requiring Arbitration: Except as provided in a collective bargaining agreement, the rights and remedies provided to aggrieved employees by this section may not be waived by any agreement, policy, form, or condition of employment, including any pre-dispute arbitration agreement. No pre-dispute 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. False Claims Act

Sub-recipients shall promptly refer to TRC/NHOEP/DOE or other appropriate Inspector General any credible evidence that a principal, employee, agent, contractor, Vendor(s) or other person has submitted a false claim under the False Claims Act or has committed a criminal or civil violation of laws pertaining to fraud, conflict or interest, bribery, gratuity or similar misconduct involving those funds.

H. Information in supporting of Recovery Act Reporting

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

I. Availability of Funds

Funds appropriated under the Recovery Act and obligated to this award are available for reimbursement of costs until March 10, 2012.

REPORTING AND REGISTRATION REQUIREMENTS UNDER SECTION 1512 OF THE RECOVERY ACT

ARRA imposes transparency, oversight and accountability requirements, including, without limitation, the reporting requirements in the Jobs Accountability Act in Section 1512.

Definitions: As used in this Section 1512 reporting clause, the following terms have the meaning set forth below:

Agreement: means a mutually binding legal relationship obligating the seller to furnish the supplies or services (including construction) and the buyer to pay for them. It includes all types of commitments that obligate the Government to an expenditure of appropriated funds and that, except as otherwise authorized, are in writing. In addition to bilateral instruments, Agreements include (but are not limited to) awards and notices of awards; letter Agreements; orders, such as purchase orders, under which the Agreement becomes effective by written acceptance or performance; and bilateral Agreement modifications, grants, and cooperative agreements.

First-tier Sub-contract: means a Sub-contract awarded directly by a Sub-recipient whose agreement is funded by ARRA.

Jobs created: means an estimate of those new positions created and filled, or previously existing unfilled positions that are filled, as a result of funding by the American Recovery and Reinvestment Act of 2009 (Recovery Act). This definition covers Sub-recipient positions established in the United States and outlying areas (see definition in FAR 2.101). The number shall be expressed as "full-time equivalent" (FTE), calculated cumulatively as all hours worked divided by the total number of hours in a full-time schedule, as defined by the Sub-Grant Manager/Sub-recipient. For instance, two full-time employees and one part-time employee working half days would be reported as 2.5 FTE in each month.

Jobs retained: means an estimate of those previously existing filled positions that are retained as a result of funding by ARRA. This definition covers Sub-recipient positions established in the United States and outlying areas (see definition in FAR 2.101). The number shall be expressed as "full-time equivalent" (FTE), calculated cumulatively as all hours worked divided by the total number of hours in a full-time schedule, as defined by the Sub-Grant Manager/Sub-recipient. For instance, two full-time employees and one part-time employee working half days would be reported as 2.5 FTE in each month.

All jobs created (FTEs) added to all jobs retained (FTEs) should equal the total jobs (FTEs) being paid for with the ARRA Agreement/grant funds received pursuant to this Agreement by the Sub-recipient. Stated otherwise, all jobs (FTEs) being paid for with funds provided by this Agreement minus all jobs created (FTEs) should equal all jobs retained (FTEs). A job cannot be reported as both created and retained.

Number of Jobs: This is based on a simple calculation used to avoid overstating the number of other than full-time permanent jobs. This calculation converts part-time or temporary jobs into fractional "full-time equivalent" (FTE) jobs. *Full-time equivalent (FTE) employment* is a standard concept used by the Office of Personnel Management. In order to perform the calculation, a Sub-recipient will need the total number of

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hours worked by employees in the most recent quarter (the quarter being reported) in jobs that meet the definition of a job created or a job retained as defined above. The Sub-recipient will also need the number of hours in a full-time schedule for the quarter. For instance, if a full-time schedule is 2,080 hours/year, the number of hours in a full-time schedule for a quarter is 520 (2,080 hours/4 quarters = 520). The formula for reporting FTE can be represented as:

Total Number of Hours Worked and Funded by Recovery Act within Reporting Quarter
Quarterly Hours in a Full-Time Schedule

Total compensation: means the cash and noncash dollar value earned by the executive during the Sub-recipient's past fiscal year of the following (for more information see 17 CFR 229.402(c) (2)):

1. Salary and bonus.
2. Awards of stock, stock options, and stock appreciation rights. Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.
3. Earnings for services under non-equity incentive plans. Does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.
4. Change in pension value. This is the change in present value of defined benefit and actuarial pension plans.
5. Above-market earnings on deferred compensation, which is not tax-qualified.
6. Other compensation. For example, severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property if the value for the executive exceeds \$10,000.

