



# The Town of Hilton Head Island Regular Town Council Meeting

Tuesday, June 21, 2011

4:00 P.M.

## AGENDA

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As a Courtesy to Others Please Turn Off All Cell Phones and Pages During  
the Town Council Meeting

- 1) **Call to Order**
- 2) **Pledge to the Flag**
- 3) **Invocation**
- 4) **FOIA Compliance** – Public notification of this meeting has been published, posted, and mailed in compliance with the Freedom of Information Act and the Town of Hilton Head Island requirements.
- 5) **Proclamations and Commendations**
- 6) **Approval of Minutes**
  - a. Town Council Budget Workshop – May 24, 2011
  - b. Regular Town Council Meeting – June 7, 2011
- 7) **Report of the Town Manager**
  - a. Town Manager's Items of Interest
  - b. June, 2011 Policy Agenda, Management Targets and CIP Updates
- 8) **Reports from Members of Council**
  - a. General Reports from Council
  - b. Report of the Intergovernmental Relations Committee – George Williams, Chairman
  - c. Report of the Personnel Committee – Lee Edwards, Chairman
  - d. Report of the Planning & Development Standards Committee – Bill Ferguson, Chairman
  - e. Report of the Public Facilities Committee – Kim Likins, Chairman
  - f. Report of the Public Safety Committee – Bill Harkins, Chairman
  - g. Report of the LMO Rewrite Committee – Kim Likins, Ex-Officio Member
- 9) **Appearance by Citizens**
- 10) **Unfinished Business**
  - a. **Second Reading of Proposed Ordinance No. 2011-09**

Second Reading of Proposed Ordinance No. 2011-09 to raise revenue and adopt a budget for the Town of Hilton Head Island, South Carolina, for the fiscal year ending June 30, 2012; to establish a property tax levy; to establish funds; to establish a policy for acquisition of rights of way and easements; and providing for severability and an effective date.

**b. Second Reading of Proposed Ordinance No. 2011-08**

Second Reading of Proposed Ordinance No. 2011-08 to revise language and defined terms to be consistent with the National Flood Insurance Program regulations 44 CFR, Parts 59 and 60; clarify the scope and purpose of the Ordinance and correct outdated reference to the International Building Code.

**c. Second Reading of Proposed Ordinance No. 2011-10**

Second Reading of Proposed Ordinance No. 2011-10 authorizing the execution of those certain Parking Easement Agreements with Rowe Highsmith, LLC over property owned by the Town of Hilton Head Island, South Carolina, pursuant to the authority of S. C. Code Ann. Sec. 5-7-40 Supp. 2010), and Sec. 2-7-20, *Code of the Town of Hilton Head Island, South Carolina*, (1983); and providing for severability and an effective date.

**11) New Business**

**a. First Reading of Proposed Ordinance No. 2011-11**

First Reading of Proposed Ordinance No. 2011-11 to amend Title 16 of the Municipal Code of the Town of Hilton Head Island, South Carolina, the Land Management Ordinance, Chapter 4, to revise Section 16-4-1204 and to add Section 16-4-13xx. This amendment commonly referred to as the *WMU Outdoor Recreation Amendment* as noticed in the Island Packet on March 27, 2011, includes changes that provide for an amendment to LMO Section 16-4-1204, use table and the addition of a new Section, 16-4-13xx, Outdoor Recreation; and providing for severability and an effective date.

**b. Consideration of a Resolution**

Consideration of a Resolution of the Town Council of the Town Of Hilton Head Island, South Carolina to execute the Grant Agreement with the South Carolina Budget & Control Board Office of Local Government and execute the Sub-Recipient Agreement with Hilton Head Public Service District for the Water & Sewer Energy Efficiency Grant.

**c. Appointments to Town Boards and Commissions**

**12) Executive Session**

- a. Land Acquisition
- b. Annual Review of the Town Manager

**13) Adjournment**

**THE TOWN OF HILTON HEAD ISLAND**  
**TOWN COUNCIL BUDGET WORKSHOP**

**Date:** Tuesday, May 24, 2011

**Time:** 4:00 P.M.

**Present from Town Council:** Drew A. Laughlin, *Mayor*; Ken Heitzke, *Mayor Pro-Tem*; Bill Ferguson, George Williams, Bill Harkins, Kim Likins, Lee Edwards, *Council Members*.

**Present from Town Staff:** Stephen G. Riley, *Town Manager*; Greg DeLoach, *Assistant Town Manager*; Charles Cousins, *Director of Community Development*; Scott Liggett, *Director of Public Projects and Facilities*; Lavarn Lucas, *Fire Chief*; Nancy Gasen, *Director of Human Resources*; Susan Simmons, *Director of Finance*; Steven Markiw, *Deputy Director of Finance*; Brian Hulbert, *Staff Attorney*; Paul Rasch, *Emergency Management Coordinator*; Rene Phillips, *Website/Court Systems Administrator*; Vicki Pfannenschmidt, *Executive Assistant*

**Present from Media:** Tom Barton, *Island Packet*

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**1) CALL TO ORDER**

Mayor Laughlin called the meeting to order at 4:00 p.m.

- 2) FOIA COMPLIANCE** – Public notification of this meeting has been published, posted and mailed in compliance with the Freedom of Information Act and the Town of Hilton Head Island requirements.

**3) Review Of General Operating Budget**

Steve Riley reviewed and explained adjustments to the proposed budget due to changes in certain areas. He said that while there is a projection of what the State will allow in a millage increase for population and cost of living, the Town has not received the actual figures yet and are still waiting for them from the State. He asked if Council members had any questions.

Mr. Harkins stated he thought it was a good budget and it reflected good thinking. Mr. Harkins spoke concerning town staffing. He stated comparative data would be of assistance in defending the position of staff salaries and benefits.

Mr. Williams stated he felt the Town Manager has worked to reduce staff costs as needed noting in 2009 there were 262 employees and in 2011 there are now 252 employees. He pointed out that all affiliated agencies were asked to hold the line on their budgets and the Town's proposed budget shows an increase in spending for next year. He suggested the Town should keep the budget in line with last year's estimated actual. Mr. Williams then suggested any millage increase be set aside for additional citizen services such as the Senior Citizen Center, the Sailing and Rowing Club and the expansions for the Island Recreation Center.

Mr. Harkins asked questions concerning the proposed millage increase. Mr. Riley answered his questions and explained this is a one time opportunity based on the change in the census numbers. He stated if Town Council chooses not to take the increase at this time, it will not be available in the future. Mr. Edwards asked if Council chose to take the increase now, could they reduce the millage in the future. Mr. Riley responded that Council can reduce the millage any time, but cannot increase it except as provided by State Law.

Mayor Laughlin stated if the directive is to maintain spending at last year's levels and to set aside any increase in property tax he felt in that order to accomplish those things, reductions would need to be taken in other areas. Mr. Riley said he could go back and look at items and show Council the estimated actual and the additional items that are over and above such as additional recycling costs and advertising costs. He said by splitting these costs out of the budget it would show that the increase is not due to staff costs but additional costs in other areas.

Kim Likins asked about the 1% merit increase and asked if it was an across the board increase. Steve Riley explained the process in awarding merit increases. Mr. Harkins said if Town Council is going to consider a tax increase then the 1% merit increase might be considered the cause and may create a volume of complaints. Mr. Ferguson said he feels the 1% merit increase makes up for the 1% cut from the budget last year.

Mr. Edwards said he is not opposed to an increase if people deserve it but he is opposed to an across the board increase. He said he would also like a comparative analysis with other municipalities including salaries and total number of staff. Mr. Riley said there was a comparative study on salaries and benefits done approximately four years ago and he would have it distributed to Town Council for review. He explained how the comparative studies concerning staffing are difficult to conduct due to the many differences in all municipalities. Mr. Edwards stated he feels Town Council needs to be as judicious as possible in dealing with tax payers money. Mr. Ferguson said the cost of living on Hilton Head Island is much more than the surrounding communities. He said he feels staff deserves an across the board increase to keep up with the cost of living. Mayor Laughlin referred to the compensation study done in late 2006. Nancy Gasen approached the dais and explained the past study noting there were salary increases in certain positions but the salary ranges were adjusted across the board. She said on the national level, the salary ranges for the most part are in sync with the public sector and are behind in comparison to the private sector.

Mr. Harkins said he really wants comparative data. He stated comparative data creates an environment where there is knowledge based decision making. Mr. Harkins said fortunately, Council is guided by a very competent administration which increases his comfort level. He suggested starting at a macro level and honing in to the level necessary. Mrs. Likins stated she strongly agreed with Mr. Edwards and Mr. Harkins and Town Council needs something concrete to substantiate salaries.

Susan Simmons pointed out that the estimated actuals were completed in January

and Finance could go back and revisit those figures and see if adjustments can be made. She added that in the past they used the figures from January, but maybe in the future they can earmark them to be updated in early April.

Mayor Laughlin stated times demand additional scrutiny. He said people need to know they are delivering good value for what they are asked to pay and what the Town is spending. He noted there have not been significant increases since the salary comparison study done in late 2006. He said a lot of projects going on at this time are creating huge drains on staff time in some departments and staff members are taking on extra work loads.

Mr. Williams asked if there is anything in the budget for Economic Development. Mr. Riley said he is holding open positions that are vacant and carrying the dollars forward for a future proposal.

After further discussion, it was decided staff would go back and generate the documents discussed and have them prepared for the next budget workshop scheduled for June 9.

**4) Adjournment**

Mr. Heitzke moved to adjourn. Mr. Williams seconded. The meeting was adjourned at 5:12 p.m.

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Vicki Pfannenschmidt, Secretary

Approved:

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Drew A. Laughlin, Mayor

**THE TOWN OF HILTON HEAD ISLAND**

**REGULAR TOWN COUNCIL MEETING**

**Date:** Tuesday, June 7, 2011

**Time:** 4:00 P.M.

**Present from Town Council:** Drew A. Laughlin, *Mayor*; Ken Heitzke, *Mayor-Pro Tem*; Bill Ferguson; George Williams, Bill Harkins, Kim Likins, Lee Edwards, *Council Members*.

**Present from Town Staff:** Greg DeLoach, *Assistant Town Manager*; Scott Liggett, *Director of Public Projects and Facilities*; Lavarn Lucas, *Fire Chief*; Nancy Gasen, *Director of Human Resources*; Susan Simmons, *Director of Finance*; Steven Markiw, *Deputy Finance Director*; Jill Foster, *Deputy Director of Community Development*; Brian Hulbert, *Staff Attorney*; Jeff Buckalew, *Town Engineer*; Cary Gaffney, *Storm Water Administrator*; Galen Knighten, *Engineering Technician*; Teri Lewis, *LMO Official*; Heather Colin, *Development Review Administrator*; Nicole Dixon, *Senior Planner*; Trudie Johnson, *Floodplain Administrator*; Anne Cyran, *Senior Planner*; Paul Rasch, *Emergency Management Coordinator*; Debra Cyrilla, *Accounting Specialist*; Vicki Pfannenschmidt, *Executive Assistant*

**Present from Media:** Tom Barton, *Island Packet*

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**1) CALL TO ORDER**

Mayor Laughlin called the meeting to order at 4:00 p.m.

**2) PLEDGE TO THE FLAG**

**3) INVOCATION**

**4) FOIA COMPLIANCE** – Public notification of this meeting has been published, posted and mailed in compliance with the Freedom of Information Act and the Town of Hilton Head Island requirements.

Mayor Laughlin stated Mr. Riley would not be present for the meeting because he was attending his son's high school graduation ceremony.

**5) Proclamations and Commendations**

None.

**6) Approval of Minutes**

**a. Regular Town Council Meeting – May 17, 2011**

Mr. Williams moved to approve. Mr. Harkins seconded. The minutes from the May 17, 2011 Town Council meeting were approved by a vote of 6-0-1. Mr. Heitzke abstained because he was not present at the meeting.

**7) Report of the Town Manager**

**a. Town Manager's Items of Interest**

Assistant Town Manager Greg DeLoach reported on some items of interest.

## 8) Reports from Members of Council

### a. General Reports from Council

Mr. Williams referred to his report to Council at the May 3, 2011 meeting concerning the proposed construction of an acceleration lane at Windmill Harbor by LCOG. He had stated the Committee had thought it would qualify for Guide Share funds and have since found out it does not qualify so the project has been removed from consideration.

