

**ICC Docket No. 12-0512**  
**The Peoples Gas Light and Coke Company's Response to**  
**Staff Data Requests ENG 6.01-6.05**  
**Dated: October 30, 2012**

**REQUEST NO. ENG 6.02:**

Referring to Peoples Gas' response to BAP 13.01, please provide a detailed description of the current Compressed Natural Gas ("CNG") fueling station. Further, please provide the following information:

- a. The Company's rationale for constructing the facility, detailing how the Company arrived at the conclusion that the costs associated with the construction of the new CNG fueling station were prudently incurred; and
- b. A description of the manner in which CNG fueling station is and will be used and useful in providing service for Peoples Gas' fleet vehicles as well as its customers.

**RESPONSE:**

As described below, Peoples Gas was able to use grant money to offset a substantial portion of the cost of the new facility. The new facility increased and improved Peoples Gas' CNG capabilities for its own fleet and it includes third party fueling capability, both aspects of which will benefit Peoples Gas' customers.

The CNG station is a split use facility capable of separately fueling Peoples Gas' company vehicles in addition to third party fleet vehicles. The entire station encompasses three primary functional elements. These elements include the external fuel dispenser island, the internal time-fill field, and the shared compressor package. The external and internal fuel systems are only connected by a common compressor that selectively fuels one system at a time. There is no company vehicle use on the external fuel island and no external fleet fueling with the internal time-fill field.

The external fuel dispenser island is sited on the east side of Peoples Gas' property adjacent to North Elston Avenue in Chicago. The external fleet accessible area includes a dual hose/ dual pressure dispenser capable of fueling 2 vehicles at either 3600 PSI or 3000 PSI. Covering the fuel island is a 30'x50' canopy providing light and cover from weather. With the use of 2 driveways, the site is available to vehicles with up to a 55' wheel base. The site also includes concrete curbing, landscaped areas, and surrounding ornamental iron fencing as required by the City of Chicago. The entire area is approximately 20,000 square feet.

The shared natural gas compressor package containing utilizing a 150 HP Ariel reciprocating compressor in addition to a 75 HP Pinnacle Hydraulic Intensifier. The compressor package delivers approximately 4-14 gasoline gallon equivalents (GGE) per

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minute to either the external fueling island or 4 GGE per minute to the internal company use time-fill field.

The company time fill field was an existing element that was left unchanged during the construction of the new compressor and fuel island areas.

Peoples Gas received a federal Clean Cities grant administered by the City of Chicago and the Gas Technology Institute that required the construction of the new facility. The grant provided funding to increase the number of CNG vehicles in the company fleet by 12 vehicles and to greatly increase the fueling capacity of our facility from 0.5 GGE per minute to more than 4 GGE per minute for company vehicles. The grant provided \$692,400 toward the expected \$1,052,080 fuel station construction cost. The grant agreement required the ability to fuel third party vehicles. See attached for full agreement and requirements.

The new fueling station is and will be used and useful for the company and our customers. The station provides a greatly increased fueling capacity to company vehicles. This allows for a successful expansion of the CNG fleet of vehicles at the site and others. With an increased fueling capacity, the new fueling station can quickly fill vehicles during the day when required and has the capacity to serve as an alternative fueling location should other company CNG facilities experience a disruption. Increased use of CNG fuel benefits customers both in reduced operational costs and environmental benefits.

Businesses utilizing CNG vehicles, or planning to use CNG vehicles, benefit from the availability of an additional CNG fueling station. Only two other fueling stations are currently available for outside use and only one that is able to accommodate large vehicles.

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SUB-AWARDEE AGREEMENT

This AGREEMENT made and entered into as of this 21<sup>st</sup> day of September, 2011 (this Agreement) between INSTITUTE of GAS TECHNOLOGY dba GAS TECHNOLOGY INSTITUTE, an Illinois not-for-profit corporation, with offices located at 1700 S. Mount Prospect Road, Des Plaines, IL 60018 ("GTI"), and The Peoples Gas Light and Coke Company with offices located at 130 East Randolph Street, Chicago, IL 60601 ("SUB-AWARDEE").

WITNESSETH:

WHEREAS, GTI is organized for scientific and educational purposes, including the conduct of programs of research and development in the general areas of production, transmission, storage, distribution, utilization and conservation of natural and manufactured gases and related products; and

WHEREAS, GTI has entered into a Grant Agreement dated **June 24, 2010** with the City of Chicago acting through its Department of the Environment ("SPONSOR") under Government Prime Contract No DE-EE002541 for the Chicago Area Alternative Fuels Deployment Project, CFDA No.81.086, CFDA No. Title "Conservation Research and Development" (the "Clean Cities Project") with the United States Department of Energy ("FEDERAL FUNDER"); and

WHEREAS, GTI desires to subcontract a portion of the work called for under the Grant agreement and the SUB-AWARDEE is willing to perform that work; and

WHEREAS, SUB-AWARDEE has represented that it is equipped and qualified to perform said work; and

WHEREAS, GTI desires to contribute to the cost of research and services by SUB-AWARDEE in connection with the work (as hereinafter defined), and to obtain and have the results disseminated for the benefit of the public; and

NOW, THEREFORE, the parties agree that SUB-AWARDEE shall furnish the materials, facilities, equipment, personnel, services, and all other necessary and related items for the performance of the program, all as more fully set forth in the following attachments to this Agreement, which are hereby made part of this Agreement:

- I. The Schedule, including the SUB-AWARDEE's Scope of Work attached therein as Exhibit A
- II. Exhibit B, FEDERAL FUNDER Special Terms and Conditions
- III. Exhibit C, Payment Requisition Form, Electronic Fund Transfer Form, and IRS W-9 Form
- IV. Exhibit D, EEO/AA Certificate of Compliance Form
- V. Exhibit E, Quarterly Report Form
- VI. Exhibit F, Davis Bacon Wage Determination -- Cook and DuPage Counties, Illinois
- VII. Exhibit G, Property Certification Form

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the last date and year written below.

INSTITUTE OF GAS TECHNOLOGY  
dba GAS TECHNOLOGY INSTITUTE

By: Fred M. Vitale  
signature

Fred M. Vitale  
Director, Contract Services

9/21/2011  
Date Signed

THE PEOPLES GAS LIGHT AND COKE COMPANY

By: Willard S. Evans, Jr.  
signature

Willard S. Evans, Jr.  
President

September 21, 2011  
Date Signed

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## SCHEDULE

1. SCOPE OF WORK

- 1.1 SUB-AWARDEE shall perform the Scope of Work applicable to the SUB-AWARDEE as set forth in and substantially in accordance with SUB-AWARDEE's Scope of Work attached hereto as Exhibit A and is incorporated herein by reference (the "Scope of Work").
- 1.2 GTI will provide services to assist SUB-AWARDEE, as applicable, in accordance with the Scope of Work attached hereto as Exhibit A and incorporated herein by reference.
- 1.3 SUB-AWARDEE warrants that the performance of the Scope of Work pursuant to this Agreement shall be done in a safe, proficient and professional manner and shall conform to the highest standards. SUB-AWARDEE shall adhere to all local, state and federal laws and regulations and ordinances applicable to the Scope of Work. Furthermore, SUB-AWARDEE shall obtain agreements to effectuate the provisions of this Agreement from all persons in its employ who perform any part of the Scope of Work under this Agreement.
- 1.4 Changes to the Scope of Work shall be made as agreed to by GTI and SUB-AWARDEE or as necessary to comply with the SPONSOR and/or FEDERAL FUNDER requirements of the Clean Cities Project.

2. PERIOD OF PERFORMANCE

- 2.1 SUB-AWARDEE shall complete the Scope of Work in accordance with the following schedule:
  - (a) Effective Date - September 21, 2011
  - (b) Work Completion Date - December 20, 2013
  - (c) Final Deliverables Submission Date - January 20, 2014

3. COSTS AND PAYMENTS

- 3.1. GTI shall fund the SUB-AWARDEE an aggregate amount of costs incurred not to exceed Eight Hundred Forty-Eight Thousand Four Hundred Dollars US (\$848,400.00 US) which amount shall be the "Agreement Cost Limitation". In addition, SUB-AWARDEE is obligated to provide Two Hundred Forty-Four Thousand Five Hundred Twelve Dollars US (\$244,512.00 US) in cost share.
  - 3.1.1 By being reimbursed for expenses with federal funds pursuant to this SUB-AWARDEE Agreement, SUB-AWARDEE agrees to be liable for its percentage share of cost share dollars identified in Section 3.1 above, even if this Agreement is terminated early or is not funded to its completion. Failure to provide the cost sharing required by this Section 3, may result in the subsequent recovery by GTI of some or all of the federal funds provided by GTI under this SUBAWARDEE Agreement.
  - 3.1.2 SUB-AWARDEE understands that the SPONSOR and FEDERAL FUNDER's regulations require SUB-AWARDEE to maintain internal documentation of cost share expenses related to this Agreement and that records of such expenses be maintained separately from SUB-AWARDEE's other expenses. SUB-AWARDEE agrees to submit statements of its cost share expenditures to GTI as supporting documentation with the Payment Requisition Form attached hereto as Exhibit C. Travel related expenses are to be itemized separately. By signing the Payment Requisition Form, SUB-AWARDEE certifies it did in fact incur the described cost share expenditures.