The Sub-recipient shall provide the data needed for Section 1512 reporting monthly in the format defined by the Sub-Grant Manager. The report format may be changed over time if the federal government issues guidance or establishes requirements for a different format.

Section 1512, at a minimum, requires the following data from the Sub-recipient:

1. An evaluation of the completion status of the project or activity;
2. An estimate of the number of jobs created by the project or activity by job type;
3. An estimate of the number of jobs retained by the project or activity by job type;
4. Total hours of employees working on the project or activity (subtotal by jobs created and existing jobs);
5. Total wages for employees working on the project or activity (subtotal by jobs created and existing jobs);
6. For infrastructure investments made by State and local governments, the purpose, total cost, and rationale of the agency for funding the infrastructure investment with funds made available under this Act, and name of the contact person if there are concerns with the infrastructure investment; and
7. Detailed information on any Sub-contracts awarded by the Sub-recipient to include the data elements required to comply with the Federal Funding Accountability and Transparency Act of 2006 (Public Law 109-282), allowing aggregate reporting on awards below \$25,000 or to individuals, as prescribed by the Director of the Office of Management and Budget.

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This Agreement requires the Sub-recipient to provide products and/or services that are funded under the American Recovery and Reinvestment Act of 2009 (Recovery Act). Section 1512(c) of the Recovery Act requires each Sub-recipient to report on its use of Recovery Act funds under this contract. These reports will be made available to the public.

The Sub-Recipient shall report the following additional information, to the Sub-grant manager or representative identified in this Agreement in an Excel spreadsheet or paper report in the form provided by TRC. TRC agrees to provide the Sub-recipient with a report form that has pre-filled the data elements known to TRC:

1. The Government contract and order number, as applicable;
2. The amount of Recovery Act funds invoiced by the Sub-recipient for the reporting period. A cumulative amount from all the reports submitted for this action will be maintained by TRC;
3. A list of all significant services performed or supplies delivered, including construction, for which the Sub-recipient invoiced in this calendar month;
4. Program or project title, if any;
5. A description of the overall purpose and expected outcomes or results of the Agreement, including significant deliverables and, if appropriate, associated units of measure;
6. An assessment of the Sub-recipient's progress towards the completion of the overall purpose and expected outcomes or results of the Agreement (i.e., not started, less than 50 percent completed, completed 50 percent or more, or fully completed). This covers the Agreement/grant (or portion thereof) funded by the Recovery Act;
7. A narrative description of the employment impact of work funded by the Recovery Act. This narrative should be cumulative for each calendar month and only address the impact on the Sub-recipient's workforce. At a minimum, the Sub-recipient shall provide:
 - i. A brief description of the types of jobs created and jobs retained in the United States and outlying areas (see definition in FAR 2.101). This description may rely on job titles, broader labor categories, or the Sub-recipient's existing practice for describing jobs as long as the terms used are widely understood and describe the general nature of the work; and
 - ii. An estimate of the number of jobs created by job type and a separate estimate of the number of jobs retained by job type, by the Sub-recipient and separately by any Vendor(s), in the United States and outlying areas. A job cannot be reported as both created and retained.
8. If the Sub-recipient meets the criteria set forth below, the names and total compensation of each of the five most highly compensated officers of the Sub-recipient for the calendar year in which the Agreement is awarded. This requirement applies only if:
 - i. In the Sub-recipient's preceding fiscal year, the Sub-recipient received—
 - A. 80 percent or more of its annual gross revenues from Federal contracts (and subcontracts), loans, grants (and subgrants) and cooperative agreements; and
 - B. \$25,000,000 or more in annual gross revenues from Federal contracts (and subcontracts), loans, grants (and subgrants) and cooperative agreements; and
 - ii. The public does not have access to information about the compensation of the senior executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986.
9. For Sub-contracts valued at less than \$25,000 or any Sub-contracts awarded to an individual, or Sub-contracts awarded to a Vendor that in the previous tax year had gross income under \$300,000, the Sub-recipient shall only report the aggregate number of such first tier Sub-contracts awarded in the month and their aggregate total dollar amount.