Mr. Harkins requested clarification on a report in the newspaper that there may be a three year window for applying a millage increase and if so, what is the formula and what can be done with the revenue generated. Mayor Laughlin agreed that Town Council needs the answers to the questions above.

Mr. Ferguson stated he attended a recent meeting of the LMO ReWrite Committee and he noticed the high priority and high emphasis on redevelopment. He said he feels they are getting away from economic development because there are certain areas that are not built and developed yet the emphasis in on those areas. He said he feels all areas should be placed under Economic Development and that would solve any confusion to parties that would like to develop and parties that would like to redevelop.

Mr. Ferguson stated he received a letter from someone who had a bad experience at one of the local lodging establishments. He passed it on to Greg DeLoach asking that the person be contacted.

Mrs. Likins asked for an update on the Economic Development Commission. She said the LMO ReWrite Committee has had many discussions concerning their work and how it will help development be easier to get done, as well as redevelopment, but it is not going to ignite the type of economic development they are hoping to see in the community. She said it is going to take a separate effort and the Committee would like to know the status of the proposed Economic Development Commission. Mr. DeLoach said a position paper for discussion will be forthcoming to Town Council in the near future. Mayor Laughlin stated he would like to a report from the LMO ReWrite Committee added to Town Council agendas going forward under Reports from Members of Council.

Mr. Ferguson wanted it on the record he will have a problem with raising the millage rate. He stated there are areas on the Island that cannot withstand an increase no matter how small it is.

### b. Report of the Intergovernmental Relations Committee – George Williams, Chairman

No Report.

### c. Report of the Personnel Committee – Lee Edwards, Chairman

Mr. Edwards reported the interview process has concluded and the Committee will be making recommendations in today's Executive Session.

### d. Report of the Planning & Development Standards Committee –Bill Ferguson, Chairman

Mr. Ferguson reported the Committee met on May 25, 2011 to review additions to uses on the waterfront mixed use zoning districts on the Island. He stated the

Committee voted in favor of the changes by a vote of 2-1 with two exceptions including nighttime operations and lighting for nighttime operations.

e. Report of the Public Facilities Committee – Kim Likins, Chairman

No Report.

f. Report of the Public Safety Committee – Bill Harkins, Chairman

Mr. Harkins report the Committee met on June 6, 2011 and Fire Chief Lavarn Lucas conducted a presentation on the 2010 Hilton Head Island Fire and Rescue Annual Report. He stated it was an excellent report documenting resources and new technology being used to benefit citizens. He noted the response time is very competitive with other communities and the department continues to improve. He encouraged everyone to read the report. Mr. Harkins said the Committee also discussed the Beaufort County proposed towing ordinance. He said the Committee will be reviewing the ordinance once it is approved.

**9) Appearance by Citizens**

None.

**10) Unfinished Business**

**a. Second Reading of Proposed Ordinance No. 2011-07**

Second Reading of Proposed Ordinance No. 2011-07 to amend Title 16, "The Land Management Ordinance," of the Municipal Code of the Town of Hilton Head Island, South Carolina, by amending Section 16-4-102, the Official Zoning Map with respect to those certain parcels identified as Parcels 161 and 166 on Beaufort County Tax Map 11, from OL (Office/Institutional Low Density) to the CC (Commercial Center) Zoning District; and providing for severability and an effective date.

Mr. Harkins moved to approve. Mrs. Likins seconded. Mr. Heitzke said he was not present at the last meeting when this item was introduced. He stated this is not a redevelopment issue but a development issue. He said he feels Town Council is setting a bad precedence voting for this and it is spot zoning in order to be able to sell a small piece of property. The motion was approved by a vote of 5-2. Mr. Heitzke and Mr. Williams were opposed. Mr. Williams requested that legal counsel review and make sure that this is a legal action and not spot zoning.

**11) New Business**

**a. Consideration of a Recommendation**

Consideration of a Recommendation from the Accommodations Tax Advisory Committee for the Chamber of Commerce Visitor and Convention Bureau's proposed 2011-2012 "30 Percent" Budget.

Mr. Heitzke moved to approve. Mrs. Likins seconded. Mayor Laughlin invited Mr. Shay to speak. Mr. Shay spoke concerning the review of the VCB budget. He asked for more direction from Town Council for the Committee in conducting the process. Mayor Laughlin stated that a proposal will be coming forward to Town Council in the future to address the process. The motion was approved by a vote of 7-0.

## **b. First Reading of Proposed Ordinance No. 2011-08**

First Reading of Proposed Ordinance No. 2011-08 to revise language and defined terms to be consistent with the National Flood Insurance Program regulations 44 CFR, Parts 59 and 60; clarify the scope and purpose of the Ordinance and correct outdated reference to the International Building Code.

Mr. Heitzke moved to approve. Mr. Williams seconded. After the vote Mayor Laughlin received comments from Mr. Chester Williams, a member of the audience on the revised wording of Section 15-9-317(4). Mr. Williams had a concern about the use of the phrase “currently adopted” to modify the referenced edition of the International Building Code. Mayor Laughlin requested staff to investigate Mr. Williams’ concern. The motion was approved by a vote of 7-0.

## **c. Proposed Storm Water Management and Utility Intergovernmental Agreement with Beaufort County**

Mr. Williams moved to approve. Mr. Heitzke seconded. Mr. Williams explained this agreement was reviewed by the Intergovernmental Relations Committee in great detail and noted the substantial decrease in administrative costs from Beaufort County. The motion was approved by a vote of 7-0.

Mayor Laughlin said the time was 4:40 p.m. and the Public Hearing was scheduled for 5:00 p.m. He asked Mr. DeLoach if he had any reason for Executive Session. Mr. DeLoach stated he needed an executive session for land acquisition matters; legal advice related to a settlement of a lawsuit; personnel matters related to appointments to boards and commissions; and legal advice related to R. H. Realty and Rentals.

At 4:41 p.m., Mr. Heitzke moved to go into Executive Session for the reasons stated by the Assistant Town Manager. Mr. Williams seconded. The motion was approved by a vote of 7-0.

Members of Town Council returned to Chambers at 4:59 p.m.

## **12) 5:00 P.M. Business License Revocation Hearing**

### **a. R. H. Realty & Rentals, Inc.**

Mayor Laughlin commenced the hearing at 5:00 p.m. asking Steven Markiw to approach the dais. Mr. Markiw stated the review of the finance records of R. H. Realty and Rentals had been completed and it was determined that they did have the ability in the past and also have the ability in the present to make the payments to the Town of Hilton Head Island in accordance with the bankruptcy agreement.

Mr. Michael Mogil, Legal Counsel for R. H. Realty and Rentals approached the dais. He explained Mr. William Hoisington and Mr. Robert Hoisington were present to explain the documents submitted to the Town for review. He stated that R. H. Realty and Rentals reduced required payments in 2008 and did not complete compliance with the bankruptcy plan, but did continue to make payments, even though they were reduced. He explained they do not have the ability to pay the full amount all at once. He said they would like to continue making payments. Mr. Mogil stated if R. H. Realty and Rentals is shut down that could result in the Town not receiving the past due funds and losing the on-going revenue stream. Mr. Mogil said R. H. Realty and Rentals is paying the current applicable taxes on-going. He suggested rather than revoking the license, Town Council could let them stay in

business and make payments on the funds owed. He referred to the proposed payment schedule R. H. Realty and Rentals submitted. He referred questions to Mr. William Hoisington and Mr. Robert Hoisington.

Mrs. Likins asked if R. H. Realty and Rentals had any brokerage accounts or any money on deposit that could be used to pay the debt. Mr. William Hoisington responded explaining that they had an E-Trade account and all monies were transferred back in to the account and the funds were procured from a re-finance in their Cost Rica house which was used for repairs and on-going expenses for their company. He explained there is no money in the account that would satisfy the amount they owe the Town. Mrs. Likins asked him to clarify there is no money on deposit anywhere that could help satisfy the account. Mr. Hoisington responded there is no surplus cash in any accounts to pay the amount owed. He explained funds that come in from the home in Costa Rica offset their Hilton Head Island expenses.

Mr. Harkins asked Mr. Markiw if he noted any irregularities in the review of R. H. Realty and Rentals financial documents. Mr. Markiw noted that the net income on the income sheet and the balance sheet do not tie together. He explained they did find that in December of each year funds were transferred out and it was not reflected on the income statement but appeared to go to a Costa Rica account. He said it was determined that there were sufficient funds coming in to the account to satisfy their debt but what R. H. Realty and Rentals was doing with those funds could not be tracked.

Mr. Edwards asked if they have been making the agreed upon monthly payment. Mr. Markiw said they have not. Mr. Hoisington said since March they have not been making the full payment but have been paying \$750 per month for the priority and \$500 for the unsecured. Mr. Edwards said the agreed upon amount was a condition for R. H. Realty and Rentals to remain in business until the Town could complete the audit. Mr. Hoisington said he did not think that was part of the agreement.

Susan Simmons stated the agreed amount to be paid to the Town was \$2500 per month and R. H. Realty and Rentals was only paying \$1250 per month. Mrs. Likins stated she knew that the \$2500 required payment was part of the agreement because she was the one that made the motion. Mr. Williams asked how R. H. Realty and Rentals plans on making the payments in their proposal when they have not made the agreed upon payments at the last hearing. Mr. Hoisington said he is quite certain they will be able to make the payments as outlined in their proposal. Mr. Williams reviewed the past history of R. H. Realty and Rentals of taking it upon themselves to decrease required monthly payments.

Mr. Robert Hoisington approached the dais and said he did not get anything in writing stating the amount they were supposed to pay. Mrs. Simmons stated the approved minutes were reviewed from the March 1, 2011 hearing and Mrs. Likins did in fact make the motion for R. H. Realty and Rentals to pay \$2500 per month and William and Robert Hoisington were asked to confirm that they understood and they did confirm they understood and repeated that they were to pay the \$2500 per month during the review of their financials.

Mr. Mogil spoke suggesting different options for Town Council to consider because if R. H. Realty and Rentals license is revoked, it would be very unlikely the amount due could be recovered.

Mr. Ferguson said that what he is interested in is for R. H. Rental and Realty to pay 100% of the amount owed to the Town. He said that includes fees and penalties. He stated they need to own up to the responsibility.

Mr. Markiw pointed out that on the documentation from R. H. Realty and Rentals a payment of \$168,000 is shown and he has a copy of the check which was for \$80,000 not the \$168,000 stated. He added that they have not been able to validate the other payments listed. He concluded stating R. H. Realty and Rentals has not paid over \$263,000 to the Town.

Mr. Williams moved to revoke the business license of R. H. Realty and Rentals, Inc. Mr. Heitzke seconded. Mrs. Likins moved to amend the motion so that the revocation becomes effective on August 1, 2011; unless R. H. Realty and Rentals has paid the full amount owed by that time. Mr. Williams seconded the amendment. The amendment was approved by a vote of 7-1. Mr. Ferguson was opposed. Mayor Laughlin said the Town is trying to recover public funds that were converted and this money has been owned since at least 2005. He said he believes that R. H. Realty and Rentals could have done better and stuck with the original agreement. The amended motion was approved by a vote of 6-1. Mr. Ferguson was opposed.

The hearing concluded at 5:33 p.m. and Town Council returned to Executive Session.

### **13) Executive Session**

Mayor Laughlin called the meeting back to order at 5:44 p.m. and asked if there was any business to take up as a result of executive session.

Mr. Edwards moved that the Town Council for the Town of Hilton Head Island adopt an ordinance authorizing the execution of those certain Parking Easement Agreements with Rowe Highsmith, LLC over property owned by the Town of Hilton Head Island, South Carolina. Mr. Heitzke seconded. The motion was approved by a vote of 7-0.

### **14) Adjournment**

Mr. Heitzke moved to adjourn. Mr. Williams seconded. The meeting was adjourned at 5:45 p.m.