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- 3.1.3 Any pre-award costs incurred by SUB-AWARDEE after August 24, 2009 and prior to the Effective Date of this Agreement in connection with the Clean Cities Project shall be included on the first Payment Requisition Form submitted by the SUB-AWARDEE for Scope of Work performed.
- 3.1.4 GTI shall pay SUB-AWARDEE upon approval by GTI's Technical Representative, as defined in Section 7.1 below, of SUB-AWARDEE's Payment Requisition Form and upon payment by SPONSOR of GTI's Payment Requisition Form which includes SUB-AWARDEE's costs incurred for Scope of Work performed. No payment can be made to the SUB-AWARDEE until GTI is in receipt of payment from the SPONSOR for Scope of Work performed.
- 3.2 Payment Requisition Forms shall be submitted to GTI by the tenth business day of each month for costs incurred with such supporting documentation as required by GTI for Scope of Work performed, which shall include a breakdown of direct and indirect costs incurred on a current and cumulative basis, detailed written explanation of the actual services performed, the labor dollars (including hours and rates by labor category) incurred for such services, and the associated expenses with copies of vendor receipts associated with travel, materials, supplies and each item of property. Property supporting documentation shall also include the make, manufacturer, description, model number, serial number, Vehicle Identification Number (VIN), acquisition cost, acquisition date, and general location of the property purchased (as applicable to the specific equipment or vehicle purchase). Payments to SUB-AWARDEE shall not be made more often than once a month and shall be contingent upon GTI's acceptance of SUB-AWARDEE's Payment Requisition Form (Exhibit C) and supporting documentation prepared in accordance with this section, any required Deliverables covering the Scope of Work and SPONSOR's payments to GTI. In addition, SUB-AWARDEE shall provide the same supporting documentation as described above for all cost sharing incurred and reported by SUB-AWARDEE on a current and cumulative basis on the Payment Requisition Forms.
- 3.2.1 SUB-AWARDEE's acceptance of payment under the Final Payment Requisition Form submitted shall constitute and operate as a release of GTI (including GTI's respective officers, agents and employees) by SUB-AWARDEE for any and all claims against and liability of GTI that SUB-AWARDEE, its representatives and assigns might otherwise have or assert arising out of the performance of the Scope of Work under this Agreement.
- 3.2.2 As GTI is required to have an IRS Form W-9 on file for all vendors to which payments are made, SUB-AWARDEE must submit a completed W-9 Form along with an Electronic Fund Transfer Form by fax to GTI's Purchasing Department at 847-768-0750 or by email to PURCHASING@GASTECHNOLOGY.ORG *prior* to GTI paying any Payment Requisition Forms under this Agreement. All Payment Requisition Forms and supporting documentation shall reference the Agreement No. and be sent to Attention: GTI's Accounts Payable Department via fax at 847-768-0750, email to accounts.payable@gastechnology.org or mailed (address below).

GAS TECHNOLOGY INSTITUTE  
1700 South Mount Prospect Road  
Des Plaines, Illinois 60018  
Attn: Accounts Payable Department  
Reference: Agreement No S263

#### 4. REIMBURSEMENT OF FUNDS

The SUB-AWARDEE shall return to GTI any funds paid to the SUB-AWARDEE determined to be unallowable by an audit of SUB-AWARDEE's records. If the SUB-AWARDEE fails to return

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funds deemed unallowable, GTI may deduct the appropriate amount from subsequent payments due to the SUB-AWARDEE from GTI. GTI also reserves the right to recover such funds by any other legal means including litigation if necessary.

The SUB-AWARDEE shall be responsible for reimbursement to GTI for any disbursed funds, which are determined by GTI, the SPONSOR or FEDERAL FUNDER to have been misused or misappropriated. GTI may also require reimbursement of funds if GTI, the SPONSOR or FEDERAL FUNDER determines that any provision of this Agreement has been violated. Any reimbursement of funds which is required by GTI, with or without termination, shall be due within forty-five (45) days after giving written notice to the SUB-AWARDEE.

5. ALLOWABLE COST

5.1 Payment of Direct and Indirect Costs

5.1.1 The SUB-AWARDEE's cost shall be determined on the basis of the SUB-AWARDEE's normal accounting procedures and shall be in accordance with generally accepted accounting principles consistently applied and applicable cost principles referenced in Exhibit B, FEDERAL FUNDER Special Terms and Conditions. The SUB-AWARDEE's costs shall include all costs, direct and indirect, incurred in performance of the Scope of Work or reasonably incidental to such performance as identified in Exhibit A, Scope of Work.

6. EXAMINATION OF RECORDS

The SUB-AWARDEE agrees that GTI, the SPONSOR and FEDERAL FUNDER shall have access at any time and the right to examine, audit, excerpt, transcribe and copy on the SUB-AWARDEE's premises any pertinent records (including electronic records) of the SUB-AWARDEE in connection with this Agreement. Similarly, GTI, the SPONSOR and FEDERAL FUNDER shall have access at any time to examine, audit, test and analyze any and all physical property subject to this Agreement. If a record is stored in an electronic format, the SUB-AWARDEE shall provide copies of these materials in the electronic format as may be requested. Such records shall be retained by the SUB-AWARDEE for no less than three years following final payment on the Agreement (whether such payment is the result of expiration, cancellation or termination).

The minimum types of financial records for the Scope of Work consist of: 1) Documentation of employee time; 2) Documentation of all equipment, materials, supplies and travel expenses; 3) Inventory records and supporting documentation for equipment purchased to carry out the project scope; 4) Documentation and substantiation of methodology used in any in-kind contributions; 5) Rationale supporting allocation of space charges; 6) Rationale and documentation of any indirect costs and 7) Records which support use of Clean Cities Project funds. The SUB-AWARDEE must maintain sufficient segregation of project accounting records from other projects or programs.

7. TECHNICAL DIRECTION

7.1 SUB-AWARDEE's performance of the Scope of Work shall be under the general technical direction of GTI's Technical Representative, who is Mr. Ted Barnes. GTI, at anytime, may designate a new or alternate Technical Representative or Contract Services Representative by written notice to SUB-AWARDEE from GTI's Contract Services Representative, who is Fred Vitalo.

7.2 GTI's Contract Services Representative shall be the only individual within GTI authorized on behalf of GTI to make changes in or amendments to this Agreement, including but not limited to, changes in the Scope of Work, period of performance, and cost.

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## 8. DELIVERABLES

8.1 SUB-AWARDEE shall prepare and submit to GTI deliverables as specified in SUB-AWARDEE's Scope of Work (attached as Exhibit A), Quarterly Report Form (attached as Exhibit E) and set forth below ("Deliverables"), which shall be updated from time to time as necessary. Any required Deliverables shall be in a format acceptable to the GTI Technical Representative.

### 8.2 Deliverable Due Dates

The following table documents the dates that the required Deliverables will be submitted to the GTI Representative. Reporting requirements detailed below are subject to changes by GTI, the SPONSOR, and FEDERAL FUNDER throughout the period of performance. Compliance with any changes to reporting is required.

<b>Deliverable</b>	<b>Due Date to GTI</b>
Quarterly Report (reference Exhibit E)	3rd day after quarter's end
Special Status Report (reference Section 8.3)	As soon as possible after special event
Property Certification (reference Section 8.7)	30th day after expiration or termination of Agreement
Marketing and Training Documentation (reference Exhibit A)	15th day after publicizing

**Table 1-Deliverables Reporting Schedule**

If any due date is not on a business day, such Deliverable shall be due on the preceding business day. Deliverables shall be filed, as necessary, until the expiration of the Term of this Agreement.