The Sub-recipient shall require the Vendor to register with the federal government Central Contractor Registration (CR) database at www.ccr.gov.

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1. The Sub-recipient agrees to comply with the Emergency Economic Stabilization Act of 2008 requirements (as amended in Section 1608 of the Recovery Act), 12 U.S.C. 5217(b), which provide for the inclusion and utilization, to the maximum extent practicable, of minorities (as such term is defined in section 1204(c) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 1811 note)) and women, and minority- and women-owned businesses (as such terms are defined in 12 U.S.C.1441a(r)(4) of this title), and individuals with disabilities and businesses owned by individuals with disabilities;
2. The Sub-recipient agrees to comply with the National Environmental Policy Act of 1969 (P.L. 91-190) requirements in Section 1609, including requirements for plans and projects to be reviewed and documented in accordance with those processes; and Executive Order 11514; notification of violating facilities pursuant to Executive Order 11738; protection of wetlands pursuant to Executive Order 11990 and State law; evaluation of flood hazards in floodplains in accordance with Executive Order 11988; assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§1451 *et seq.*); conformity of Federal Actions to State (Clean Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. §§7401 *et seq.*); protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93-523); and protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93-205);
3. The Sub-recipient agrees to comply with all anti-discrimination and equal opportunity statutes, regulations, and Executive Orders that apply to the expenditure of funds under Federal contracts, grants, cooperative agreements, loans, and other forms of Federal assistance, and all State and federal anti-discrimination statutes including but not limited to: Title VI of the Civil Rights Act of 1964, which prohibits discrimination on the basis of race, color, or national origin; Title IX of the Education Amendments of 1972, (20 U.S.C. §§ 1681-1683 and 1685-1686), which prohibits discrimination on the basis of sex; Section 504 of the Rehabilitation Act of 1973 as amended (29 U.S.C. §794), which prohibits discrimination on the basis of handicaps; the Age Discrimination Act of 1975 as amended (42 U.S.C. §§6101-6107), which prohibits discrimination on the basis of age; the Drug Abuse Office and Treatment Act of 1972 (P.L.92-255), as amended, relating to nondiscrimination on the basis of drug abuse; the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; §§523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§ 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§3601 *et seq.*), as amended, relating to nondiscrimination in the sale, rental or financing of housing; Executive Order 11246; any other nondiscrimination provisions in ARRA, and any program-specific statutes with anti-discrimination requirements; as well as generally applicable civil rights laws including, but not limited to, the Fair Credit Reporting Act, 15 U.S.C. § 1681 *et seq.*; the Americans With Disabilities Act, 42 U.S.C. §§ 12101 *et seq.*; Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e *et seq.*, relating to employment rights and preventing employment discrimination; the Equal Educational Opportunities Act, 20 U.S.C. § 1703, prohibiting denial of an equal educational opportunity to an individual on account of his or her race, color, sex, or national origin; the Age Discrimination in Employment Act, 29 U.S.C. § 634, prohibiting age discrimination against persons 40 years of age or older; the Uniform Relocation Act, 42 U.S.C.A. § 4601 *et seq.*, establishing uniform policies to compensate people displaced from their homes or businesses by state and local government programs; and New Hampshire Revised Statutes Annotated Chapter 354-A, prohibiting certain discrimination in employment, in places of public accommodation and in housing accommodations.
4. The Sub-recipient agrees to comply with 40 U.S.C. §§ 3701, *et seq.*, Contract Work Hours and Safety Standards Act; 41 U.S.C. §§ 51–58, Anti-Kickback Act of 1986; 41 U.S.C. § 265 and 10 U.S.C. § 2409 relating to whistleblower protections; the Hatch Act, 5 U.S.C. §§1501-1508 and 7324-7328, which limits the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds; and the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§401 *et seq.*), which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.
5. The Sub-recipient agrees to comply with 31 U.S.C. § 1352, relating to limitations on the use of appropriated funds to influence certain Federal contracts and New Hampshire Revised Statute Annotated

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15:5 which prohibits to use of funds appropriated or granted under this Agreement for lobbying or electioneering.