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Vicki Pfannenschmidt, Secretary

Approved:

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Drew A. Laughlin, Mayor



# Items of Interest

## June 21, 2011

### 1. Noteworthy Events

a) Some of the upcoming meetings at Town Hall:

- LMO Rewrite Committee, June 23, 1:00 p.m.
- Board of Zoning Appeals, June 27, 2:30 p.m.
- Design Review Board, June 28, 1:15 p.m.
- Construction Board of Adjustments and Appeals, June 28, 5:30 p.m.
- LMO Rewrite Committee, June 30, 1:00 p.m.
- Public Facilities Committee – July 5, 2:00 p.m.
- Town Council – July 5, 4:00 p.m.

**(Meetings subject to change and/or cancellation. Please visit the Town of Hilton Head Island website at [www.hiltonheadislandsc.gov](http://www.hiltonheadislandsc.gov) for meeting agendas)**

### 2011 Hilton Head Island Events

Fridays, thru Dec. 9, 2011 8:30am-1:00pm	Farmers Market	Honey Horn
Mondays thru Fridays May 30 – Sept. 2, 2011 6:30pm-7:30pm 8:00pm-9:00pm	Shannon Tanner	Shelter Cove Harbour Stage
Tuesdays, June 14 thru 28, 2011 5:00pm-10:00pm	HarbourFest 2011	Shelter Cove Harbour
Tuesdays, June 21 thru 28, 2011 7:00pm-10:00pm	Summer Jams	Shelter Cover Community Park
Thursday, June 23, 2011 4:00pm-7:00pm	Water Fun Day	Shelter Cove Community Park

## 2011 Policy Agenda

June, 2011

### Top Priority

Target	Chief Contact	Comments
<ul style="list-style-type: none"> <li>▪ Heritage Golf Tournament: Seek to Secure Its Long-Term Future</li> </ul>	<p>Steve Riley Greg DeLoach</p>	Continue working with the Heritage Classic Foundation.
<ul style="list-style-type: none"> <li>▪ Technology Infrastructure: Evaluation and Direction of Town's Role</li> </ul>	<p>Shea Farrar</p>	Staff continues to work with the Telecommunications Taskforce of the Greater Island Council. The Chairman of the Taskforce attended the LMO Rewrite Committee and expressed the desire to work with the Committee related to the permitting requirements of telecommunications infrastructure on the Island.
<ul style="list-style-type: none"> <li>▪ LMO: Amend to Foster Greater Flexibility, Simplicity, and Revitalization</li> </ul>	<p>Teri Lewis</p>	The LMO Rewrite Committee appointed by Town Council will complete their review of the current LMO and identification of issues at the end of this month. Beginning in July, they will start to identify solutions to the seven 'bullets' listed in their charter.
<ul style="list-style-type: none"> <li>▪ Coligny Area Redevelopment: Conceptual Plan, Direction, and Town's Role</li> </ul>	<p>Mike Roan</p>	Staff has had several individual meeting this month with both the owners of Coligny Plaza and Blanchard and Calhoun. We are expecting a potential plan from these owners later this month.
<ul style="list-style-type: none"> <li>▪ South Island Marina Dredging: Determine Town's Role and Funding</li> </ul>	<p>Scott Liggett Susan Simmons</p>	Draft RFQ has been completed. Target release date – mid July.
<ul style="list-style-type: none"> <li>▪ Redevelopment Authority/Community Development Corporation: Evaluation and Direction</li> </ul>	<p>Shawn Colin</p>	Working on a recommended strategy for Economic Development and Redevelopment for the P&DS Committee's July 27 <sup>th</sup> meeting.

### High Priority

Target	Chief Contact	Comments
<ul style="list-style-type: none"> <li>▪ Economic Development Corporation: Evaluation</li> </ul>	<p>Shawn Colin</p>	Working on a recommended strategy for Economic Development and Redevelopment for the P&DS Committee's July 27 <sup>th</sup> meeting.
<ul style="list-style-type: none"> <li>▪ Mitchelville Development: Evaluate Business and Master Plan and Town's Role</li> </ul>	<p>Jayne Lopko</p>	A right of entry has been request for wetland, tree, and topography surveying. Staff is drafting a response to this request for Town Manager review.
<ul style="list-style-type: none"> <li>▪ Shelter Cove Mall Redevelopment: Conceptual Plan, Direction, and Town's Role</li> </ul>	<p>Mike Roan</p>	Staff has had several meeting this month with Blanchard and Calhoun, owners of the Mall, and their planners and engineers. We are awaiting a potential plan later this month.

### Moderate Priority

Target	Chief Contact	Comments
<ul style="list-style-type: none"> <li>▪ Community Based Education Program on Environmental Stewardship</li> </ul>	<p>Sally Krebs</p>	Working with website administrator to redo natural resources section of Town site to offer residents and visitors more information on stewardship as part of the educational component of the environmental stewardship program. Working with Audubon Green Communities committee and sign consultant to design and write text for four interpretive signs for Jarvis Creek Park; our deadline for installation is the end of August.

▪ Fire Station #6 Direction	Charles Cousins	Revised agreement being reviewed by Greenwood Development and the Palmetto Dunes POA
▪ Law Enforcement Center: Seek to Acquire with County	Steve Riley Greg DeLoach	Continuing discussions with County.
▪ Public Information Enhancement	Greg DeLoach	Memo distributed to Town Council 6-3-2011.

**2011 Management Targets  
June, 2011**

**Top Priority**

Target	Chief Contact	Comments
▪ Legislative Program	Greg DeLoach	Letter sent to Reps. Patrick and Herbkersman and Senator Davis requesting that they closely monitor the Aeronautics Bill. Preparing session wrap-up memo and charts.
▪ Stormwater Utility Needs and Agreements	Cary Gaffney	On June 7 Town Council approved the new County storm water IGA agreement as recommended by the Town IGR committee May 17. Agreement has been sent to County for their approvals. Draft drainage agreements with FY13 implementation schedules have been drafted and sent to Dunes, Leamington, Wexford, and Sea Pines. New Enterprise Storm Water Utility draft budget completed for FY12.

**High Priority**

Target	Chief Contact	Comments
▪ Bicycle Friendly Community: Seek Designation	Marcy Benson	On May 2, 2011 The League of American Bicyclists announced the Town of Hilton Head Island received the designation of Bicycle Friendly Community at the silver level. August 2 <sup>nd</sup> an award ceremony is scheduled with the Executive Director of the League of American Bicyclists.
▪ Residential Recycling Development	Alice Derian	Total accounts initiated as of 6/10/11 is 7,099 108.48 tons of recycling collected for the month of May Starting the week of June 20 <sup>th</sup> and continuing for the next 3 months, Republic will be airing on WHHI 1 thirty second ad on the recycling program and 2 sixty second vignettes on the recycling program and explaining the recyclable material list
▪ Town Council Redistricting: Direction	Steve Riley	Meeting with State expert Bobby Bowers set for July 11.

**CIP Monthly Report - June, 2011**

Project	Chief Contact	Comments
<ol style="list-style-type: none"> <li>1. Fire Station #1 Replacement</li> <li>2. Mathews Drive / Beach City Road Roundabout</li> <li>3. Mathews Drive Pathway</li> <li>4. Miller's Pond Drainage Project</li> <li>5. Pathway repairs and rejuvenation</li> <li>6. Port Royal Terminal Groin</li> <li>7. Port Royal Beach Renourishment</li> </ol>	Scott Liggett	<ol style="list-style-type: none"> <li>1. Work underway, target completion date – October 2011</li> <li>2. Project substantially complete</li> <li>3. Project substantially complete</li> <li>4. Project under contract, pending USACE permit</li> <li>5. Work complete</li> <li>6. Out for bids, due July 7, 2011</li> <li>7. Out for bids, due July 7, 2011</li> </ol>

**MEMORANDUM**

**TO:** Town Council

**FROM:** Stephen G. Riley, Town Manager

**DATE:** June 21, 2011

**RE:** **FY12 Budget Ordinance, Second Reading**

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Based on the actions taken at first reading and the comments that were made, Staff suggests the following changes to the budget.

Several members of Council suggested that we target the millage increase of 0.79 mils (generating \$725,000) to investing in our future. Staff believes we made a significant investment in our future, with a proven return, when we adopted a long-term beach maintenance plan and shifted \$500,000 from operations to capital improvements. Maintaining what we already have is a significant hedge against future decline and we need to replace those funds that had been used for operating and maintaining our beach parks.

We can move the remaining \$225,000 generated by this tax increase into the CIP for investment in our future. Specific uses will be identified later. This leaves an operational shortfall of \$225,000 which staff will absorb through additional cuts we have identified. This is more than the cost of the proposed salary increase.

We also need to pause and remind ourselves that we have been making operational costs cuts; and continue to look for more. But this budget adds significant new costs that boost the total expenditures:

- Consulting to support the LMO Rewrite Committee (\$200,000)
- Debt Service to pay for fire apparatus (\$339,370)
- Recycling initiatives (\$170,000)
- New money for advertising and promotions (\$325,445)

These too are investments in our future, but they also add over \$1 million in new expenditures.

To avoid the need to have a third reading on the budget, Staff suggests that we do not amend the millage rates at this point. That can be accomplished with the budget amendments that are always done upon completion of the audit. We can add a “vacancy factor” to the town-wide portion of the operating budget to account for the \$225,000 in operating costs reductions.

There were also comments regarding benchmarking. This is not strictly a budget ordinance matter. But if the majority of Council is committed to pursuing additional benchmarks, we would suggest that we start simple and build over time. Measures that we would start with include:

- Millage rate comparisons
- CIP as a portion of total budget
- Bond ratings
- Response times
- Costs per resident

**AN ORDINANCE OF THE TOWN OF HILTON HEAD ISLAND**

ORDINANCE NO. \_\_\_\_\_

PROPOSED ORDINANCE NO. 2011-09

**AN ORDINANCE TO RAISE REVENUE AND ADOPT A BUDGET FOR THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA, FOR THE FISCAL YEAR ENDING JUNE 30, 2012; TO ESTABLISH A PROPERTY TAX LEVY; TO ESTABLISH FUNDS; TO ESTABLISH A POLICY FOR ACQUISITION OF RIGHTS OF WAY AND EASEMENTS; AND PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.**

**WHEREAS**, Section 5-7-260(3) of the Code of Laws for South Carolina 1976, as amended, and Section 2-7-20 of the Municipal Code of the Town of Hilton Head Island, South Carolina, require that the Town Council act by ordinance to adopt a budget and levy taxes, pursuant to public notice; and

**WHEREAS**, Town Council desires to set aside funds for an Operating Reserve to provide for emergency-related expenditures and to offset fiscal year tax revenue income stream deficiency; and

**WHEREAS**, Town Council finds that it would be more economical and efficient to authorize the Town Manager to move forward with construction contract modifications, change orders, contract price adjustments, and execution of contracts for supplies, services, and construction where the contract amount involved does not exceed the budget line item or project budget as approved by Town Council in the Consolidated Municipal Budget.

**NOW, THEREFORE, BE IT ORDERED AND ORDAINED BY THE COUNCIL OF THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA; AND IT IS HEREBY ORDAINED BY THE AUTHORITY OF THE SAID COUNCIL:**

**NOTE:** Underlined and bold-face typed portions indicate additions to the Ordinance. ~~Stricken~~ Portions indicate deletions to the Ordinance.

**Section 1. Adoption of the Budget.** The prepared budget of estimated revenues and expenses, a copy of which is attached hereto and incorporated herein, is hereby adopted as the budget for the Town of Hilton Head Island for the fiscal year ending June 30, 2012.

**Section 2. Establishment of Property Tax Levy.** A tax to cover the period from July 1, 2011 through June 30, 2012, inclusive, for the sums and in the manner hereinafter mentioned, is and shall be, levied, collected and paid into the treasury of the Town of Hilton Head Island for its uses at a rate of mills on assessed value of real estate and personal property of every description owned in the Town of Hilton Head Island, except such property as is exempt from taxation under the Constitution and laws of the State of South Carolina. Said tax levy shall be paid into the Town Treasury for the credit of the Town of Hilton Head Island for its corporate purposes, for the purpose of paying current operational expenses of the said municipality 12.57 mills, Debt Service 6.01 mills, and Capital Projects Fund .75 mills making the total levy of 19.33 mills.

**Section 3. Establishment of Funds.** To facilitate operations, there shall be established and maintained a General Fund, a Capital Projects Fund, a Debt Service Fund, **a Stormwater Utility Fee Fund**, and other appropriate funds in such amounts as are provided for in the aforesaid Budget, as hereby adopted or as hereafter modified pursuant to law.