### 8.3 Special Status Reports

A report is required (via email) as soon as possible after any of the following events occur:

1. Developments that have a significant favorable impact on the project.
2. Problems, delays, or adverse conditions which materially impair the ability to meet the objectives of the award or which may require GTI, the SPONSOR or the FEDERAL FUNDER to respond to questions relating to such events from the public. Report on any of the following incidents and include the anticipated impact and remedial action to be taken to correct or resolve the problem/condition:
  - a. Any OSHA reportable fatality or injuries requiring hospitalization of five or more individuals.
  - b. Any verbal or written Notice of Violation of any Environmental, Safety, or Health statutes.
  - c. Any incident which causes a significant process or hazard control system failure.
  - d. Any event which is anticipated to cause a significant schedule slippage or cost increase.
  - e. Any damage to Government-owned equipment in excess of \$50,000.
  - f. Any other incident that SUB-AWARDEE reasonably believes has the potential for high visibility in the media.

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- 8.4 Any change to the Deliverable requirements shall require approval by GTI's Technical Representative and require a formal change or amendment authorized by GTI's Contract Services Representative.
- 8.5 The following legal notice shall be affixed to each Deliverable furnished by SUB-AWARDEE to GTI pursuant to this Section 8:

"LEGAL NOTICE

THIS REPORT WAS PREPARED BY ('SUB-AWARDEE') AS AN ACCOUNT OF WORK SPONSORED BY GAS TECHNOLOGY INSTITUTE ('GTI') AND THE CITY OF CHICAGO („SPONSOR") AND US DEPARTMENT OF ENERGY ("FEDERAL FUNDER"). NEITHER GTI, MEMBERS OF GTI, SPONSOR, FEDERAL FUNDER, NOR ANY PERSON ACTING ON BEHALF OF ALL OR ANY OF THEM:

A. MAKES ANY WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED WITH RESPECT TO THE ACCURACY, COMPLETENESS, OR USEFULNESS OF THE INFORMATION CONTAINED IN THIS REPORT, OR THAT THE USE OF ANY INFORMATION, APPARATUS, METHOD, OR PROCESS DISCLOSED IN THIS REPORT MAY NOT INFRINGE PRIVATELY-OWNED RIGHTS, OR

B. ASSUMES ANY LIABILITY WITH RESPECT TO THE USE OF, OR FOR ANY AND ALL DAMAGES RESULTING FROM THE USE OF, ANY INFORMATION, APPARATUS, METHOD, OR PROCESS DISCLOSED IN THIS REPORT."

8.6 Guaranteed Deliverables

Notwithstanding any provision of this Agreement to the contrary, SUB-AWARDEE shall complete the Scope of Work in such a manner so as to guarantee to GTI the submission of acceptable Deliverables under this Agreement.

8.7 Closeout Deliverable  
Property Certification

The SUB-AWARDEE must provide GTI the Property Certification, including the required inventories of non-exempt property, attached hereto as Exhibit G.

9. INSURANCE REQUIREMENTS

- 9.1 SUB-AWARDEE shall provide at SUB-AWARDEE's own expense, and shall cause all lower-tier subcontractors to provide, at their own expense, during the term of the Agreement, the insurance coverages and requirements specified below, as applicable under the Statement of Work, insuring all operations related to the Agreement. SUB-AWARDEE may meet these requirements through self-insurance.

9.1.1 Insurance to Be Provided

A. Workers Compensation and Employers Liability

Workers Compensation as prescribed by applicable law covering all employees who are to provide a service under this Agreement and Employers Liability coverage with limits of not less than \$1,000,000 each accident or illness.

B. Commercial General Liability (Primary and Umbrella)

Commercial General Liability Insurance or equivalent with limits of not less than \$5,000,000 per occurrence for bodily injury, personal injury, and property damage liability. Coverages shall include the following: All premises and operations, products/completed operations,

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separation of insureds, defense, and contractual liability (with no limitation endorsement). The Sponsor and GTI are to be named as an additional insured on a primary, non-contributory basis for any liability arising directly or indirectly from the Scope of Work.

C. Automobile Liability (Primary and Umbrella)

When any motor vehicles (owned, non-owned and hired) are used in connection with Scope of Work to be performed, Automobile Liability Insurance shall be provided with limits of not less than \$2,000,000 per occurrence for bodily injury and property damage. The Sponsor and GTI are to be named as an additional insured on a primary, non-contributory basis.

D. Professional Liability

When any architects, engineers, construction managers, or any other professional consultants perform work in connection with this Agreement, Professional Liability Insurance covering acts, errors, or omissions shall be maintained with limits of not less than \$1,000,000. Coverage shall include contractual liability. When policies are renewed or replaced, the policy retroactive date must coincide with, or precede, start of work on the Agreement. A claims-made policy which is not renewed or replaced must have an extended reporting period of 2 years.

E. Valuable Papers

When any media, data, financial records, books and other documents are produced or used under this Agreement, Valuable Papers Insurance shall be maintained in an amount to insure against any loss whatsoever, and shall have limits sufficient to pay for the re-creation and reconstruction of such records.

F. Builders' Risk

When any construction is undertaken, All Risk Builders Risk Insurance must be provided at replacement cost for materials, supplies, equipment, machinery and fixtures that are or will be part of the permanent facility/project. Coverage must include but is not limited to the following: material stored off-site and in-transit, equipment breakdown, flood, water including overflow, leakage, sewer backup, or seepage, collapse, debris removal, loss resulting from faulty workmanship or materials, testing and mechanical-electrical breakdown or failure. The Sponsor and GTI are to be named as an additional insured and loss payee.

G. Garage Liability

When Scope of Work encompasses performance of any labor on vehicles, Garage Liability Insurance must be provided with limits of not less than \$1,000,000 per occurrence, combined single limit, for bodily injury and property damage. Coverage extensions must include Garage Keepers Legal Liability. The Sponsor and GTI are to be named as an additional insured.

H. Contractor's Pollution Liability

When any Scope of Work is performed which may cause a pollution exposure, Contractors Pollution Liability must be provided covering bodily injury, property damage and other losses caused by pollution conditions that arise from the Scope of Work performed with limits of not less than \$1,000,000 per occurrence. Coverage must include completed operations, contractual liability, defense, excavation, environmental cleanup, remediation and disposal. When policies are renewed or replaced, the policy retroactive date must coincide with or precede the start date of the Scope of Work. A claims-made policy which is not renewed or replaced must have an extended reporting period of two (2) years. The Sponsor and GTI are to be named as an additional insured.

I. Railroad Protective Liability

When any work is to be done adjacent to or on railroad or transit property, Railroad Protective Liability Insurance must be provided with respect to the operations being performed in the name of railroad or transit entity. The policy must have limits of not less than the requirement

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of the operating railroad as applicable for losses arising out of injuries to or death of all persons and for damage to or destruction of property, including the loss of use thereof.

#### 9.1.2 Additional Requirements

SUB-AWARDEE will furnish GTI, prior to the execution of this Agreement, original Certificates of Insurance or evidence of self-insurance detailing the required coverage to be in force on the date of this Agreement, and Renewal Certificates of Insurance, or such similar evidence, if the coverages have an expiration or renewal date occurring during the term of this Agreement. SUB-AWARDEE shall submit evidence of insurance prior to Agreement award. The receipt of any certificate does not constitute agreement by SUB-AWARDEE, GTI or the SPONSOR that the insurance requirements in the Agreement have been fully met or that the insurance policies indicated on the certificate are in compliance with all Agreement requirements. The failure of GTI to obtain certificates or other insurance evidence from SUB-AWARDEE shall not be deemed to be a waiver by GTI and the SPONSOR. SUB-AWARDEE shall advise all insurers of the Agreement provisions regarding insurance. Non-conforming insurance shall not relieve SUB-AWARDEE of the obligation to provide insurance as specified herein. Nonfulfillment of the insurance conditions may constitute a violation of the Agreement, and, GTI retains the right to not enter into an Agreement with the Sub-Awardee, stop work until proper evidence of insurance is provided, or terminate the Agreement.

The insurance shall provide for 30 days prior written notice to be given to GTI in the event coverage is substantially changed, canceled, or non-renewed.

Any and all deductibles or self insured retentions on referenced insurance coverages shall be borne by SUB-AWARDEE.

SUB-AWARDEE agrees that insurers shall waive their rights of subrogation against GTI, the SPONSOR, and the FEDERAL FUNDER its employees, elected officials, agents, or representatives.

SUB-AWARDEE expressly understands and agrees that any coverages and limits furnished by SUB-AWARDEE shall in no way limit SUB-AWARDEE's liabilities and responsibilities specified within the Agreement documents or by law.

SUB-AWARDEE expressly understands and agrees that any insurance or self insurance programs maintained by GTI and the SPONSOR shall not contribute with insurance provided by SUB-AWARDEE under the Agreement.

The required insurance shall not be limited by any limitations expressed in the indemnification language herein or any limitation placed on the indemnity therein given as a matter of law.