6. Limitations on the use of federal Grant or Agreement Funds for Lobbying:
 - a. The law prohibits Federal funds from being expended by the Sub-recipient or any lower tier sub-recipients/Vendors of a Federal contract, grant, loan, or cooperative agreement to pay any person for influencing or attempting to influence a Federal agency or Congress in connection with the awarding of any Federal contract, the making of any Federal grant or loan, or the entering into of any cooperative agreement. The extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan, or cooperative agreement is also covered.
 - b. Federal-aid Sub-recipients as well as lower tier Vendors are also subject to the lobbying prohibition.
 - c. To assure compliance, for any agreement or grant, including any sub-contract or award exceeding \$100,000 the Sub-recipient and Vendors must submit and update as required a "Disclosure of Lobbying Activities" form, (OMB Standard Form LLL), available at <http://www.nh.gov/recovery/library/index.htm>.

1. During the agreement period, Sub-recipients and Vendors must file disclosure form (Standard Form LLL) at the end of each calendar year in which there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any previously filed disclosure form.

2. Lower tier certifications should be maintained by the next tier above (i.e. Sub-recipients will keep the Vendor(s) certification on file, etc.)

3. Standard Form LLL will be provided during contract execution for utilization during the required contract period.

Special Terms and Conditions for use in Agreements and

RESOLUTION OF CONFLICTING CONDITIONS

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

REBUDGETING AND RECOVERY OF INDIRECT COSTS - REIMBURSABLE INDIRECT COSTS AND FRINGE BENEFITS

a. If actual allowable indirect costs are less than those budgeted and funded under the award, the Sub-recipient may use the difference to pay additional allowable direct costs during the project period. If at the completion of the award the Government's share of total allowable costs (i.e., direct and indirect), is less than the total costs reimbursed, you must refund the difference.

b. The Sub-recipients are expected to manage their indirect costs. DOE will not amend an award solely to provide additional funds for changes in indirect cost rates. DOE recognizes that the inability to obtain full reimbursement for indirect costs means the Sub-recipient must absorb the under recovery. Such under recovery may be allocated as part of the organization's required cost sharing.

USE OF PROGRAM INCOME - ADDITION

If Sub-recipient earns program income during the project period as a result of this award, Sub-recipient may add the program income to the funds committed to the award and use it to further eligible project objectives.

STATEMENT OF FEDERAL STEWARDSHIP

DOE/NHOEP/TRC will exercise normal Federal stewardship in overseeing the project activities performed under this award. Stewardship activities include, but are not limited to, conducting site visits; reviewing performance and financial reports; providing technical assistance and/or temporary intervention in unusual

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circumstances to correct deficiencies which develop during the project; assuring compliance with terms and conditions; and reviewing technical performance after project completion to ensure that the award objectives have been accomplished.

SITE VISITS

Office of the Governor/ Office of Economic Stimulus / DOE/ OEP/ TRC have the right to make site visits at reasonable times to review project accomplishments and management control systems and to provide technical assistance, if required. The Sub-recipient must provide, and must require your Vendor(s) to provide, reasonable access to facilities, office space, resources, and assistance for the safety and convenience of the government representatives in the performance of their duties. All site visits and evaluations must be performed in a manner that does not unduly interfere with or delay the work.

REPORTING REQUIREMENTS

- a. Requirements. Failure to comply with the Federal reporting requirements is considered a material noncompliance with the terms of the award. Noncompliance may result in withholding of future payments, suspension, or termination of the current award, and withholding of future awards. A willful failure to perform, a history of failure to perform, or unsatisfactory performance of this and/or other financial assistance awards, may also result in a debarment action to preclude future awards by Federal agencies.
- b. Restrictions. Reports submitted to the TRC/NHOEP/DOE Information Bridge must not contain any Protected Personal Identifiable Information (PII), limited rights data (proprietary data), classified information, information subject to export control classification, or other information not subject to release.