**Section 4. Acquisition of Rights of Way and Easements.** The Town Manager is charged with the duty of executing all necessary documents to obtain rights of way, easements, and other property interests necessary to complete duly authorized Capital Improvement Projects. If an expenditure is expressly authorized in an approved Capital Improvement Project, then the Town Manager is hereby authorized to execute all necessary documents and to expend such funds as are approved pursuant to the Capital Improvement budget. Provided, however, in the event that the costs of an acquisition of such real property interests materially exceeds the amount budgeted in the approved Capital Improvement Project and the Town Manager is unable to shift additional funds from other authorized sources, the Town Manager shall be required to obtain the approval of Town Council for such addition expenditures. Nothing herein shall obviate the requirement that no condemnations shall be commenced without the appropriate approval of the Town Council for the Town of Hilton Head Island.

**Section 5 Severability.** If any section, phrase, sentence, or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions thereof.

**Section 6. Effective Date.** This Ordinance shall be effective upon its enactment by the Town Council for the Town of Hilton Head Island.

Proposed Ordinance No. 2011-09  
Page Three

**PASSED, APPROVED, AND ADOPTED BY THE COUNCIL FOR THE TOWN OF  
HILTON HEAD ISLAND ON THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2011.**

\_\_\_\_\_  
Drew A. Laughlin, Mayor

ATTEST:

\_\_\_\_\_  
Town Clerk

First Reading: May 3, 2011  
Public Hearing: June 14, 2011  
Revised First Reading: June 14, 2011  
Second Reading:

APPROVED AS TO FORM:

\_\_\_\_\_  
Gregory M. Alford, Town Attorney

Introduced by Council Member: Kenneth S. Heitzke



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## TOWN OF HILTON HEAD ISLAND

*Community Development Department*

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**TO:** Steve Riley, CM, *Town Manager*  
**VIA:** Teri Lewis, AICP, *LMO Official*  
**FROM:** Trudie Johnson, NCARB, CBO, CFM, *Floodplain Administrator*  
**CC:** Charles Cousins, AICP, *Director of Community Development*  
**DATE:** April 29, 2011  
**SUBJECT:** Proposed Ordinance 2011-08: Revisions to Title 15, Chapter 9

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**Recommendation:** At their June 7, 2011 meeting the Town Council unanimously voted on First Reading to approve the revisions to Title 15, Chapter 9, Flood Damage Controls. After the vote Mayor Laughlin received comments from Mr. Chester Williams, a member of the audience on the revised wording of Section 15-9-317(4). Mr. Williams had a concern about the use of the phrase “currently adopted” to modify the referenced edition of the International Building Code. Mayor Laughlin requested staff to investigate Mr. Williams’ concern. After conferring with staff Attorney, Brian Hulbert and review by Mr. John Wilkins of Alford, Wilkins & Coltrane, LLC staff recommends that the Town Council approve the proposed amendment on Second Reading with the following revised language; “...the ~~2000~~ latest Edition of the International Building Code, with amendments, that has been adopted by the South Carolina Building Codes Council.”

This change will minimize ordinance revisions as code editions are changed every three years by the State, will specifically refer to the adopting Agency and be consistent with State law. Similar language was used in Title 15, Chapter 1, Article 2 in 2008 when this Chapter was revised.

**AN ORDINANCE OF THE TOWN OF HILTON HEAD ISLAND**

**ORDINANCE NO. 2011-**

**PROPOSED ORDINANCE NO. 2011-08**

**AN ORDINANCE TO AMEND TITLE 15 OF THE MUNICIPAL CODE OF THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA, CHAPTER 9 TO REVISE SECTIONS 111, 112, 211, 212, 213, 214, 311, 312 AND 317. THIS AMENDMENT INCLUDES CHANGES THAT WOULD CLARIFY THE SCOPE AND PURPOSE OF THE ORDINANCE, CORRECT REFERENCE TO OUT DATED CODE EDITIONS AND REVISE THE LANGUAGE AND DEFINED TERMS TO BE CONSISTENT WITH THE NATIONAL FLOOD INSURANCE PROGRAM REGULATIONS 44 CFR PARTS 59 AND 60; AND PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.**

**WHEREAS**, in 1983, the Town Council of the Town of Hilton Head Island, South Carolina adopted the Municipal Code of the Town of Hilton Head Island; and

**WHEREAS**, the flood hazard areas of the Town are subject to periodic inundation resulting in property loss, economic disruption and health and safety hazards; and

**WHEREAS**, the Town Council now intends to amend Title 15, Chapter 9, Sections 111, 112, 211, 212, 213, 214, 312 and 317 to clarify and correct language inconsistent with the NFIP regulations; and

**WHEREAS**, the Planning & Development Standards Committee met on April 27,2011, and voted to recommend that Town Council approve the proposed amendments; and

**WHEREAS**, the Town Council now finds that, upon further review, it is in the public interest to approve Title 15, Chapter 9, Sections 111, 112, 211, 212, 213, 214, 312 and 317 of the Municipal Code.

**NOW, THEREFORE, BE IT ORDERED AND ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA; AND IT IS ORDAINED BY SAID AUTHORITY OF COUNCIL:**

**Section 1. Amendment.** That the Municipal Code of the Town of Hilton Head Island, South Carolina, be, and the same hereby is, amended to read as indicated on the attached pages.

**NOTE:** New text is indicated by a double underline, deleted text is indicated by ~~strike through~~.

**Section 2. Severability.** If any section, phrase, sentence or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions thereof.

**Section 3. Effective Date.** This Ordinance shall be effective upon its adoption by the Town Council of the Town of Hilton Head Island, South Carolina.

**PASSED, APPROVED, AND ADOPTED BY THE COUNCIL FOR THE TOWN OF HILTON HEAD ISLAND ON THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ 2011.**

\_\_\_\_\_  
Drew Laughlin, Mayor

ATTEST:

\_\_\_\_\_  
Victoria L. Pfannenschmidt, Acting Town Clerk

First Reading:                      June 7, 2011  
Second Reading:                      \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
Gregory M. Alford, Town Attorney

Introduced by Council Member: \_\_\_\_\_

# TITLE 15 BUILDING AND BUILDING CODES

## CHAPTER 9 FLOOD DAMAGE CONTROLS

### ARTICLE 1. - FINDINGS OF FACT AND PURPOSE

#### Sec. 15-9-111. - Preamble.

(a) The flood hazard areas of the town are subject to periodic inundation which results in loss of life and property, health and safety hazards, disruptions of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of tax base all of which adversely affect the public health, safety and welfare.

(b) These flood losses are caused by the cumulative effect of obstructions of floodplains causing increases in flood heights and velocities, and by the occupancy of flood hazard areas by structures vulnerable to floods or hazardous to other lands which are inadequately elevated, floodproofed, or otherwise protected from flood damages.

(c) The flood hazard areas of the town have been identified by the Federal Insurance Administration through a scientific and engineering report entitled "The Flood Insurance Study for the County of Beaufort," dated September 30, 1977, Federal Register Vol. 41, No. 207, pages 46,962—46,992, dated Tuesday, October 26, 1976, and subsequent supplement titled "Wave Height Analysis," dated June 4, 1984; with accompanying flood insurance rate maps and flood boundary maps, dated September 30, 1977, and subsequent maps adding wave heights dated December 4, 1984, as reevaluated and effective September 29, 1986, are hereby adopted by reference and declared to be part of this chapter.

#### (d) Sec. 15-9-112. – Scope.

It is the purpose of this chapter to promote the public health, safety and general welfare and to minimize public and private losses due to flood conditions in flood hazard areas by provisions designed to:

(1) (a) Require that buildings vulnerable to floods, including facilities which serve such buildings, be protected against flood damages at the time of initial construction.

(2) (b) Regulate the construction of flood barriers which will unnaturally divert floodwaters or which may increase flood hazards to other lands.

(3) (c) Control filling or grading which may increase erosion or flood damage.

(4) (d) Control the alteration of natural floodplains, stream channels, and natural protective barriers, which are involved in the accommodation of floodwaters.

(Ord. No. 01-07, § 1, 6-5-01)

### ARTICLE 2. - ADMINISTRATION

#### Sec. 15-9-211. - Building official ~~Chief Executive Officer~~ who for the purposes of this chapter shall be the Town Manager to apply flood hazard area limits.

To ensure that the purposes of this chapter are being complied with in regard to development within the flood hazard areas of the town, the ~~building official~~ Town Manager shall provide the applicant with the location of the proposed development with respect to the flood hazard area limits and water surface elevation of the base flood (i.e., 100-year flood) at the proposed development site.

(Ord. No. 01-07, § 1, 6-5-01)

#### Sec. 15-9-212. - Information required on building permit application.

The ~~building official~~ Town Manager shall require the following specific information to be included as part of an application for a building permit.

(1) A plan which details size of structure, finished ground elevation, finished floor elevation, water supply, sanitary facilities and, if appropriate, floodproofing measures.

(2) If the building structure incorporates floodproofing measures or breakaway walls, then certification is required by a registered professional engineer or architect stating that adequate precautions against flood damage have been taken with respect to the design of said building or structure, and that the plans for the development of the site adhere to the restrictions cited in this chapter.

(3) Where alterations or repairs or additions are involved, the original date of construction and the current market value of the property, as defined by FEMA policy, shall be furnished by the owner of the property or his agent.

(Ord. No. 01-07, § 1, 6-5-01)

**Sec. 15-9-213. - Duties of ~~building official.~~ Town Manager.**

The ~~building official~~ Town Manager shall:

- (1) Review proposed developments to assure that all necessary permits have been received from those governmental agencies from which approval is required by federal, state or local law.
- (2) Notify adjacent communities and the South Carolina Department of Natural Resources prior to any alteration or relocation of a watercourse, and shall submit evidence of such notification to the Federal Insurance Administration.
- (3) Obtain necessary engineering analysis to assure that the flood-carrying capacity within the altered or relocated portion of said watercourse is maintained.
- (4) Verify that any requested substantial damages or substantial improvements to property are consistent with the National Flood Insurance Program regulations, title 44, parts 59 and 60, particularly section 60.3(e), effective October 1, 1989. "Substantial damage" means damage of any origin, including flood related damage, sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed fifty (50) percent of the market value of the structure before the damage occurred. Substantial damage also means flood related damages sustained by a structure on two (2) separate occasions during a ten-year period for which the cost of repairs at the time of each such flood event, on the average, equals or exceeds twenty-five (25) percent of the market value of the structure before the damage occurred.

*(Ord. No. 01-07, § 1, 6-5-01)*

**Sec. 15-9-214. - Elevation information to be public record.**

The ~~building official~~ Town Manager shall require the verification of actual elevation (in relation to mean sea level) of the lowest floor (including basement) of all new or substantially improved structures prior to vertical framing of said structure. The elevation information shall be maintained as public record.

*(Ord. No. 01-07, § 1, 6-5-01)*

**ARTICLE 3. - CONSTRUCTION STANDARDS**

**Sec. 15-9-311. Standards.**

The standards and defined terms used herein shall be the National Flood Insurance Program regulations, ~~the~~ 44 CFR, parts 59 and 60 and with final rule effective October 1, 1989, as published by FEMA is hereby adopted, and hereby made a part of this chapter. A copy is on file in the office of the municipal clerk.

*(Ord. No. 01-07, § 1, 6-5-01)*

**Sec. 15-9-312. - Elevation requirements.**

- (a) Residential structures must be constructed so that the lowest floor, including basement, is located no lower than the base flood elevation (i.e., the 100-year flood elevation). No environmentally conditioned space shall be allowed below the lowest floor.
- (b) Nonresidential structures may be constructed below the base flood elevation (i.e., the 100-year flood elevation) provided they are designed to preclude the inundation of floodwater and withstand the hydrostatic loads associated with the base flood (i.e., structure must be floodproofed to the elevation of the base flood) and certified by a South Carolina licensed engineer or architect that the design and method of construction meet the provisions of section 60.3(c)(4) of the standard. Record of certification of floodproofing shall be maintained ~~by the building official~~ as a public record.