SUB-AWARDEE shall require all lower-tier subcontractors to provide the insurance required herein or SUB-AWARDEE may provide the coverages for its lower-tier subcontractors. All lower-tier subcontractors shall be subject to the same insurance requirements of SUBAWARDEE unless otherwise specified herein.

If SUB-AWARDEE and its lower-tier subcontractor desire additional coverages, SUB-AWARDEE and its lower-tier subcontractor shall be responsible for the acquisition and cost of such additional protection.

The SPONSOR Risk Management Department maintains the right to modify, delete, alter or change these requirements.

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10. INDEMNIFICATION

- 10.1 SUB-AWARDEE agrees to and hereby indemnifies and saves GTI, the SPONSOR and FEDERAL FUNDER harmless from and against any and all claims of any kind, including but not limited to liability for injury to persons or damage to property, including environmental damage, arising out of the Scope of Work done under this Agreement, including any and all expenses, costs, attorney's fees, settlements, judgments or awards incurred by GTI and/or SPONSOR in the defense of any such claim or lawsuit; provided, however, that SUB-AWARDEE shall not be obligated to defend, indemnify or hold GTI, SPONSOR or FEDERAL FUNDER harmless from and against any claims (including reasonable attorneys' fees and court costs) to the extent caused by any negligent act or omission or intentional wrongdoing of GTI, SPONSOR or FEDERAL FUNDER.
- 10.2 SUB-AWARDEE shall ensure that all lower-tier subcontracts issued under this Agreement shall provide that any such lower-tier subcontractor agrees to indemnify and save GTI, SPONSOR and FEDERAL FUNDER harmless from and against any and all claims of any kind, including but not limited to liability for injury to persons or damage to property, including environmental damage, arising out of the Scope of Work done under any such lower-tier subcontracts including any and all expenses, costs, attorney's fees, settlements, judgments or awards incurred by GTI and/or SPONSOR in the defense of any such claim or lawsuit; provided, however, that SUB-AWARDEE lower tier subcontractors shall not be obligated to defend, indemnify or hold GTI, SPONSOR or FEDERAL FUNDER harmless from and against any claims (including reasonable attorneys' fees and court costs) to the extent caused by any negligent act or omission or intentional wrongdoing of GTI, SPONSOR or FEDERAL FUNDER.
- 10.3 This indemnification shall survive the termination or expiration of this Agreement.
- 10.4 SUB-AWARDEE shall promptly provide, or cause to be provided, to GTI copies of all notices that SUB-AWARDEE receives of any Action that is given or filed in connection with SUB-AWARDEE's performance, or the performance of any lower-tier subcontractor of SUB-AWARDEE.

11. TERMINATION

- 11.1 GTI may terminate this Agreement at anytime by providing written notice to the SUB-AWARDEE. In the event of such termination, GTI shall reimburse SUB-AWARDEE for all actual costs and non-cancelable commitments (as such term is defined in 10 CFR 600.162 (c) (1)) incurred in the performance of the Agreement up through the effective date of termination.

The foregoing notwithstanding, any obligations relating to confidential information, insurance, indemnification and audit of records as provided for under this Agreement will survive the termination of this Agreement.

- 11.2 Prior to termination for default, GTI shall give its notice of intent to terminate 30 days prior to termination and shall state the nature of the default. In the event SUB-AWARDEE does not cure such default within the 30-day notice period, such termination shall become effective at the end of such period; provided, however, with respect to those defaults which are not capable of being cured within such 30-day period, SUB-AWARDEE shall not be deemed to have committed such default if it has commenced to cure the alleged default within such 30-

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day period and thereafter diligently and continuously prosecutes the cure of such default until the same has been cured.

- 11.3 GTI may, in any court of competent jurisdiction, by any proceeding at law or in equity, secure the specific performance of the agreements contained herein, or may be awarded damages for failure of performance, or both.
- 11.4 Notwithstanding anything to the contrary, this Agreement is subject to the appropriation and availability of SPONSOR funds. In the event that no funds or insufficient funds are appropriated and budgeted in any fiscal period by the SPONSOR, GTI shall notify SUB-AWARDEE of such occurrence and this Agreement shall terminate on the earlier of: (a) the last day of the fiscal period for which sufficient appropriation was made or (b) whenever the funds appropriated by the SPONSOR are exhausted.

12. CONFIDENTIAL INFORMATION

12.1 The parties contemplate that, in the performance of the Scope of Work, either party may furnish the other confidential information which is generally related to the subject matter of this Agreement, but was developed apart from this Agreement. Such confidential information shall be held in confidence by the receiving party, shall not be published in any form, shall not be used, and shall not be discussed with or disseminated to any individual or organization other than the parties. Such terms shall apply for a period commencing upon the execution of this Agreement and extending five (5) years after the Work Completion Date of this Agreement and shall not apply to information:

- (a) which is not in writing and clearly marked "Confidential", except that, information transmitted orally or visually may be classified as information pursuant to this provision by so designating at the time of disclosure, followed by a subsequent reduction to writing and submission to the receiving party within thirty (30) days from the date of initial disclosure;
- (b) which is already in the possession of the receiving party or its employees at the time of disclosure and not subject to confidentiality as evidenced by prior written documentation;
- (c) which now or hereinafter comes into the public domain without breach of this Agreement;
- (d) which the receiving party rightfully receives from third parties without obligation of confidentiality;
- (e) which is approved by the disclosing party's written authorization for use or release by the receiving party;
- (f) which is required to be disclosed by an order of court of competent jurisdiction, subject to timely notice being given to the disclosing party for purposes of intervention and a request of the court by the receiving party for a form of protective order against further disclosure.

13. PUBLICITY RELEASES

13.1 No news releases, advertising or promotional releases that mention GTI, relating to this Agreement or the Scope of Work hereunder, shall be issued by SUB-AWARDEE without the prior written approval of GTI's Contract Services Representative. Such approval shall not be unreasonably withheld. Any inquiry SUB-AWARDEE receives from news media concerning

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this Agreement must be referred to the GTI Technical Representative for coordination prior to response.

14. INDEPENDENT CONTRACTOR

14.1 SUB-AWARDEE shall at all times be an independent contractor to GTI. SUB-AWARDEE shall exercise its own professional judgment and skill. Nothing herein is intended nor shall it create a joint venture or partnership between the parties.

15. INSPECTION AND ACCEPTANCE

15.1 Final inspection and acceptance of all Deliverables required by this Agreement will be accomplished by GTI's Technical Representative.

16. DELIVERY INSTRUCTIONS

16.1 All Deliverables specified under this Agreement shall be prepared in accordance with the terms of this Agreement and delivered to:

GTI's Technical Representative  
Gas Technology Institute  
1700 South Mount Prospect Road  
Des Plaines, Illinois 60018

17. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

17.1 SUB-AWARDEE hereby certifies that it and its principals:

- (i) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal department or agency;
- (ii) 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;
- (iii) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (i) of this Section 17;
- (iv) 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; and
- (v) Are in compliance with the Code of Business Ethics and Conduct as required under the Government's FAR Subpart 3.10.

17.2 SUB-AWARDEE shall attach an explanation to this Agreement in the event it is unable to certify any of the statements in Section 17.1.

18. PROPERTY

18.1 In the course of performance of this Agreement, SUB-AWARDEE may only acquire and direct charge to this Agreement such facilities, equipment (including office equipment), furniture, fixtures, or other real or personal property items as have been included in SUB-AWARDEE's

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Scope of Work and approved by GTI. Property to be purchased that is not set forth in SUB-AWARDEE's Scope of Work will require written approval from GTI's authorized Technical Representative. Property to be purchased under this Agreement must meet the approval of the SPONSOR and be subject to the PROPERTY clause included in Exhibit B, FEDERAL FUNDER Special Terms and Conditions.

19. LOWER-TIER AGREEMENTS

19.1 SUB-AWARDEE shall flow-down the terms this Agreement including, but not limited to, the FEDERAL FUNDER Special Terms and Conditions attached as Exhibit B in any lower-tier subcontract(s), and shall not contain any provision which would conflict with the provisions of this Agreement. Any deviations or changes to any provisions of the lower-tier subcontract(s) requires GTI's approval.

20. CONFLICTS OF INTERESTS

(a) SUB-AWARDEE represents that, to the best of its knowledge and belief, it does not have any conflicts of interest related to this Agreement other than those disclosed in writing to GTI in advance of this Agreement.

(b) SUB-AWARDEE agrees that if, after award, it discovers conflicts of interest with respect to this Agreement, it shall make an immediate and full disclosure in writing to GTI which shall include a description of the action which SUB-AWARDEE has taken or proposes to take to avoid or mitigate such conflicts.