PUBLICATIONS

- a.** The Sub-recipient is encouraged to publish or otherwise make publicly available the results of the work conducted under the award.
- b. An acknowledgment of Federal support and a disclaimer must appear in the publication of any material, whether copyrighted or not, based on or developed under this project, as follows:
Acknowledgment: "This material is based upon work supported by the Department of Energy under Award Number DE-EE0000095
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."

FEDERAL, STATE, AND MUNICIPAL REQUIREMENTS

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

INTELLECTUAL PROPERTY PROVISIONS AND CONTACT INFORMATION

- a. A list of intellectual property provisions applicable to this award may be found at http://www.gc.doe.gov/financial_assistance_awards.htm.
- b. Questions regarding intellectual property matters should be referred to TRC for transmission to NHOEP, DOE Award Administrator and the Patent Counsel designated as the service provider for the DOE office that issued the award. The IP Service Providers List is found at [http://www.gc.doe.gov/documents/Intellectual_Property_\(IP\)_Service_Providers_for_Acquisition.pdf](http://www.gc.doe.gov/documents/Intellectual_Property_(IP)_Service_Providers_for_Acquisition.pdf)

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From 10 CFR 600.236-Procurement

(a) States. When procuring property and services under a grant, a State will follow the same policies and procedures it uses for procurements from its non-Federal funds. The State will ensure that every purchase order or other contract includes any clauses required by Federal statutes and executive orders and their implementing regulations. Other Sub-recipients and Vendors will follow paragraphs (b) through (i) in this section.

Note: 600.236 (i)-Contract provisions. A Sub-recipient's Sub-contracts MUST contain provisions in paragraph (i) of this section (1) through (13). 10 CFR 600.236 <http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&sid=1d87da29f6087f0251f78954c8888ff1&rgn=div8&view=text&node=10:4.0.1.3.9.3.20.23&idno=10>

From 10 CFR 600.237-Subgrants

Retention and Access Requirements for Records <http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?type=simple;c=ecfr;cc=ecfr;sid=4c22613d54c8ee557f9dc9d6015ec1c9;idno=10;region=DIV1;q1=600.242;rgn=div8;view=text;node=10%3A4.0.1.3.9.3.20.27>

Conform any advances of grant funds to Vendors substantially to the same standards of timing and amount that apply to cash advances by Federal agencies, if applicable. (refer state to 10 CFR 600.221(c).

BUY AMERICAN

The Sub-recipient agrees to comply with the Buy American requirements in Section 1605 of ARRA. Unless this requirement has been waived by a competent federal authority pursuant to 2 CFR 176.140, none of the funds appropriated or otherwise made available by the American Recovery and Reinvestment Act may be used for a project for the construction, alteration, maintenance, or repair of a public building or public work unless all of the iron, steel, and manufactured goods used in the project are produced in the United States. When using funds appropriated under the American Recovery and Reinvestment Act of 2009 (Pub. L. 111–5), the definition of “domestic manufactured construction material” requires manufacture in the United States but does not include a requirement with regard to the origin of the components. Production in the United States of the iron or steel used as construction material requires that all manufacturing processes must take place in the United States, except metallurgical processes involving refinement of steel additives. These requirements do not apply to steel or iron used as components or subcomponents of other manufactured construction material. There is no requirement with regard to the origin of components or subcomponents in other manufactured construction material, as long as the manufacture of the construction material occurs in the United States.

As used in this “Buy American” 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,

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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.

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.

A federal law, commonly known as the "Buy American Act," 41 U.S.C.A. § 10A-10D, exists as a separate and additional legal limitation on the use of ARRA federal funds. The Sub-recipient agrees to use only domestic unmanufactured construction material, as required by the Buy American Act.