**(c) Exception**

In A zones, the following buildings, not to exceed three hundred (300) square feet (net floor area), shall be allowed below the base flood elevation, but should be located at the highest existing grade feasible to accomplish the requirements of minimizing or eliminating flood damage. All construction material below the base flood elevation will be constructed with flood resistant material and the structures will comply with sections 15-9-314—15-9-316:

- (1) Detached security or guard houses at the entrance to a development.
- (2) Detached pump houses for water and sewer installations.
- (3) Detached bathrooms which provide only minimal facilities to provide sanitation for public use.
- (4) Publicly owned buildings.

*(Ord. No. 01-07, § 1, 6-5-01)*

**Sec. 15-9-313. Fill.**

If fill is used to raise the lowest floor to the base flood elevation:

- (1) Fill shall consist of suitable compact soil or small rock materials only. Sanitary landfills shall not be permitted.
- (2) Uncontained fill shall extend laterally no less than five (5) feet beyond the building line at all points.

- (3) Fill shall be used only to the extent to which it does not adversely affect adjacent properties.
- (4) Fill slopes shall be no steeper than allowed by acceptable engineering standards for the type of fill material used.

(Ord. No. 01-07, § 1, 6-5-01)

**Sec. 15-9-314. - Anchoring.**

- (a) All structures shall be firmly anchored to prevent flotation, collapse, or lateral movement.
- (b) All ducts, pipes, and storage tanks shall be firmly anchored to prevent flotation, collapse or lateral movement.

(Ord. No. 01-07, § 1, 6-5-01)

**Sec. 15-9-315. - Mechanical and utility equipment.**

- (a) Electrical, heating, ventilation, plumbing, and air-conditioning equipment and other service facilities shall be designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.
- (b) Design for below base flood elevation shall be certified by a South Carolina licensed engineer.

(Ord. No. 01-07, § 1, 6-5-01)

**Sec. 15-9-316. - Mandatory use of openings in enclosures below the base flood elevation.**

- (a) For all new construction and substantial improvements, fully enclosed areas below the lowest floor that are subject to flooding shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional South Carolina engineer or architect or must meet or exceed the following minimum criteria: A minimum of two (2) openings, each on a separate building face, shall be provided. These openings should have a total net area of not less than one (1) square inch for every square foot of enclosed area subject to flooding. The bottom of all openings shall be no higher than one (1) foot above grade. Openings may be equipped with screens, louvers, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.
- (b) Doors and windows are not to be considered as a part of the minimum requirement.
- (c) Uses below the B.F.E. are restricted to parking, limited storage and building access. (Enclosed areas below B.F.E. must comply with (a) above.)

(Ord. No. 01-07, § 1, 6-5-01)

**Sec. 15-9-317. - Special standard for construction in coastal high hazard areas.**

Located within the special flood hazard areas are areas known as coastal high hazard areas (V zones). These coastal high hazard areas have special flood hazards associated with high velocity waters from tidal surge and hurricane wave wash and therefore the following special construction standards shall apply in the coastal high hazard areas as determined by the ~~building official.~~ Town Manager.

- (1) All new construction and substantial improvements shall be located landward of the reach of the mean high tide.
- (2) All new construction and substantial improvements shall be elevated so that the bottom of the lowest horizontal supporting member is located no lower than the base flood elevation level, with all space below the lowest supporting member free of obstruction and open so as not to impede the flow of the water, except as provided for breakaway walls in subsection (9), below.
- (3) All new construction and substantial improvements shall be securely anchored on pilings or columns.
- (4) The pile or column foundation and structure attached thereto shall be designed and anchored to resist flotation, collapse and lateral movement due to the effects of wind and water loads acting simultaneously on all building components. (Windloads will comply with the 2000 latest Edition of the International Building Code, with amendments, that has been adopted by the South Carolina Building Codes Council.) The waterloads are those associated with the base flood.
- (5) A registered professional engineer or architect shall develop or review the structural design, specifications and plans for the construction, and shall certify that the design and methods of construction to be used are in accordance with accepted standards of practice for meeting the provisions of paragraphs (2)—(4) of this section.
- (6) Pilings or columns used as structural support shall be spaced so that when measured perpendicular to the general direction of flood flow shall not be less than eight (8) feet apart at the closest point.
- (7) There shall be no fill used as structural support.
- (8) There shall be no alteration of primary sand dunes which would increase potential flood damage.
- (9) Breakaway walls shall be allowed below the base flood elevation provided they are not part of the structural support of the building and are designed so as to break away, under abnormally high tides or wave action, without damage to the structural integrity of the building on which they are to be used. Breakaway walls shall be open lattice work or screening only.
- (10) If breakaway walls are utilized, such enclosed space shall not be used for human habitation. The enclosed areas may only be used for parking of the vehicles, building access or limited storage.

(Ord. No. 01-07, § 1, 6-5-01)

## **ARTICLE 4. – SPECIAL STANDARDS FOR MANUFACTURED HOMES IN FLOOD HAZARD AREAS**

### **Sec. 15-9-411. – Manufactured home standards.**

- (a) Standards shall apply to all installations after April 1, 1987 and shall include homes placed in manufactured home parks or subdivisions, or homes not placed in such parks or subdivisions.
- (b) All manufactured homes to be placed or substantially improved within zones A1-30, AH, and AE shall be elevated on a permanent foundation such that the lowest floor of the manufactured home is at or above the base flood elevation and be securely anchored to an adequately anchored foundation system in accordance with the provisions of chapter 7, title 15.
- (c) Manufactured homes to be placed in V zones shall meet the same standards as conventional housing; i.e., meet the provisions at section 60.3(e)(3), (4), (5) and (6) of NFIP criteria, as required by section 15-9-317, "Special standard for construction in coastal high hazard areas."

*(Ord. No. 01-07, § 1, 6-5-01)*

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## **ARTICLE 5. – REQUIREMENTS FOR SUBDIVISION PROPOSALS AND UTILITY SYSTEMS**

### **Sec. 15-9-511. Subdivisions.**

Floodplain management criteria associated with the subdivision of land into lots, building sites or building units is contained within the town subdivision regulations or future ordinances regulating such development activity.

*(Ord. No. 01-07, § 1, 6-5-01)*

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### **Sec. 15-9-512. Utilities.**

Water supply systems and/or sanitary sewage systems should be designed to minimize or eliminate infiltration of floodwaters into the system and discharges from the systems into floodwaters.

*(Ord. No. 01-07, § 1, 6-5-01)*

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## **ARTICLE 6. VARIANCES**

### **Sec. 15-9-611. Requirements for variances.**

Upon the submission of a written application to the town construction board of adjustments and appeals, a variance may be granted permitting the erection of structures with a lowest floor elevation, including basement, lower than regulatory flood elevation if all of the following are met:

- (1)
  - a. The property on which the structure is to be erected is an isolated lot of one-half acre or less, with all contiguous existing structures constructed below such required first floor elevation; or
  - b. A structure listed on the National Register of Historic Places or a state inventory of history places is to be restored or reconstructed.
- (2) Good and sufficient cause exists for the granting of the variance.
- (3) Failure to grant the variance would result in exceptional hardship to the applicant.
- (4) The issuance of the variance would not result in increased flood heights, additional threats to public safety or extraordinary public expense.
- (5) The variance would not have the effect of nullifying the intent and purpose of the chapter.

*(Ord. No. 01-07, § 1, 6-5-01)*

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### **Sec. 15-9-612. Hearing.**

- (a) All applications for variances shall be heard by the construction board of adjustments and appeals.
- (b) Prior to the granting of a variance the construction board of adjustments and appeals must find that justifications exist in accordance with the terms of this chapter. These findings together with the granting of a variance, shall be reduced to writing, and may be a part of the public record. All variances shall pertain to the particular parcel of land and apply only to the proposed structure set forth in the variance and application.
- (c) Such variance shall be freely transferable with the land and shall not be personal to the applicant.
- (d) Unless otherwise provided therein, a variance shall be valid for a period of one (1) year after the date of its issuance. If construction has not commenced pursuant thereto within such time, said variance shall become void. Lapse of a variance by the passage of time shall not preclude subsequent application for variance.

(e) No variance except herein specifically permitted may be granted from the provisions of this chapter. The variance procedures herein provided shall be the exclusive method for obtaining variances under the provisions herein.

*(Ord. No. 01-07, § 1, 6-5-01)*

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**Sec. 15-9-613. Fee.**

Each written application for a variance shall be accompanied by a fee of seventy-five dollars (\$75.00). Such application shall reflect the type of structures for which a variance is sought, the size of such structures, the approximate location upon the parcel and intended use thereof and the reasons for which the variance is being sought.

*(Ord. No. 01-07, § 1, 6-5-01)*

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**Sec. 15-9-614. Notice of possible increased insurance cost.**

Any applicant to whom a variance is granted shall be given notice that the proposed structure will be located in the floodprone area. The structure will be permitted to be built with a lowest flood elevation below the regulatory flood elevation, and the cost of flood insurance will be commensurate with the increased risk resulting from the reduced first floor elevation.

*(Ord. No. 01-07, § 1, 6-5-01)*

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# Memorandum

To: Town Council

Via: Steve Riley, Town Manager

From: Scott Liggett, Dir. of PP&F / Chief Engineer

Subject: Parking Easement Agreements  
Rowe-Highsmith, LLC Settlement

Date: June 9, 2011



## **Recommendation:**

Staff recommends that Town Council adopt an ordinance authorizing the execution of certain parking easement agreements with Rowe-Highsmith, LLC over property owned by the Town.

## **Summary:**

The Town has agreed to a settlement with Rowe-Highsmith, LLC, the owners of property affected by the proposed roundabout project at Arrow Road and Dunnagan's Alley. Part of this settlement agreement obligates the Town to grant perpetual access and parking easements over Town-owned property to Rowe-Highsmith, LLC. The easements will allow for the construction, maintenance, and utilization of parking areas that benefit Rowe-Highsmith, their tenants and guests.

## **Background:**

Rowe-Highsmith, LLC owns property adjacent to and partially encumbered by the proposed roundabout project. The project will impact a portion of the parking areas currently used by the Rowe-Highsmith tenants and their customers. The aforementioned settlement was reached based on extensive right of way and easement negotiations. Rowe-Highsmith shall be solely responsible for all cost associated with construction and maintenance of the parking spaces.

**PROPOSED ORDINANCE NUMBER 2011-10 ORDINANCE NUMBER:**

**AN ORDINANCE OF THE TOWN OF HILTON HEAD, SOUTH CAROLINA, AUTHORIZING THE EXECUTION THOSE CERTAIN PARKING EASEMENT AGREEMENTS WITH ROWE HIGHSMITH, LLC OVER PROPERTY OWNED BY THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA, PURSUANT TO THE AUTHORITY OF S.C. CODE ANN. SEC. 5-7-40 (SUPP. 2010), AND SEC. 2-7-20, CODE OF THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA, (1983); AND PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.**

**LEGISLATIVE FINDINGS**

**WHEREAS**, Rowe Highsmith, LLC is the owner of certain real property generally known and described as Parcels A, B and C Palmetto Bay Commercial Subdivision, sometimes referred to as the Graves Subdivision, said parcels more particularly described on Exhibit A-1 on the attached Easement Agreements hereto and incorporated herein (the "R-H Property"); and

**WHEREAS**, Town is the owner of certain real property generally known and described as Lot M, a 0.159 acre parcel and New Lot N, a 0.356 acre parcel, which are contiguous to R-H Property and were formerly known as Remy's parcel and Rock's parcel respectively, said parcels being more particularly described on Exhibit A-2 on Parking Easement Number 1 attached hereto and incorporated herein and a 0.319 acre parcel, which is contiguous to R-H Property, and is sometimes referred to as the Graves Easement parcel, said parcel being more particularly described on Exhibit A-2 on Parking Easement Number 2 attached hereto and incorporated herein, collectively hereinafter (the "Town Property"); and

**WHEREAS**, the Town and R-H have entered into a Settlement Agreement and Release of that certain litigation, Civil Action No. 2010-CP-07-5447, in which Section 2 requires the Town to grant to R-H a parking easement for the exclusive benefit of the R-H Property; and

**WHEREAS**, Town has agreed to grant certain easement rights over and through a portion of Town Property for the benefit of the R-H Property; and

WHEREAS, the Town Council for the Town of Hilton Head Island, South Carolina has determined that it is in the best interests of the Town to grant two Easements to Rowe Highsmith, LLC for parking and landscaping, copies of which are attached hereto as Exhibits "A" and "B"; and

WHEREAS, under the provisions of S.C. Code Ann. Sec. 5-7-40 (SUPP. 2010) and Sec. 2-7-20, *Code of the Town of Hilton Head Island, South Carolina*, (1983), the conveyance or granting of an interest in real property owned by the Town of Hilton Head Island must be effected by Ordinance.