(c) Except as otherwise authorized in writing by GTI, SUB-AWARDEE will insert into all subcontracts provisions making this section applicable to the subcontractor and its employees.

21. ASSIGNMENT

21.1 This Agreement, including the rights and duties contained herein, may not be assigned, in whole or in part, by SUB-AWARDEE without the prior written consent of GTI.

22. GENERAL PROVISIONS OF THE SUBCONTRACT

22.1 By execution of this Agreement, SUB-AWARDEE specifically acknowledges that the Agreement is funded, in part, under the American Recovery and Reinvestment Act (the "Recovery Act) of 2009 (March, 2009), and as such is subject to the requirements of the Recovery Act. SUB-AWARDEE and its lower-tier subcontractors shall comply with all requirements of Exhibit B FEDERAL FUNDER Special Terms and Conditions; 10 CFR Part 600; and the Recovery Act, applicable to this Agreement, including but not limited to all applicable recordkeeping sufficiently segregated from SUB-AWARDEE's other agreements and/or projects and reporting requirements. SUB-AWARDEE shall comply with the FEDERAL FUNDER Special Terms and Conditions contained in Exhibit B, applicable to SUB-AWARDEE, which are hereby incorporated and made a part hereof. The term Recipient used in Exhibit B shall mean SUB-AWARDEE for purposes of this Agreement.

23. COMPLIANCE WITH A-133 AUDIT REQUIREMENT

23.1 In accordance with the Government's A-133 audit requirement for institutions of higher education and other non-profit institutions, SUB-AWARDEE shall provide to GTI, on an annual basis, a copy of its most recent A-133 audit, to the extent SUB-AWARDEE is required to conduct such an audit, and notify GTI of any adverse findings which impact this subcontract. Such copy shall be filed and maintained by GTI throughout the duration of this subcontract. The federal award information (government contract number, CFDA number and title, etc.) for this subcontract is identified in the second Whereas clause on page one of this Agreement.

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SUB-AWARDEE certifies to GTI that it complies with OMB Circular A-133 Compliance Supplement which includes applicable sections Part 3 - Compliance Requirements, Part 4 - DOE Compliance Requirements, Part 5 - Clusters of Programs (R&D Section) and Part 6 - Internal Controls. The foregoing notwithstanding, SUB-AWARDEE is subject to 10CFR 600.316 Audits under this Agreement.

24. EEO CERTIFICATE REQUIREMENT

24.1 GTI requires that all SUB-AWARDEES providing services to GTI indicate their acceptance and compliance to the U.S. Government's Presidential Executive Order No. 11246 requirement by signing the EEO/AA Certificate of Compliance, hereto attached as Exhibit D, and submitting it to GTI's Contract Services Representative.

25. SMALL BUSINESS AND MINORITY-OWNED BUSINESSES

The SUB-AWARDEE shall make positive efforts to utilize small business and minority-owned business sources of supplies and services. Such efforts should allow these sources the maximum feasible opportunity to compete for contracts or subcontracts to be performed utilizing Clean Cities Project funds.

26. FAILURE TO PERFORM

GTI reserves the right to suspend payment of funds and/or terminate this Agreement if required Deliverables are not provided to GTI on a timely basis or if performance of contracted activities is not evidenced. GTI further reserves the right to suspend payment of funds under this Agreement if there are deficiencies related to the required Deliverables or if performance of contracted activities is not evidenced in whole or in part.

The SUB-AWARDEE's management and financial capability including, but not limited to, audit results and performance, may be taken into consideration in any or all future determinations by GTI and may be a factor in a decision to withhold payment and may be cause for termination of this Agreement.

27. SEVERABILITY

If any provision of this Agreement shall be adjudged to be unlawful or contrary to public policy, then that provision shall be deemed null and void and severable from the remaining provisions, and shall in no way affect the validity of this Agreement.

28. SURVIVAL OF REQUIREMENTS

Unless otherwise authorized in writing by GTI, the terms and conditions of this Agreement shall survive the performance period and shall continue in full force and effect until the SUB-AWARDEE has completed, and is in compliance with, all of its requirements.

29. WAIVER

Failure or delay on the part of either party to exercise any right, power, privilege or remedy hereunder shall not constitute a waiver thereof. A waiver of any default shall not operate as a waiver of any other default or of the same type of default on a future occasion.

30. GOVERNING LAW

30.1 This Agreement shall be governed by and construed in accordance with the internal laws of the State of Illinois and, as applicable, Federal Law.

31. COMPLIANCE WITH STATUTES AND OTHER PROVISIONS

31.1 SUB-AWARDEE hereby agrees to comply with any and all applicable statutes, regulations, Executive Orders, and contract and/or grant provisions, including the FEDERAL FUNDER

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Special Terms and Conditions (Exhibit B). SUB-AWARDEE shall ensure that all lower-tier subcontracts issued under this Agreement shall provide that any such lower-tier subcontractor agrees to comply with any and all applicable statutes, regulations, Executive Orders and contract and/or grant provisions, including, but not limited to, the FEDERAL FUNDER Special Terms and Conditions (Exhibit B).

32. NO BUSINESS RELATIONSHIP WITH CITY ELECTED OFFICIALS

Pursuant to Section 2-156-030(b) of the Municipal Code of Chicago, it is illegal for any elected official of the City, or any person acting at the direction of such official, to contact, either orally or in writing, any other City official or employee with respect to any matter involving any person with whom the elected official has a "Business Relationship" (as defined in Section 2-156-080 of the Municipal Code of Chicago), or to participate in any discussion in any City Council committee hearing or in any City Council meeting or to vote on any matter involving the person with whom an elected official has a Business Relationship. Violation of Section 2-156-030(b) of the Municipal Code of Chicago by any elected official, or any person acting at the direction of such official, with respect to this Agreement, or in connection with the transactions contemplated hereby, shall be grounds for termination of this Agreement and the transactions contemplated hereby. SUB-AWARDEE hereby represents and warrants that, to the best of its knowledge after due inquiry, no violation of Section 2-156-030(b) of the Municipal Code of Chicago has occurred with respect to this Agreement or the transactions contemplated hereby.

33. HEADINGS

The paragraph and section headings contained herein are for convenience only and are not intended to limit, vary, define or expand the content thereof.

34. COUNTERPARTS

This Agreement may be executed in several counterparts, each of which shall be deemed an original and all of which shall constitute one and the same agreement. The use of facsimile or PDF signatures for the execution of this Agreement shall be legal and binding and shall have the same force and effect as if originally signed.

35. ENTIRE AGREEMENT

This Agreement constitutes the entire agreement between the parties and supersedes all previous agreements and understandings, whether oral or written, express or implied, relating to the subject matter contained in this Agreement. This Agreement may not be altered, amended, or modified except by written instrument signed by the authorized signatory of GTI and the SUB-AWARDEE.

36. ORDER OF PRECEDENCE

36.1 In the event of any conflict between the terms of this Agreement and certain of the Exhibits hereto, no term contained in this Agreement shall be given effect if it is in conflict with the Clean Cities Project. The following order of precedence shall be used as guidance in resolving such conflict:

Exhibit B:	FEDERAL FUNDER Special Terms and Conditions
Exhibit A:	SUB-AWARDEE's Scope of Work
Exhibit C:	Payment Requisition Form, Electronic Fund Transfer Form and W-9 Form
Exhibit D:	EEO/AA Compliance Certification Form
Exhibit G:	Property Certification Form
Exhibit F:	Davis Bacon Wage Determination – Cook and DuPage Counties, Illinois
Exhibit E:	Quarterly Report Form

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END OF SCHEDULE

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**Exhibit A****EXHIBIT A  
Scope of Work****1.0 Vehicle Deployment****1.1 Procurement and/or Conversion**

The Clean Cities Project grant funds allocated for the SUB-AWARDEE's vehicle deployment are \$156,000 with a corresponding cost share commitment by the SUB-AWARDEE of \$244,512 (detailed below). SUB-AWARDEE will complete actions necessary to enable vehicle purchases and/or conversions. This could include, but is not limited to drafting specifications, issuing Requests for Quotes (RFQs), Evaluating Quotes, Selecting Vehicle Vendor, Negotiating Agreements with Vendor, etc. (using only EPA or CARB certified equipment and installation). All procurements must meet the requirements of this Agreement and the FEDERAL FUNDER's Special Terms and Conditions. Fuel provider entities covered by the Energy Policy Act of 1992's Alternative Fuel Transportation Program (10 CFR 490) are eligible for funding for light-duty alternative fuel vehicles (AFVs) in excess of their annual AFV acquisition requirements. Since medium and heavy duty AFV's are not covered by 10 CFR 490, fuel provider entities are eligible for funding acquisitions for any of those vehicles. All vehicles (detailed in the table below) must be procured, converted (if conversion to alternative fuel is necessary), and put into service by 12/20/2011:

Vehicle Make	Model	Model Year	Qty	Type of Alt Fuel	Total Cost	Grant Funds	Cost Share [?]
Ford	E250	2010	12	CNG	\$400,512	\$156,000	\$244,512

Table 1-Vehicle Deployment Details

**1.2 Data Collection and Reporting**

GTI will report to the SPONSOR on the required programmatic information and vehicle data that will be prepared and collected by the SUB-AWARDEE as described in Section 8 of this Agreement and in Exhibit E, Quarterly Report Form. Data collection is required until the Work Completion date under Section 2.1 of this Agreement. Data collection requirements include:

1. Fuel Use per vehicle per quarter
2. Fuel Use per vehicle cumulative
3. Mileage per vehicle per quarter
4. Mileage per vehicle cumulative

This Section shall survive expiration or earlier termination of the Agreement.