The Sub-recipient acknowledges to and for the benefit of the State of New Hampshire that it understands the goods and services under this Agreement are being funded with monies made available by ARRA and such law contains provisions commonly known as "Buy American;" that requires all of the iron, steel, and manufactured goods used in the project be produced in the United States ("Buy American Requirements") including iron, steel, and manufactured goods provided by the Sub-recipient pursuant to this Agreement. The Sub-recipient hereby represents and warrants to and for the benefit of TRC that

- a. The Sub-recipient has reviewed and understands the Buy American Requirements,
- b. all of the iron, steel, and manufactured goods used in the project funded by this agreement will be and/or have been produced in the United States in a manner that complies with the Buy American Requirements, unless a waiver of the requirements has been approved by federal authorities, and
- c. The Sub-recipient will provide any further verified information, certification or assurance of compliance with this paragraph, or information necessary to support a waiver of the Buy American Requirements, as may be requested by the State. Notwithstanding any other provision of the Agreement, any failure to comply with this paragraph by the Sub-recipient shall permit NHOEP/TRC to recover as damages against the Sub-recipient any loss, expense or cost (including without limitation attorney's fees) incurred by NHOEP/TRC resulting from any such failure (including without limitation any impairment or loss of funding, whether in whole or in part, from NHOEP/TRC or any damages owed to NHOEP/TRC).

The Sub-recipient agrees to certify compliance with a certification in the following form:

1. Identification of American-made Iron, Steel, and Manufactured Goods: Consistent with the terms of the bid solicitation and the provisions of ARRA Section 1605, the Sub-recipient certifies that the bid on which this Agreement is based reflects the Contractor's best, good faith effort to identify domestic sources of iron, steel, and manufactured goods for every component contained in the bid solicitation where such American-made components are available on the schedule and consistent with the deadlines prescribed in or required by the bid solicitation.
2. Verification of U.S. Production: The Sub-recipient certifies that all components contained in the bid solicitation that are American-made have been so identified, and the Sub-recipient agrees that it will provide reasonable, sufficient, and timely verification to the State of the U.S. production of each component so identified.

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DAVIS BACON ACT REQUIREMENTS

A. *Definitions.* For purposes of this term, the Contract Work Hours and Safety Standards Act term, and the Sub-recipient Functions term, the following definitions are applicable:

- (1) “*Construction, alteration or repair*” means all types of work done by laborers and mechanics employed by a Vendor on a particular building or work at the site thereof, including without limitation—
- (a) Altering, remodeling, installation (if appropriate) on the site of the work of items fabricated off-site;
 - (b) Painting and decorating; or
 - (c) Manufacturing or furnishing of materials, articles, supplies, or equipment on the site of the building or work.
- (2) “*Site of the work*”—
- (a) Means—
 - (i) The physical place or places where the construction called for in the Agreement will remain when work on it is completed; and
 - (ii) Any other site where a significant portion of the building or work is constructed, provided that such site is established specifically for the performance of the project;
 - (b) Except as provided in paragraph (c) of this definition, the site of the work includes any fabrication plants, mobile factories, batch plants, borrow pits, job headquarters, tool yards, etc., provided—
 - (1) They are dedicated exclusively, or nearly so, to performance of the project; and
 - (2) They are adjacent or virtually adjacent to the site of the work as defined in paragraphs (2) (a) (i) or (2) (a) (ii) of this definition; and
 - (c) Does not include permanent home offices, branch plant establishments, fabrication plants, or tool yards of a Sub-recipient or Vendor whose locations and continuance in operation are determined wholly without regard to a particular contract or Federal Award or project. In addition, fabrication plants, batch plants, borrow pits, job headquarters, yards, etc., of a commercial or material supplier which are established by a supplier of materials for the project before opening of bids and not on the project site as defined in paragraphs (2) (a) (i) or (2) (a) (ii) of this definition, are not included in the “site of the work.” Such permanent, previously established facilities are not a part of the “site of the work” even if the operations for a period of time may be dedicated exclusively or nearly so, to the performance of an Agreement, Award, Subaward, or Contract.

Prevailing Wage Requirements:

The Sub-recipient agrees to comply with the Wage Rate Requirements in Section 1606 of ARRA. In accordance with 2 C.F.R. §176.190, the standard Davis-Bacon contract clause as specified by 29 CFR §5.5(a) is set forth below:

29 CFR §5.5(a):

§ 5.5 Contract provisions and related matters.