**NOW THEREFORE, BE IT ORDERED AND ORDAINED BY THE TOWN COUNCIL FOR THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA, AS FOLLOWS:**

***Section 1.*** Execution of Easement Agreements.

- (a) The Mayor and/or Town Manager are hereby authorized to execute and deliver the Easement Agreements, or ones in a substantially similar form, which are attached hereto as Exhibits "A" and "B"; and
- (b) The Mayor and/or Town Manager are hereby authorized to take such other and further actions as may be necessary to complete the execution of the Lease as authorized hereby.

***Section 2.*** Severability.

If any section, phrase, sentence or portion of this Ordinance is, for any reason, held or deemed to be invalid or unconstitutional by any court of competent jurisdiction, then such section, phrase, sentence or portion shall be deemed a separate, distinct and independent provision and shall not affect the remaining portion thereof.

**Section 3.** Effective Date.

This Ordinance shall become effective upon adoption thereof by the Town Council for the Town of Hilton Head Island, South Carolina.

**PASSED, APPROVED AND ADOPTED BY THE TOWN COUNCIL FOR THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA, ON THIS \_\_\_ DAY OF \_\_\_\_\_, 2011.**

\_\_\_\_\_  
Drew Laughlin, Mayor

ATTEST

\_\_\_\_\_  
Town Clerk  
First Reading: JUNE 7, 2011  
Second Reading: \_\_\_\_\_

Approved as to form: \_\_\_\_\_  
Gregory M. Alford, Town Attorney

Introduced by Council Member: EDWARDS

STATE OF SOUTH CAROLINA            )  
   )  
 COUNTY OF BEAUFORT                 )                   **PARKING EASEMENT AGREEMENT**  
   )                   **(#1)**

**THIS PARKING EASEMENT AGREEMENT** ("Agreement") is made effective this \_\_\_\_\_ day of \_\_\_\_\_, 2011, by and between **ROWE HIGHSMITH, LLC**, a South Carolina limited liability company ("R-H") and **THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA** ("Town").

**WITNESSETH:**

**WHEREAS**, R-H is the owner of certain real property generally known and described as Parcels A, B and C Palmetto Bay Commercial Subdivision, sometimes referred to as the Graves Subdivision, said parcels more particularly described on **Exhibit A-1** attached hereto and incorporated herein (the "R-H Property"); and

**WHEREAS**, Town is the owner of certain real property generally known and described as Lot M, a 0.159 acre parcel and New Lot N, a 0.356 acre parcel, which are contiguous to R-H Property, and were formerly known as Remy's parcel and Rock's parcel respectively, said parcels being more particularly described on **Exhibit A-2** attached hereto and incorporated herein (the "Town Property"); and

**WHEREAS**, the Town and R-H have entered into a Settlement Agreement and Release dated May 18, 2011 in which Section 2 requires the Town to grant to R-H a parking easement for the exclusive benefit of the R-H Property; and

**WHEREAS**, Exhibit A to said Settlement Agreement includes an agreed upon parking and landscaping plan which further defines the specific parking areas on the Town Property; and

**WHEREAS**, Town has agreed to grant certain easement rights over and through a portion of Town Property for the benefit of the R-H Property; and

**WHEREAS**, Town and R-H desire to enter into this Agreement to memorialize the terms and conditions governing said easement..

**NOW THEREFORE**, the premises considered and for and in consideration of the sum of TEN AND NO/100 DOLLARS (\$10.00), the mutual covenants and conditions hereinafter contained, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, R-H and Town do hereby covenant and agree as follows:

1. **Grant of Access and Parking Easements:** The Town has bargained, granted, sold and conveyed, and by these presents, does hereby bargain, grant, sell and convey to Rowe Highsmith, LLC, its successors and assigns, and creates and establishes for the benefit of the R-H Property, a perpetual, appurtenant and exclusive commercial easement to plan, lay out, build, use, maintain and replace parking improvements, with said improvements to be utilized by the tenants, guests and invitees of R-H, on, over and across that portion of the Town's Property which is described in paragraph 2 below (hereinafter the "Easement Property").
2. **Easement Property.** Attached as **Exhibit "B"** is an updated plan of the Parking Study, an earlier version of which was attached as Exhibit A to the Settlement Agreement referenced above. This Exhibit "B" plan depicts the parking on the R-H Property as well as the Town Property and on certain adjacent property known as the Graves Parcel. The parties have outlined in red the specific area within New Lot N and Lot M which will be considered the easement property for purposes of this Agreement. The redlining is to approximate a minimum of 3 feet from the end of the parking spaces so as to allow for landscaping in certain locations as well as access for maintenance and repair. For purposes of this Agreement, said areas shall be collectively referred to as the "Easement Property".

3. Conveyance Subject to Town Rights. This easement is conveyed subject to all other easements, licenses and conveyances of record and is subject to the rights herein reserved by the Town, its successors and assigns, to relocate up to six (6) parking spaces located on New Lot N and partially on Lot M, provided, however, that such relocation by the Town shall be to a mutually agreed area in close proximity to the R-H Property and shall be improved as a parking area in no less quality of a condition than the existing spaces. All costs of such relocation shall be borne by the Town. Once the relocation has been accomplished, this Easement Agreement shall be amended to reflect the relocated area and the release of the former parking space area.
4. Responsibilities of Improvement and Maintenance of Easement Property:
  - (a) R-H shall be entitled at its sole cost and expense except as provided below to improve the Easement Property to construct the parking spaces and, thereafter, maintain, repair, resurface and ultimately, if necessary, replace. R-H may use asphalt for purposes of the paving of the parking area on the Easement Property, provided however in the event the Town desires that the parking area on the Easement Property be constructed, in whole or in part, of pervious materials rather than impervious asphalt. R-H will construct using pervious materials, subject to the Town's obligation to pay for the additional cost, if any, of pervious materials over the cost of asphalt surface.
  - (b) From the date of the commencement of the construction of the parking improvements described herein, R-H shall, at its sole cost and expense, cause all timely cleaning, repair, renovation and signage in general to the improvements as shall be or shall become necessary and/or prudent for the reasonable safety of all persons using said improvements.
  - (c) It is agreed that R-H will be allowed to install the new parking utilizing the existing grade and natural gravity drainage provided therefrom.
  - (d) R-H agrees to cause all work contemplated hereunder to be performed in a workmanlike fashion with minimal interference to the Town, its successors, assigns, invitees, guests, licensees, and agents. R-H further agrees to cause the work contemplated hereunder to be completed in an expeditious and timely fashion, that the parking areas shall at all times be maintained in a safe condition, and that all debris and construction materials relating to work undertaken by R-H pursuant to the rights granted hereunder shall be promptly removed. R-H shall restore any other part of the Town's' property that may be damaged as a result of R-H's exercise of the rights granted hereunder to its pre-existing state.
  - (e) It is mutually agreed and covenanted that R-H, and its successors and assigns, shall be solely responsible for the maintenance, upkeep, refurbishment, repaving, and reconstruction, as applicable, of the Easement Property.
5. Insurance & Indemnification. R-H and Town are required to maintain adequate liability coverage over the Easement Property against personal injury and property damage relating to the parking area. Each party shall provide, on an annual basis, a certificate of insurance to the other party at the addresses reflected below their signature in the signature block; however, R-H agrees to indemnify and hold the Town harmless with respect to any loss, damage, claim, or suit whatsoever, as well as any expense or cost associated therewith, including reasonable attorneys fees and costs incurred on appeal, arising out of or associated in any way whatsoever with R-H's use of the Easement Property as contemplated herein.
6. Binding Effect of Easements: The easements and agreements set forth in this Agreement shall be appurtenant to, and run with, the R-H Property because said easements are essential and necessary for the use of R-H Property, and shall burden the Town Property, and shall inure to the benefit of, and be binding upon, the successors and assigns of the parties hereto. Furthermore, the easements and agreements shall remain in full force and effect and shall be unaffected by any change of ownership of the R-H Property or Town Property or by any change of use of R-H Property or Town Property or other circumstances except as otherwise expressly provided in this Agreement. Each of the rights created under this Agreement shall be



WITNESSES:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**R-H:**  
Rowe Highsmith, LLC

By: \_\_\_\_\_  
James L. Rowe, Member

By: \_\_\_\_\_  
Joseph F. Highsmith, Member  
Address: 51 Haulaway  
Hilton Head Island, SC 29928

STATE OF SOUTH CAROLINA     )  
  )  
COUNTY OF BEAUFORT         )

**ACKNOWLEDGMENT**

I, the undersigned notary, do hereby certify that James L. Rowe and Joseph F. Highsmith, as Members of Rowe Highsmith, LLC, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

WITNESS my hand and official seal this \_\_\_ day of April, 2011.

\_\_\_\_\_  
Notary Public for South Carolina  
My Commission Expires: \_\_\_\_\_

Exhibit A-1

**R-H Property**

ALL that certain parcel or tract of land situate, lying and being on Hilton Head Island, Beaufort county, South Carolina, being shown as **Parcel "A"** on that certain plat entitled "A Boundary Survey of Lots 'M', 'New Lot N', New Lot 'N-1' & Parcels 'A', & 'C', A Portion of Palmetto Bay Commercial Subdivision, Hilton Head Island, Beaufort County, South Carolina", prepared by Coastal Surveying Co., Inc., prepared for The Trust for Public Land, dated 4/29/05, last revised 5/12/05, and recorded in the Office of the Beaufort County Records, South Carolina in Plat Book 106 at Page 128.

**ALSO**, all those certain pieces, parcels or tracts of land, situate, lying and being on Hilton Head Island, Beaufort County, South Carolina, shown and designated as **Parcel "B"** containing 0.216 acre, more or less, Parcel "B-1" containing 0.75 acre, more or less, and Parcel "B-2" containing 0.007 acre, more or less, on a plat entitled "An As-Built Survey of Lot 'M' and Parcels 'A', 'B', 'B-1' and 'B-2' and Related Easements," dated November 8, 2004, last revised November 12, 2004, prepared by Coastal Surveying Company, Inc., certified to by Michael R. Dunigan, S.C.P.L.S. No. 11905, and recorded in the Beaufort County Records in Plat Book 103 at Page 195.

**ALSO**, all that certain piece, parcel or tract of land, situate, lying and being on Hilton Head Island, Beaufort County, South Carolina, shown and designated as **Parcel "C"** containing 0.414 acres, more or less, on that certain plat entitled "A Boundary Survey of Lots 'M', 'New Lot 'N', New Lot 'N-1' & Parcels 'A' & 'C', a Portion of Palmetto Bay Commercial Subdivision, Hilton Head Island, Beaufort County, South Carolina," dated May 12, 2005, prepared by Coastal Surveying Co., certified to by Michael R. Dunigan, S.C.R.L.S. #11905, and recorded in the Beaufort County Records in Plat Book 106 at Page 128. The above parcel was formerly shown as Parcel B on a plat entitled "A Plat of Parcels A & B - Graves Construction Company" dated February 7, 1977, and prepared by Jerry L. Richardson, S.C.R.L.S. #4784, Coastal Surveying Company, Inc., Hilton Head Island, South Carolina, and revised March 15, 1977, and recorded in the Beaufort County Records in Plat Book 25 at Page 131.

For a more detailed description as to the metes and bounds, courses and distances, of the above referenced R-H Property, reference is had to the aforementioned recorded plats.

Exhibit A-2

**Town Property**

All that certain piece, parcel or lot of land, situate, lying and being on Hilton Head Island, County of Beaufort, State of South Carolina, and being more particularly described and shown as **Lot 'M'**, containing 0.159 acres, on that certain plat entitled "A Boundary Survey of Lots 'M', 'New Lot 'N', New Lot 'N-1' & Parcels 'A' & 'C', A Portion of Palmetto Bay Commercial Subdivision, Hilton Head Island, Beaufort County, South Carolina", prepared by Coastal Surveying Co., Inc., prepared for The Trust for Public Land, dated 4/29/05 and recorded in Plat Book 106 at Page 128 in the Office of the Register of Deeds for Beaufort County, South Carolina.