**1.3 Marketing**

GTI will supply the required marketing documentation (decals, pamphlets, etc.) to be implemented by SUB-AWARDEE. GTI will verify and report to the SPONSOR on the required vehicle marketing information that will be implemented by SUB-AWARDEE. Any marketing material that is publicized by the SUB-AWARDEE (or its lower-tier sub-contractors) must be submitted to GTI as described in Section 8 of this Agreement. Required marketing tasks include (but may not be limited to):

1. Application and display of appropriate signage to vehicles stating that they are part of a USDOE Clean Cities Award and are powered by an alternative fuel and/or advanced technology.

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**1.4 Training**

SUB-AWARDEE will provide training as necessary to ensure that the vehicles are operated and maintained in a safe and proper manner. The SUB-AWARDEE will be responsible to ensure the availability of necessary personnel and cover any costs associated with the personnel's time and travel to participate in training in the Chicago area. Any training material that is developed by the SUB-AWARDEE (or its lower-tier sub-contractors) must be submitted to GTI as described in Section 8 of this Agreement.

**2.0 Infrastructure Deployment****2.1 Procurement**

The Clean Cities Project grant funds allocated for the SUB-AWARDEE's Infrastructure deployment are \$692,400. All procurements must meet the descriptions below, the requirements of this Agreement and the FEDERAL FUNDER's Special Terms and Conditions. Any procurement not detailed below must receive prior authorization by GTI's Technical Representative. Infrastructure (detailed herein) shall allow for public and/or shared fleet access and must be procured, installed, and put into service by 12/20/2011.

**2.2 Location**

The fueling station will be installed at 1134 N. Elston Ave, Chicago, IL.

**2.3 Fueling Station Equipment and Services**

The following tables describe the Infrastructure equipment and services that will be procured under this Agreement. All equipment and installations must meet applicable codes.

<b>Equipment</b>	<b>Description with Nominal Capacity</b>
Compressor Station	One (1) compressor with approx. 150 BHP electric motors including necessary electrical components (motor starter, controls, transformer, etc.) designed for approx. 289 scfm at 30 psig inlet. Weather-proof enclosure with steel deck.
Dryer	Single-tower with regeneration
Storage	ASME storage vessels with approx. 24,000 scf capacity at 5,000 psig
Priority and ESD Controls	Pneumatic Priority Panel with Emergency Shutdown Devices and controls
Dispensers	One (1) Dual-hose, Dual-pressure (3000 and 3600 psig) dispenser
Card Reader	One card reader system

**Table 2-Infrastructure Equipment Details**

<b>Service</b>	<b>Description</b>
Site Preparation	Site preparation including (but not limited to) grading/excavating, trenching, backfilling, paving, general site lighting, driveway improvements, landscaping, etc.
Equipment Pads	Concrete pads for the fueling station and dispensing equipment
Protection	Concrete bollards and/or guard rails to protect equipment as required by code
Mechanical Installation	Mech. installation including (but not limited to) equipment placement, crane lifting, anchoring, piping, tubing, connections, etc.
Electrical Installation	Elec. installation including (but not limited to) conduit and wiring, connections, seal-offs, ESD system, electrical boxes, etc.
Extension of Utilities	Extend natural gas and/or electrical services as necessary
Shipping and Delivery	Shipping and Freight charges for station equipment to the station location
Engineering Services	Services include (but are not limited to) project management, site design, drawings, permits, etc.
Start-Up and Training	Services include (but are not limited to) station start-up services, training of necessary personnel, operations and maintenance manuals, spare parts lists, etc.

**Table 3-Infrastructure Service Details**

## **2.4 Data Collection and Reporting**

GTI will report to the SPONSOR on the required programmatic information and Infrastructure data that will be prepared and collected by the SUB-AWARDEE as described in Section 8 of this Agreement and in Exhibit E, Quarterly Report Form. Data collection is required until the Work Completion date under Section 2.1 of this Agreement. Data collection requirements include:

1. Alternative fuel sales per quarter per site
2. Alternative fuel sales cumulative per site
3. Average Alternative Fuel Sale Price per quarter per site

This Section shall survive expiration or earlier termination of the Agreement.

## **2.5 Training**

SUB-AWARDEE will provide training to the users and operators as necessary to ensure that the infrastructure is installed, operated and maintained in a safe and proper manner. The SUB-AWARDEE will be responsible to ensure the availability of necessary personnel and cover any costs associated with the personnel's time and travel to participate in training. Any training material that is publicized by the SUB-AWARDEE (or its lower-tier sub-contractors) must be submitted to GTI as described in Section 8 of this Agreement.

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**Exhibit B**

**Federal Funder Special Terms and Conditions**

See Attached.

**SPECIAL TERMS AND CONDITIONS FOR USE IN MOST GRANTS AND COOPERATIVE AGREEMENTS..... 2**

**RESOLUTION OF CONFLICTING CONDITIONS..... 2**

**AWARD AGREEMENT TERMS AND CONDITIONS ..... 2**

**PAYMENT PROCEDURES – REIMBURSEMENT THROUGH THE AUTOMATED CLEARING HOUSE (ACH) VENDOR INQUIRY PAYMENT ELECTRONIC REPORTING SYSTEM (VIPERS)..... 2**

**INCREMENTAL FUNDING AND MAXIMUM OBLIGATION - COEXTENSIVE BUDGET PERIOD AND PROJECT PERIOD ..... 3**

**COST SHARING FFRDC'S NOT INVOLVED ..... 3**

**REBUDGETING AND RECOVERY OF INDIRECT COSTS - REIMBURSABLE INDIRECT COSTS AND FRINGE BENEFITS ..... 3**

**FINAL INCURRED COST AUDIT..... 4**

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**PUBLICATIONS..... 5**

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**SPECIAL TERMS AND CONDITIONS FOR USE IN MOST GRANTS AND COOPERATIVE AGREEMENTS**

**RESOLUTION OF CONFLICTING CONDITIONS**

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

**AWARD AGREEMENT TERMS AND CONDITIONS**

This award/agreement consists of the Grant and Cooperative Agreement cover page, plus the following:

- a. Special terms and conditions.
- b. Attachments:
 

Attachment No.	Title
1	Intellectual Property Provisions
2	Statement of Project Objectives
3	Federal Assistance Reporting Checklist
4	Budget Pages
5	Wage Determination
- c. Applicable program regulations: None
- d. DOE Assistance Regulations, 10 CFR Part 600 at <http://ecfr.gpoaccess.gov> and if the award is for research and to a university or non-profit, the Research Terms & Conditions and the DOE Agency Specific Requirements at <http://www.nsf.gov/bfa/dias/policy/rtc/index.jsp>.
- e. Application/proposal (original application proposed 5/29/2009 and revised on 11/19/2009) as approved by DOE.
- f. National Policy Assurances to Be Incorporated as Award Terms in effect on date of award at [http://management.energy.gov/business\\_doe/1374.htm](http://management.energy.gov/business_doe/1374.htm).