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

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

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

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

2. The classification is utilized in the area by the construction industry; and
 3. The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.
- B. If the Sub-recipient and the laborers and mechanics to be employed in the classification (if known), or their representatives, and TRC 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 TRC 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 TRC or will notify TRC within the 30-day period that additional time is necessary.
- B. In the event the Sub-recipient, the laborers or mechanics to be employed in the classification or their representatives, and TRC do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), TRC shall refer the questions, including the views of all interested parties and the recommendation of TRC, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise TRC or will notify TRC within the 30-day period that additional time is necessary.
- B. The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (A)(1)(ii), (B) or (C) of this section, shall be paid to all workers performing work in the classification under this Agreement from the first day on which work is performed in the classification.

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- iii. Whenever the minimum wage rate prescribed in the Sub-contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Sub-recipient 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.

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

Additional prevailing wage rules may apply for volunteers:

The Department of Labor states in its Field Operations Handbook (15e23): "There are no exceptions to Davis-Bacon coverage for volunteer labor unless an exception is specifically provided for in the particular Davis-Bacon Related Act under which the project funds are derived." The Davis-Bacon Related Act for the American Recovery and Reinvestment Act of 2009 (ARRA) is silent on this subject of an exception for volunteer labor. Therefore, on ARRA-funded projects subject to Davis-Bacon coverage, the school must pay all workers the prevailing wage.

Approval of Wage Rates

All straight time wage rates, and overtime rates based thereon, for laborers and mechanics engaged in work under this Agreement, or a Sub-contract must be submitted for approval in writing by the Sub-recipient or a representative expressly designated for this purpose, if the straight time wages exceed the rates for corresponding classifications contained in the applicable Davis-Bacon Act minimum wage determination included in the Award, Subaward or Contract. Any amount paid by the Sub-recipient or Vendor(s) to any laborer or mechanic in excess of the agency approved wage rate shall be at the expense of the Sub-recipient or Vendor(s) and shall not be reimbursed by TRC. If the Government refuses to authorize the use of the overtime, the Sub-recipient or Vendor is not released from the obligation to pay employees at the required overtime rates for any overtime actually worked.

For additional guidance on the wage rate requirements of section 1606, contact TRC. The Secretary of Labor retains final coverage authority under Reorganization Plan Number 14.

- 2. Withholding. The New Hampshire Office of Energy and Planning (OEP) and TRC shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the Sub-recipient under this Agreement or any other State contract with the same Sub-recipient, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same Sub-recipient, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Sub-recipient or any Vendor(s) the full amount of wages required by the Agreement or sub-contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the Work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the Agreement, TRC may, after written notice to the Sub-recipient take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

The Sub-recipient shall, upon its own action or upon written request of OEP or TRC for transmission to an authorized representative of the Department of Labor, withhold or cause to be withheld from any Vendor so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Vendor the full amount of wages required by the Sub-contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the Sub-contract, the

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Sub-Recipient may, after written notice to the Vendor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased or the Government may cause the suspension of any further payment under any other contract or Federal award with the same Vendor on any other federally assisted Award subject to Davis-Bacon prevailing wage requirements, which is held by the same Vendor.

2. Payrolls and basic records.

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

(ii)(A) On behalf of the Office of Energy and Planning (OEP) and TRC, the Sub-recipient shall perform the following functions:

- a. Obtain, maintain and monitor all Davis Bacon Act certified payroll records submitted by the Sub-recipients and Vendors at any tier under this Award;
- b. Review all Davis Bacon Act certified payroll records for compliance with Davis Bacon Act requirements, including applicable Department Of Labor wage determinations;
- c. Notify TRC of any non-compliance with Davis Bacon Act requirements by Sub-recipients or Vendors at any tier, including any non-compliances identified as the result of reviews performed pursuant to paragraph (b) above;
- d. Address any Sub-recipient and any Vendor Davis Bacon Act non-compliance issues; If Davis Bacon Act non-compliance issues cannot be resolved in a timely manner, forward complaints, summary of investigations and all relevant information to TRC and OEP;
- e. Provide TRC and OEP with detailed information regarding the resolution of any Davis Bacon Act non-compliance issues

The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information *must be submitted* on Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The Sub-recipient is responsible for the submission of copies of payrolls by all Vendors. Sub-recipients and Vendors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the OEP and TRC if the agency is a party to the contract, but if the agency is not such a party, the Vendor will submit them to the Sub-recipient for transmission to TRC, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a Sub-recipient to require a Vendor to provide addresses

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and social security numbers to the Sub-recipient for its own records, without weekly submission to the sponsoring government agency (or the applicant, sponsor, or owner).