TMP: R552 015 000 0273 0000

All that certain piece, parcel or lot of land, situate, lying and being on Hilton Head Island, County of Beaufort, State of South Carolina, and being more particularly described and shown as **New Lot 'N'**, containing 0.356 acres, on that certain plat entitled "A Boundary Survey of Lots 'M', 'New Lot 'N', New Lot 'N-1' & Parcels 'A' & 'C', A Portion of Palmetto Bay Commercial Subdivision, Hilton Head Island, Beaufort County, South Carolina", prepared by Coastal Surveying Co., Inc., prepared for The Trust for Public Land, dated 4/29/05 and recorded in Plat Book 106 at Page 128 in the Office of the Register of Deeds for Beaufort County, South Carolina.

TMP: R552 015 000 0007 0000

For a more detailed description as to the metes and bounds, courses and distances, of the above referenced Town Property, reference is had to the aforementioned recorded plat.

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF BEAUFORT )

PARKING EASEMENT AGREEMENT  
(#2)

THIS PARKING EASEMENT AGREEMENT ("Agreement") is made effective this \_\_\_\_\_ day of \_\_\_\_\_, 2011, by and between ROWE HIGHSMITH, LLC, a South Carolina limited liability company ("R-H") and THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA ("Town").

W I T N E S S E T H:

WHEREAS, R-H is the owner of certain real property generally known and described as Parcels A, B and C Palmetto Bay Commercial Subdivision, sometimes referred to as the Graves Subdivision, said parcels more particularly described on Exhibit A-1 attached hereto and incorporated herein (the "R-H Property"); and

WHEREAS, Town is the owner of certain real property generally known and described as a 0.319 acre parcel, which is contiguous to R-H Property, and is sometimes referred to as the Graves Easement parcel, said parcel being more particularly described on Exhibit A-2 attached hereto and incorporated herein (the "Town Property"); and

WHEREAS, the Town and R-H have entered into a Settlement Agreement and Release dated May 18, 2011 in which Section 2 requires the Town to grant to R-H a parking easement for the exclusive benefit of the R-H Property; and

WHEREAS, Exhibit A to said Settlement Agreement includes an agreed upon parking and landscaping plan which further defines the specific parking areas on the Town Property; and

WHEREAS, Town has agreed to grant certain easement rights over and through a portion of Town Property for the benefit of the R-H Property; and

WHEREAS, Town and R-H desire to enter into this Agreement to memorialize the terms and conditions governing said easement.

NOW THEREFORE, the premises considered and for and in consideration of the sum of TEN AND NO/100 DOLLARS (\$10.00), the mutual covenants and conditions hereinafter contained, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, R-H and Town do hereby covenant and agree as follows:

1. Grant of Access and Parking Easements: The Town has bargained, granted, sold and conveyed, and by these presents, does hereby bargain, grant, sell and convey to Rowe Highsmith, LLC, its successors and assigns, and creates and establishes for the benefit of the R-H Property, a perpetual, appurtenant and exclusive commercial easement to plan, lay out, build, use, maintain and replace parking improvements, with said improvements to be utilized by the tenants, guests and invitees of R-H, on, over and across that portion of the Town's Property which is described in paragraph 2 below (hereinafter the "Easement Property").
2. Easement Property. Attached as Exhibit "B" is an updated plan of the Parking Study, an earlier version of which was attached as Exhibit A to the Settlement Agreement referenced above. This Exhibit "B" plan depicts the parking on the R-H Property as well as the Town Property, including the 0.319 acres parcel. The parties have outlined in red the specific area within the 0.319 acre parcel which will be considered the easement property for purposes of this Agreement. The redlining is to approximate a minimum of 3 feet from the end of the parking spaces so as to allow for landscaping in certain locations as well as access for maintenance and repair. For purposes of this Agreement, said area shall be referred to as the "Easement Property".
3. Conveyance Subject to Town Rights. This easement is conveyed subject to all other easements, licenses and conveyances of record.

4. Responsibilities of Improvement and Maintenance of Easement Property:
- (a) R-H shall be entitled at its sole cost and expense except as provided below to improve the Easement Property to construct the parking spaces and, thereafter, maintain, repair, resurface and ultimately, if necessary, replace. R-H may use asphalt for purposes of the paving of the parking area on the Easement Property, provided however in the event the Town desires that the parking area on the Easement Property be constructed, in whole or in part, of pervious materials rather than impervious asphalt. R-H will construct using pervious materials, subject to the Town's obligation to pay for the additional cost, if any, of pervious materials over the cost of asphalt surface.
  - (b) From the date of the commencement of the construction of the parking improvements described herein, R-H shall, at its sole cost and expense, cause all timely cleaning, repair, renovation, signage and striping in general to the improvements as shall be or shall become necessary and/or prudent for the reasonable safety of all persons using said improvements.
  - (c) It is agreed that R-H will be allowed to install the new parking utilizing the existing grade and natural gravity drainage provided therefrom.
  - (d) R-H agrees to cause all work contemplated hereunder to be performed in a workmanlike fashion with minimal interference to the Town, its successors, assigns, invitees, guests, licensees, and agents. R-H further agrees to cause the work contemplated hereunder to be completed in an expeditious and timely fashion, that the parking areas shall at all times be maintained in a safe condition, and that all debris and construction materials relating to work undertaken by R-H pursuant to the rights granted hereunder shall be promptly removed. R-H shall restore any other part of the Town's' property that may be damaged as a result of R-H's exercise of the rights granted hereunder to its pre-existing state.
  - (e) It is mutually agreed and covenanted that R-H, and its successors and assigns, shall be solely responsible for the maintenance, upkeep, refurbishment, repaving, and reconstruction, as applicable, of the Easement Property.
5. Insurance & Indemnification. R-H and Town are required to maintain adequate liability coverage over the Easement Property against personal injury and property damage relating to the parking area. Each party shall provide, on an annual basis, a certificate of insurance to the other party at the addresses reflected below their signature in the signature block; however, R-H agrees to indemnify and hold the Town harmless with respect to any loss, damage, claim, or suit whatsoever, as well as any expense or cost associated therewith, including reasonable attorneys fees and costs incurred on appeal, arising out of or associated in any way whatsoever with R-H's use of of the Easement Property as contemplated herein.
6. Binding Effect of Easements: The easements and agreements set forth in this Agreement shall be appurtenant to, and run with, the R-H Property because said easements are essential and necessary for the use of R-H Property, and shall burden the Town Property, and shall inure to the benefit of, and be binding upon, the successors and assigns of the parties hereto. Furthermore, the easements and agreements shall remain in full force and effect and shall be unaffected by any change of ownership of the R-H Property or Town Property or by any change of use of R-H Property or Town Property or other circumstances except as otherwise expressly provided in this Agreement. Each of the rights created under this Agreement shall be specifically enforceable in a court of equity, all parties hereto recognizing and agreeing that damages at law will be inadequate.
7. Miscellaneous: In the event any provision hereof is held to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of any other provision hereof. This Agreement is intended to supplement the Settlement Agreement with respect to the subject matter hereof. No representations, inducements, promises or agreements, oral or otherwise, not expressly set forth herein or in the Settlement Agreement shall be of any force or effect. This Agreement may not be modified except by written modification executed by all parties hereto. In the event either party must bring legal action to enforce the terms of this Agreement, the prevailing party in such legal action, suit, or arbitration shall be



Exhibit A-1

**R-H Property**

ALL that certain parcel or tract of land situate, lying and being on Hilton Head Island, Beaufort county, South Carolina, being shown as **Parcel "A"** on that certain plat entitled "A Boundary Survey of Lots 'M', 'New Lot N', New Lot 'N-1' & Parcels 'A', & 'C', A Portion of Palmetto Bay Commercial Subdivision, Hilton Head Island, Beaufort County, South Carolina", prepared by Coastal Surveying Co., Inc., prepared for The Trust for Public Land, dated 4/29/05, last revised 5/12/05, and recorded in the Office of the Beaufort County Records, South Carolina in Plat Book 106 at Page 128.

**ALSO**, all those certain pieces, parcels or tracts of land, situate, lying and being on Hilton Head Island, Beaufort County, South Carolina, shown and designated as **Parcel "B"** containing 0.216 acre, more or less, Parcel "B-1" containing 0.75 acre, more or less, and Parcel "B-2" containing 0.007 acre, more or less, on a plat entitled "An As-Built Survey of Lot 'M' and Parcels 'A', 'B', 'B-1' and 'B-2' and Related Easements," dated November 8, 2004, last revised November 12, 2004, prepared by Coastal Surveying Company, Inc., certified to by Michael R. Dunigan, S.C.P.L.S. No. 11905, and recorded in the Beaufort County Records in Plat Book 103 at Page 195.

**ALSO**, all that certain piece, parcel or tract of land, situate, lying and being on Hilton Head Island, Beaufort County, South Carolina, shown and designated as **Parcel "C"** containing 0.414 acres, more or less, on that certain plat entitled "A Boundary Survey of Lots 'M', 'New Lot 'N', New Lot 'N-1' & Parcels 'A' & 'C', a Portion of Palmetto Bay Commercial Subdivision, Hilton Head Island, Beaufort County, South Carolina," dated May 12, 2005, prepared by Coastal Surveying Co., certified to by Michael R. Dunigan, S.C.R.L.S. #11905, and recorded in the Beaufort County Records in Plat Book 106 at Page 128. The above parcel was formerly shown as Parcel B on a plat entitled "A Plat of Parcels A & B - Graves Construction Company" dated February 7, 1977, and prepared by Jerry L. Richardson, S.C.R.L.S. #4784, Coastal Surveying Company, Inc., Hilton Head Island, South Carolina, and revised March 15, 1977, and recorded in the Beaufort County Records in Plat Book 25 at Page 131.

For a more detailed description as to the metes and bounds, courses and distances, of the above referenced R-H Property, reference is had to the aforementioned recorded plats.

Exhibit A-2

**Town Property**

All that certain piece, parcel or lot of land, situate, lying and being on Hilton Head Island, County of Beaufort, State of South Carolina, and being more particularly described and shown as "The Robert Graves 0.319 AC Parcel Subject to 100' Power Easement" on that certain plat entitled "A Plat of the Graves Subdivision, Lots, A, B, C, D, E, F, G, H and Block A, Palmetto Bay Commercial Subdivision", prepared by Coastal Surveying Co., Inc., and recorded in Plat Book 27 at Page 168 in the Office of the Register of Deeds for Beaufort County, South Carolina.

TMP: \_\_\_\_\_

For a more detailed description as to the metes and bounds, courses and distances, of the above referenced Town Property, reference is had to the aforementioned recorded plat.



# TOWN OF HILTON HEAD ISLAND

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## *Community Development Department*

**TO:** Steve Riley, C.M., *Town Manager*  
**VIA:** Teri Lewis, AICP, *LMO Official*  
**FROM:** Anne Cyran, AICP, *Senior Planner*  
**CC:** Charles Cousins, AICP, *Director of Community Development*  
**DATE:** June 8, 2011  
**SUBJECT:** Proposed Ordinance No. 2011-11  
LMO Text Amendment to permit Outdoor Recreation in the Water Front  
Mixed Use (WMU) Zoning District

---

**Recommendation:** At the May 4, 2011 public meeting, the Planning & Development Standards Committee voted 2-1-0 to forward staff's report to Town Council with a recommendation of approval of the proposed WMU LMO Amendment as presented by staff with two modifications. Staff has made these modifications and the attached amendments reflect the recommendation of the Planning & Development Standards Committee.

**Summary:** After two public meetings, the LMO Committee recommended approval of the amendments. At a public hearing, the Planning Commission recommended approval of the amendments with a modification: that outdoor recreation uses in the WMU Zoning District shall be permitted by conditions rather than by special exception. Staff presented the amendments as modified by Planning Commission to the Planning & Development Standards Committee, which voted to forward staff's report to Town Council with a recommendation for approval with the following additional modifications: (1) that the language of Section 16-4-13XX(A) be changed to, "Uses shall be limited to those that are participatory in nature and include such facilities as challenge course activities, including such facilities as zip lines, ropes courses, and climbing walls; natural/cultural history based recreation such as nature trails and interpretive facilities; and arts and crafts activities;" and (2) that Sections 16-4-13XX(B) and 16-4-13XX(C) be deleted.