**PAYMENT PROCEDURES – REIMBURSEMENT THROUGH THE AUTOMATED CLEARING HOUSE (ACH) VENDOR INQUIRY PAYMENT ELECTRONIC REPORTING SYSTEM (VIPERS)**

- a. Method of Payment. Payment will be made by reimbursement through ACH.
- b. Requesting Reimbursement. Requests for reimbursements must be made electronically through Department of Energy's Oak Ridge Financial Service Center (ORFSC) VIPERS. To access and use VIPERS, you must enroll at <https://finweb.oro.doe.gov/vipers.htm>. Detailed instructions on how to enroll are provided on the web site. For non-construction awards, you must submit a Standard Form (SF) 270, "Request for Advance or Reimbursement" at <https://finweb.oro.doe.gov/vipers.htm> and attach a file containing appropriate supporting documentation. The file attachment must show the total federal share claimed on the SF 270, the non-federal share claimed for the billing period if cost sharing is required, and cumulative expenditures to date (both Federal and non-Federal) for each of the following categories: salaries/wages and fringe benefits; equipment; travel; participant/training support costs, if any; other direct costs, including subawards/contracts; and indirect costs. For construction awards, you must submit a SF 271, "Outlay Report and Request for Reimbursement for Construction Programs," through VIPERS.
- c. Timing of submittals. Submittal of the SF 270 or SF 271 should coincide with your normal billing pattern, but not more frequently than every two weeks. Requests for reimbursement must be limited to the amount of disbursements made during the billing period for the federal share of direct project costs and the proportionate share of any allowable indirect costs incurred during that billing period.

d. Adjusting payment requests for available cash. You must disburse any funds that are available from repayments to and interest earned on a revolving fund, program income, rebates, refunds, contract settlements, audit recoveries, credits, discounts, and interest earned on any of those funds before requesting additional cash payments from DOE.

e. Payments. The DOE approving official will approve the invoice as soon as practicable but not later than 30 days after your request is received, unless the billing is improper. Upon receipt of an invoice payment authorization from the DOE approving official, the ORFSC will disburse payment to you. You may check the status of your payments at the VIPER web site. All payments are made by electronic funds transfer to the bank account identified on the ACH Vendor/Miscellaneous Payment Enrollment Form (SF 3881) that you filed.

**INCREMENTAL FUNDING AND MAXIMUM OBLIGATION - COEXTENSIVE BUDGET PERIOD AND PROJECT PERIOD**

This award is funded on an incremental basis. The maximum obligation of the DOE is limited to the amount shown on the Agreement Face Page. You are not obligated to continue performance of the project beyond the total amount obligated and your pro rata share of the project costs, if cost sharing is required. Additional funding is contingent upon the availability of appropriated funds and substantial progress towards meeting the objectives of the award.

**COST SHARING FFRDC'S NOT INVOLVED**

a. Total Estimated Project Cost is the sum of the Government share and Recipient share of the estimated project costs. The Recipient's cost share must come from non-Federal sources unless otherwise allowed by law. By accepting federal funds under this award, you agree that you are liable for your percentage share of total allowable project costs, on a budget period basis, even if the project is terminated early or is not funded to its completion. This cost is shared as follows:

Budget Period No.	Budget Period Start	Government Share \$/%	Recipient Share \$/%	Total Estimated Cost
1	12/21/2009	\$14,999,658 / 38%	\$24,625,322 / 62%	\$39,624,980
<b>Total Project</b>		\$14,999,658	\$24,625,322	\$39,624,980

b. If you discover that you may be unable to provide cost sharing of at least the amount identified in paragraph a of this article, you should immediately provide written notification to the DOE Award Administrator indicating whether you will continue or phase out the project. If you plan to continue the project, the notification must describe how replacement cost sharing will be secured.

c. You must maintain records of all project costs that you claim as cost sharing, including in-kind costs, as well as records of costs to be paid by DOE. Such records are subject to audit.

d. Failure to provide the cost sharing required by this Article may result in the subsequent recovery by DOE of some or all the funds provided under the award.

**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, you 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. 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 recipient must absorb the underrecovery. Such underrecovery may be allocated as part of the organization's required cost sharing.

#### **FINAL INCURRED COST AUDIT**

In accordance with 10 CFR 600, DOE reserves the right to initiate a final incurred cost audit on this award. If the audit has not been performed or completed prior to the closeout of the award, DOE retains the right to recover an appropriate amount after fully considering the recommendations on disallowed costs resulting from the final audit.

#### **STATEMENT OF FEDERAL STEWARDSHIP**

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

#### **SITE VISITS**

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

#### **REPORTING REQUIREMENTS**

a. Requirements. The reporting requirements for this award are identified on the Federal Assistance Reporting Checklist, DOE F 4600.2, attached to this award. Failure to comply with these reporting requirements is considered a material noncompliance with the terms of the award. Noncompliance may result in withholding of future payments, suspension, or termination of the current award, and withholding of future awards. 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. Dissemination of scientific/technical reports. Scientific/technical reports submitted under this award will be disseminated on the Internet via the DOE Information Bridge ([www.osti.gov/bridge](http://www.osti.gov/bridge)), unless the report contains patentable material, protected data, or SBIR/STTR data. Citations for journal articles produced under the award will appear on the DOE Energy Citations Database ([www.osti.gov/energycitations](http://www.osti.gov/energycitations)).

c. Restrictions. Reports submitted to the 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.

**NOTE: Subject to OMB approval pursuant to the Paperwork Reduction Act, DOE reserves the right to amend the reporting requirements to request more frequent and more detailed reporting.**

## **PUBLICATIONS**

a. You are encouraged to publish or otherwise make publicly available the results of the work conducted under the award.

b. An acknowledgment of 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-EE0002541."

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**

You 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. The intellectual property provisions applicable to this award are provided as an attachment to this award or are referenced on the Agreement Face Page. A list of all intellectual property provisions may be found at [http://www.gc.doe.gov/financial\\_assistance\\_awards.htm](http://www.gc.doe.gov/financial_assistance_awards.htm).

b. Questions regarding intellectual property matters should be referred to the 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)

## **LOBBYING RESTRICTIONS**

By accepting funds under this award, you agree that none of the funds obligated on the award shall be expended, directly or indirectly, to influence congressional action on any legislation or appropriation matters pending before Congress, other than to communicate to Members of Congress as described in 18

U.S.C. 1913. This restriction is in addition to those prescribed elsewhere in statute and regulation.

#### **NOTICE REGARDING THE PURCHASE OF AMERICAN-MADE EQUIPMENT AND PRODUCTS -- SENSE OF CONGRESS**

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

#### **PROPERTY**

Real property and equipment acquired by the Recipient shall be subject to the rules set forth in 10 CFR 600.130-137, 10 CFR 600.231-233, or 10 CFR 600.320-324 as applicable.

Consistent with the goals and objectives of this project, the Recipient may continue to use Recipient acquired property beyond the Period of Performance, without obligation, during the period of such use, to extinguish DOE's conditional title to such property as described in 10 CFR 600.132-135, 10 CFR 600.231-233, 600.321-324, subject to the following: (a) the Recipient continues to utilize such property for the objectives of the project as set forth in the Statement of Project Objectives; (b) DOE retains the right to periodically ask for, and the Recipient agrees to provide, reasonable information concerning the use and condition of the property; and (c) the Recipient follows the property disposition rules set forth in the applicable sections of 10 CFR Part 600, if the property is no longer used by the Recipient for the objectives of the project, and the fair market value of property exceeds \$5,000.

Once the per unit fair market value of the property is less than \$5,000, pursuant to the applicable sections of 10 CFR Part 600, DOE's residual interest in the property shall be extinguished and Recipient shall have no further obligation to the DOE with respect to the property.

The regulations as set forth in 10 CFR Part 600 and the requirements of this article shall also apply to property in the possession of any team member, sub-recipient or other entity where such property was acquired in whole in part with funds provided by DOE under this grant or where such property was counted as cost-sharing under the grant.

#### **INSOLVENCY, BANKRUPTCY OR RECEIVERSHIP**

a. You shall immediately notify the DOE of the occurrence of any of the following events: (i) you or your parent's filing of a voluntary case seeking liquidation or reorganization under the Bankruptcy Act; (ii) your consent to the institution of an involuntary case under the Bankruptcy Act against you or your parent; (iii) the filing of any similar proceeding for or against you or your parent, or its consent to, the dissolution, winding-up or readjustment of your debts, appointment of a receiver, conservator, trustee, or other officer with similar powers over you, under any other applicable state or federal law; or (iv) your insolvency due to your inability to pay your debts generally as they become due.

b. Such notification shall be in writing and shall: (i) specifically set out the details of the occurrence of an event referenced in paragraph a; (ii) provide the facts surrounding that event; and (iii) provide the impact such event will have on the project being funded by this award.

c. Upon the occurrence of any of the four events described in the first paragraph, DOE reserves the right to conduct a review of your award to determine your compliance with the required elements of the award (including such items as cost share, progress towards technical project objectives, and submission of

required reports). If the DOE review determines that there are significant deficiencies or concerns with your performance under the award, DOE reserves the right to impose additional requirements, as needed, including (i) change your payment method; or (ii) institute payment controls.

d. Failure of the Recipient to comply with this provision may be considered a material noncompliance of this financial assistance award by the Contracting Officer.