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

1. That the payroll for the payroll period contains the information required to be provided under § 5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under § 5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;
 2. That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the Agreement or sub-contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;
 3. That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the Agreement or sub-contract.
- C. The weekly submission of a properly executed certification set forth on the reverse side of Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.
- C. The falsification of any of the above certifications may subject the Sub-recipient or Vendor to civil or criminal prosecution under section 1001 of [title 18 and section 231](#) of title 31 of the United States Code or New Hampshire Revised Statutes Annotated Chapter 641.

(iii) The Sub-recipient or Vendor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of TRC, OEP, the State of New Hampshire or the federal Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the Sub-recipient or Vendor fails to submit the required records or to make them available, the government agency may, after written notice take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to [29 CFR 5.12](#).

(4) Apprentices and trainees--

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

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

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

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

5. Compliance with Copeland Act requirements. The Sub-recipient shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this Agreement.
5. Sub-contracts. The Sub-recipient or Vendor shall insert in any sub-contracts or lower tier sub-contracts the clauses contained in 29 CFR 5.5(a) (1) through (10) (Davis Bacon Act Requirements) and such other clauses as the (*write in the name of the government agency*) may by appropriate instructions require, and also a clause requiring the Vendor(s) to include these clauses in any lower tier

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subcontracts. The Sub-recipient shall be responsible for the compliance by any Vendor(s) or lower tier Vendor(s) with all the contract clauses in 29 CFR 5.5.

5. Contract termination: debarment. A breach of the Agreement clauses in 29 CFR 5.5 may be grounds for termination of the Agreement, and for debarment as a Sub-recipient and a Vendor as provided in [29 CFR 5.12](#).
5. Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference into this Agreement.
5. Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this Agreement shall not be subject to the general disputes clause of this Agreement. Such disputes shall be resolved in accordance with the procedures of the federal Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the Sub-recipients (any of its Vendors) and TRC, OEP, the U.S. Department of Labor, or the employees or their representatives.
5. Certification of eligibility.
 - i. By entering into this Agreement, the Sub-recipient certifies that neither it (nor he or she) nor any person or firm who has an interest in the Sub-recipient's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or [29 CFR 5.12\(a\)\(1\)](#).
 - ii. No part of this Agreement shall be sub-contracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or [29 CFR 5.12\(a\)\(1\)](#).
 - iii. The penalty for making false statements is prescribed in the U.S. Criminal Code, [18 U.S.C. 1001](#) and New Hampshire RSA Chapter 641.

(b) Contract Work Hours and Safety Standards Act. For any contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

1. Overtime requirements. No Sub-recipient or Vendor contracting for any part of the Agreement/sub-contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
2. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (b) (1) of this section the Sub-recipient or Vendor responsible there for shall be liable for the unpaid wages. In addition, such Sub-recipient or Vendor shall be liable to the United States and the State of New Hampshire, for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.

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3. Withholding for unpaid wages and liquidated damages. OEP/TRC shall upon its own action or upon written request of an authorized representative of the federal Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Sub-recipient or Vendor under any such contract or any other contract with the same Sub-recipient, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same Sub-recipient, such sums as may be determined to be necessary to satisfy any liabilities of such Sub-recipient or Vendor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.

(c) In any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in § 5.1, the Sub-recipient or Vendor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the Agreement for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Further, the records to be maintained under this paragraph shall be made available by the Sub-recipient or Vendor for inspection, copying, or transcription by authorized representatives of the State of New Hampshire and the federal Department of Labor, and the Sub-recipient or Vendor will permit such representatives to interview employees during working hours on the job.

The Sub-recipient agrees to have an Occupational Safety and Health Administration (OSHA) 10-hour construction safety program for their on-site employees that complies with the requirements set forth in RSA 277:5-a.