#### **INDEMNITY**

The Recipient shall indemnify the Government and its officers, agents, or employees for any and all liability, including litigation expenses and attorneys' fees, arising from suits, actions, or claims of any character for death, bodily injury, or loss of or damage to property or to the environment, resulting from the project, except to the extent that such liability results from the direct fault or negligence of Government officers, agents or employees, or to the extent such liability may be covered by applicable allowable costs provisions.

#### **NATIONAL ENVIRONMENTAL POLICY ACT (NEPA) REQUIREMENTS**

Pursuant to the National Environmental Policy Act (NEPA), the Recipient is required to provide a completed Environmental Questionnaire (NETL F. 451.1-1/3) and any supplemental documentation for each location at which work will be conducted under this award. In the case of a new station, this additional documentation shall include an environmental site assessment to be performed by a qualified vendor accompanied by a photograph of the site. The Recipient and any entities associated with the performance of work under this award shall be restricted from taking any action using Federal funds which would have an adverse affect on the environment or limit the choice of reasonable alternatives prior to DOE providing either a NEPA clearance or a final NEPA decision regarding each site location. Prohibited actions include, but are not limited to, vehicle conversion, vehicle deployment, infrastructure work such as demolition of existing buildings, site clearing, ground breaking, construction, and/or detailed design. This restriction does not preclude you from performing administrative, educational, training, and outreach/marketing related activities. DOE will provide written notification to the recipient regarding NEPA clearance as soon as such determination is made by the NETL NEPA Compliance Officer.

#### **DECONTAMINATION AND/OR DECOMMISSIONING (D &D) COSTS**

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

#### **SPECIAL PROVISIONS RELAING TO WORK FUNDED UNDER AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009 (MAR 2009)**

##### **Preamble**

The American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, (Recovery Act) was enacted to preserve and create jobs and promote economic recovery, assist those most impacted by the recession, provide investments needed to increase economic efficiency by spurring technological advances in science and health, invest in transportation, environmental protection, and other infrastructure that will provide

long-term economic benefits, stabilize State and local government budgets, in order to minimize and avoid reductions in essential services and counterproductive State and local tax increases. Recipients shall use grant funds in a manner that maximizes job creation and economic benefit.

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

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

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

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

#### Definitions

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

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

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

#### Special Provisions

##### A. Flow Down Requirement

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

##### B. Segregation of Costs

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

#### C. Prohibition on Use of Funds

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

#### D. Access to Records

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

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

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

#### E. Publication

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

##### Notice of Restriction on Disclosure and Use of Data

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

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

#### F. Protecting State and Local Government and Contractor Whistleblowers.

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

**Prohibition on Reprisals:** An employee of any non-Federal employer receiving covered funds under the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, may not be discharged, demoted, or

otherwise discriminated against as a reprisal for disclosing, including a disclosure made in the ordinary course of an employee's duties, to the Accountability and Transparency Board, an inspector general, the Comptroller General, a member of Congress, a State or Federal regulatory or law enforcement agency, a person with supervisory authority over the employee (or other person working for the employer who has the authority to investigate, discover or terminate misconduct), a court or grand jury, the head of a Federal agency, or their representatives information that the employee believes is evidence of:

- gross mismanagement 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](http://www.Recovery.gov), for specific requirements of this section and prescribed language for the notices.).

#### G. RESERVED

#### H. False Claims Act

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

#### I. Information in Support of Recovery Act Reporting

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

documentation at the request of the Contracting Officer or designee.

#### J. Availability of Funds

Funds appropriated under the Recovery Act and obligated to this award are available for reimbursement of costs until September 30, 2015.

#### K. Additional Funding Distribution and Assurance of Appropriate Use of Funds

Certification by Governor -- Not later than April 3, 2009, 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.

#### L. 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.

### **REPORTING AND REGISTRATION REQUIREMENTS UNDER SECTION 1512 OF THE RECOVERY ACT**

- (a) This award requires the recipient to complete projects or activities which are funded under the American Recovery and Reinvestment Act of 2009 (Recovery Act) and to report on use of Recovery Act funds provided through this award. Information from these reports will be made available to the public.
- (b) The reports are due no later than ten calendar days after each calendar quarter in which the recipient receives the assistance award funded in whole or in part by the Recovery Act.
- (c) Recipients and their first-tier recipients must maintain current registrations in the Central Contractor Registration (<http://www.ccr.gov>) at all times during which they have active federal awards funded with Recovery Act funds. A Dun and Bradstreet Data Universal Numbering System (DUNS) Number (<http://www.dnb.com>) is one of the requirements for registration in the Central Contractor Registration.
- (d) The recipient shall report the information described in section 1512(c) of the Recovery Act using the reporting instructions and data elements that will be provided online at <http://www.FederalReporting.gov> and ensure that any information that is pre-filled is corrected or updated as needed.

### **REQUIRED USE OF AMERICAN IRON, STEEL, AND MANUFACTURED GOODS (COVERED**

DE-EE0002541 June 24, 2010

D-11

**UNDER INTERNATIONAL AGREEMENTS)—SECTION 1605 OF THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009**

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

Designated country --(1) A World Trade Organization Government Procurement Agreement country (Aruba, Austria, Belgium, Bulgaria, Canada, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea (Republic of), Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, and United Kingdom;

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

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

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

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

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

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

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

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

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

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

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

and works.

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

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

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

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

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

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

NONE

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

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

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

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

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

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

(B) Unit of measure;

(C) Quantity;

(D) Cost;

(E) Time of delivery or availability;

(F) Location of the project;

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

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

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

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

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

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

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

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

Foreign and Domestic Items Cost Comparison – N/A

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

**WAGE RATE REQUIREMENTS UNDER SECTION 1606 OF THE RECOVERY ACT**

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

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

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

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

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

(b) For recipients covered by the Single Audit Act Amendments of 1996 and OMB Circular A--133, "Audits of States, Local Governments, and Non-Profit Organizations," recipients agree to separately identify the expenditures for Federal awards under the Recovery Act on the Schedule of Expenditures of Federal Awards (SEFA) and the Data Collection Form (SF--SAC) required by OMB Circular A--133. OMB Circular A--133 is available at <http://www.whitehouse.gov/omb/circulars/a133/a133.html>. This shall be accomplished by identifying expenditures for Federal awards made under the Recovery Act separately on the SEFA, and as separate rows under Item 9 of Part III on the SF--SAC by CFDA number, and inclusion of the prefix "ARRA-" in identifying the name of the Federal program on the SEFA and as the first characters in Item 9d of Part III on the SF--SAC.

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

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

Accountability Office.

## **DAVIS BACON ACT AND CONTRACT WORK HOURS AND SAFETY STANDARDS ACT**

**Definitions:** For purposes of this article, Davis Bacon Act and Contract Work Hours and Safety Standards Act, the following definitions are applicable:

(1) "Award" means any grant, cooperative agreement or technology investment agreement made with Recovery Act funds by the Department of Energy (DOE) to a Recipient. Such Award must require compliance with the labor standards clauses and wage rate requirements of the Davis-Bacon Act (DBA) for work performed by all laborers and mechanics employed by Recipients (other than a unit of State or local government whose own employees perform the construction) Subrecipients, Contractors and subcontractors.

(2) "Contractor" means an entity that enters into a Contract. For purposes of these clauses, Contractor shall include (as applicable) prime contractors, Recipients, Subrecipients, and Recipients' or Subrecipients' contractors, subcontractors, and lower-tier subcontractors. "Contractor" does not mean a unit of State or local government where construction is performed by its own employees."

(3) "Contract" means a contract executed by a Recipient, Subrecipient, prime contractor or any tier subcontractor for construction, alteration, or repair. It may also mean (as applicable) (i) financial assistance instruments such as grants, cooperative agreements, technology investment agreements, and loans; and, (ii) Sub awards, contracts and subcontracts issued under financial assistance agreements. "Contract" does not mean a financial assistance instrument with a unit of State or local government where construction is performed by its own employees.

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

(5) "Recipient" means any entity other than an individual that receives an Award of Federal funds in the form of a grant, cooperative agreement or technology investment agreement directly from the Federal Government and is financially accountable for the use of any DOE funds or property, and is legally responsible for carrying out the terms and conditions of the program and Award.

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

(7) "Subrecipient" means a non-Federal entity that expends Federal funds received from a Recipient to carry out a Federal program, but does not include an individual that is a beneficiary of such a program.

### **(a) Davis Bacon Act**

(1) Minimum wages.

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

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

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

- (1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and
- (2) The classification is utilized in the area by the construction industry; and
- (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the Contracting Officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the Contracting Officer to the Administrator of the Wage and Hour Division, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.