**Background:** The owner of Broad Creek Marina requested that the LMO be amended to allow outdoor recreation uses – including zip lines and ropes courses – on parcels in the WMU Zoning District. Staff is proposing to allow outdoor recreation uses to be permitted with conditions in the WMU Zoning District and to create specific use standards for outdoor recreation uses that meet the purpose of the district.

Parcels in the WMU Zoning District are adjacent to Broad Creek, Skull Creek and Port Royal Sound. Allowing limited outdoor recreation uses on these properties will broaden the scope of outdoor recreation opportunities on the island. This amendment will also expand opportunities for property owners to develop, redevelop and market their properties.

These amendments are supported by Town Council's Policy Agenda for 2011 which has amending the LMO to foster greater flexibility, simplicity and revitalization listed as a Top Priority. These amendments are also supported by the Adopted 2010 Comprehensive Plan, which promotes providing flexibility for redevelopment opportunities.

**AN ORDINANCE OF THE TOWN OF HILTON HEAD ISLAND**

**ORDINANCE NO.:**

**PROPOSED ORDINANCE NO.: 2011-11**

**AN ORDINANCE TO AMEND TITLE 16 OF THE MUNICIPAL CODE OF THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA, THE LAND MANAGEMENT ORDINANCE, CHAPTER 4, TO REVISE SECTION 16-4-1204 AND TO ADD SECTION 16-4-13XX. THIS AMENDMENT COMMONLY REFERRED TO AS THE *WMU OUTDOOR RECREATION AMENDMENT* AS NOTICED IN THE ISLAND PACKET ON MARCH 27, 2011, INCLUDES CHANGES THAT PROVIDE FOR AN AMENDMENT TO LMO SECTION 16-4-1204, USE TABLE AND THE ADDITION OF A NEW SECTION, 16-4-13XX, OUTDOOR RECREATION; AND PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.**

**WHEREAS**, on July 21, 1998, the Town Council did amend Title 16 of the Municipal Code of the Town of Hilton Head Island by enacting a revised Land Management Ordinance (LMO); and

**WHEREAS**, the Town Council now intends to amend Chapter 4 to allow outdoor recreation uses to be permitted with conditions in the Water Front Mixed Use (WMU) Zoning District and to create specific use standards for outdoor recreation uses in the WMU Zoning District; and

**WHEREAS**, the proposed amendments are supported by Town Council's Policy Agenda for 2011 which lists amending the LMO to foster greater flexibility, simplicity and revitalization as a Top Priority; and

**WHEREAS**, the proposed amendments are supported by the Adopted 2010 Comprehensive Plan goal of providing flexibility for redevelopment opportunities; and

**WHEREAS**, the Land Management Ordinance Committee held public meetings on March 16, 2011 and April 6, 2011 to discuss the proposed amendments; and

**WHEREAS**, the Planning Commission held a public hearing on May 4, 2011 and voted 7-1 to recommend that Town Council approve the proposed amendments with a modification; and

**WHEREAS**, the Planning and Development Standards Committee met on May 25, 2011 and voted 2-1 to forward staff's report to Town Council with a recommendation of approval with modifications; and

**WHEREAS**, Town Council now finds that, upon further review, it is in the public interest to approve the attached amendment to Chapter 4 of the Land Management Ordinance.

**NOW, THEREFORE BE IT ORDERED AND ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA, AND IT IS ORDAINED BY SAID AUTHORITY OF COUNCIL:**

**Section 1. Amendment.** That the Land Management Ordinance of the Town of Hilton Head Island, South Carolina, be, and the same hereby is, amended to read as indicated on the attached pages.

**NOTE:** New text is indicated by a double underline and deleted text is indicated by a ~~strike through~~.

**Section 2. Severability.** If any sections, phrase, sentence or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not attest the validity of the remaining portions thereof.

**Section 3. Effective Date.** This Ordinance shall be effective upon its adoption by the Town Council for the Town of Hilton Head Island, South Carolina.

**PASSED, APPROVED, AND ADOPTED BY THE COUNCIL FOR THE TOWN OF HILTON HEAD ISLAND ON THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ 2011.**

\_\_\_\_\_  
**Drew A. Laughlin, Mayor**

**ATTEST:**

\_\_\_\_\_  
**Victoria L. Pfannenschmidt, Acting Town Clerk**

**Public Hearing:** May 4, 2011  
**First Reading:** June 21, 2011  
**Second Reading:**

**Approved as to form:**

\_\_\_\_\_  
**Gregory M. Alford, Town Attorney**

**Introduced by Council Member:** \_\_\_\_\_

## Chapter 4. Zoning District Regulations

### Article XII. Use Regulations

#### Sec. 16-4-1204. - Use Table

Specific Use	WMU
P = Permitted By Right SE = Special Exception PC = Permitted With Conditions	
<b>Outdoor Recreation/Entertainment</b>	
Outdoor Recreation	<u>PC</u>

### Article XIII. Specific Use Standards

#### Sec. 16-4-13XX. - Outdoor Recreation

Outdoor recreation uses in the WMU Zoning District are permitted subject to the following standard:

- A. Uses shall be limited to those that are participatory in nature and include such facilities as challenge course activities, including such facilities as zip lines, ropes courses, and climbing walls; natural/cultural history based recreation such as nature trails and interpretive facilities; and arts and crafts activities.



# **TOWN OF HILTON HEAD ISLAND**

*Community Development Department*

**TO:** Stephen G. Riley, *Town Manager*  
**VIA:** Charles Cousins, *Director of Community Development*  
**VIA:** Shawn Colin, *Manager of Comprehensive Planning*  
**FROM:** Marcy Benson, *Senior Grants Administrator*  
**DATE:** June 14, 2011  
**SUBJECT:** Water & Sewer Energy Efficiency Grant Agreement and Sub-Recipient Agreement

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**Recommendation:** Staff recommends Town Council approve the attached resolution to execute the attached Water & Sewer Energy Efficiency Grant Agreement with the SC Budget & Control Board Office of Local Government (OLG) and to execute the Sub-Recipient Agreement with the Hilton Head Public Service District (HHPDS) for the OLG Water & Sewer Energy Efficiency Grant.

**Summary:** The OLG Water & Sewer Energy Efficiency Grant for the HHPSD dissolved oxygen (DO) control system for the aeration process at the reclaimed water (wastewater treatment) plant requires an executed grant agreement with OLG and an executed sub-recipient agreement with HHPSD.

**Background:** In January 2011 HHPSD requested to partner with the Town of Hilton Head Island on the SC Budget and Control Board Office of Local Government Water and Sewer Energy Efficiency Grant application. The HHPSD had prepared and submitted the application, but due to a grant requirement a local municipal or county government must be the primary applicant with HHPSD being the sub-recipient. Due to the short notice of the original grant deadline date the application was reviewed and signed by the Town and returned to HHPSD for submittal.

On June 8, 2011 The Town and HHPSD received notification the \$160,000 grant had been awarded to the project. As recipient of this grant the Town must execute the attached grant agreement with the OLG to receive the awarded funds. Prior to the Town transmitting funds to the HHPSD for this project the attached sub-recipient agreement between the Town and the HHPSD must be executed.

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA TO EXECUTE THE GRANT AGREEMENT WITH THE SC BUDGET & CONTROL BOARD OFFICE OF LOCAL GOVERNMENT AND EXECUTE THE SUB-RECIPIENT AGREEMENT WITH HILTON HEAD PUBLIC SERVICE DISTRICT FOR THE WATER & SEWER ENERGY EFFICIENCY GRANT**

**WHEREAS**, the Town of Hilton Head Island is the recipient of the South Carolina Budget & Control Board Office of Local Government Water & Sewer Energy Efficiency Grant funds for the purpose of providing a dissolved oxygen control system for the aeration process at the Hilton Head Public Service District reclaimed water (wastewater treatment) plant; and

**WHEREAS**, the Town of Hilton Head Island must execute the grant agreement with the South Carolina Budget & Control Board Office of Local Government to receive the awarded funds; and

**WHEREAS**, the Town of Hilton Head Island, as the recipient of the grant, and the Hilton Head Public Service District, as the project owner, desire to designate the Hilton Head Public Service District as a grant subrecipient of the Water & Energy Efficiency Grant funds, grant number WSEE-003, made by the South Carolina Budget & Control Board Office of Local Government; and

**WHEREAS**, the Town of Hilton Head Island must execute the Sub recipient Grant Agreement with the Hilton Head Public Service District to enable them to receive the awarded funds; and

**NOW THEREFORE, BE IT, AND IT HEREBY IS RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA, THAT**

1. The Mayor, or Town Manager are authorized to enter into a Grant Agreement with the South Carolina Budget & Control Board Office of Local Government to receive the awarded Water & Sewer Energy Efficiency Grant funds for the purpose of providing a dissolved oxygen control system for the aeration process at the Hilton Head Public Service District reclaimed water (wastewater treatment) plant the awarded funds.
2. The Mayor, or Town Manager are authorized to enter into a Grant Sub recipient Agreement with the Hilton Head Public Service District to enable them to receive the awarded Water & Sewer Energy Efficiency Grant funds for the purpose of providing a dissolved oxygen control system for the aeration process at the Hilton Head Public Service District reclaimed water (wastewater treatment) plant the awarded funds.

**MOVED, APPROVED AND ADOPTED THIS 21<sup>ST</sup> DAY OF JUNE, 2011.**

---

Drew Laughlin, Mayor

ATTEST:

\_\_\_\_\_  
Vicki Pfannenschmidt, Acting Town Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Gregory M. Alford, Town Attorney

Introduced by Council Member: \_\_\_\_\_

## Grant Agreement

Between the SC Budget & Control Board Office of Local  
Government and the Town of Hilton Head Island

NIKKI R. HALEY, CHAIR  
GOVERNOR  
  
CURTIS M. LOFTIS, JR.  
STATE TREASURER  
  
RICHARD ECKSTROM, CPA  
COMPTROLLER GENERAL



SC BUDGET AND CONTROL BOARD

OFFICE OF LOCAL GOVERNMENT  
ASHLIE LANCASTER  
INTERIM DIRECTOR

TELEPHONE: (803) 737-9822  
FAX: (803) 737-9846

HUGH K. LEATHERMAN, SR.  
CHAIRMAN, SENATE FINANCE  
COMMITTEE

DANIEL T. COOPER  
CHAIRMAN, HOUSE WAYS AND MEANS  
COMMITTEE

ELEANOR KITZMAN  
EXECUTIVE DIRECTOR

## NOTICE OF AWARD Water & Sewer Energy Efficiency Grant

**Date:** June 07, 2011

**Award No.:** WSEE-003

**Awarded To:** Town of Hilton Head Island  
1 Town Center Court  
Hilton Head Island, SC 29928-2701

**Contact:** Steve Riley, Town Manager

**Telephone:** 843-341-4100

**Facsimile:** 843-842-8908

**Email:** [SteveR@hiltonheadislandsc.gov](mailto:SteveR@hiltonheadislandsc.gov)

**Grant Period:** May 16, 2011 through January 30, 2012

**Awarded Amount:** \$160,000.00

**Federal Award Identifier:** DE-EE0000158

**CFDA No.:** 81.041

**Purpose of Award:** Reduce Energy Use and Cost

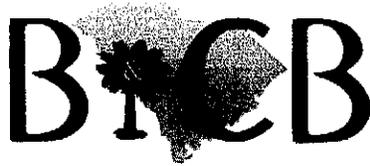
### Project Description:

The Town of Hilton Head Island will replace manual valves with motor-operated valves, install dissolved oxygen (DO) analyzers and replace hardware and programming to provide better control for the blower inlet throttling valve at the Reclaimed Water Plant.

NIKKI R. HALEY, CHAIR  
GOVERNOR

CURTIS M. LOFTIS, JR.  
STATE TREASURER

RICHARD ECKSTROM, CPA  
COMPTROLLER GENERAL



**SC BUDGET AND CONTROL BOARD**

OFFICE OF LOCAL GOVERNMENT  
1200 SENATE STREET  
406 WADE HAMPTON BUILDING  
COLUMBIA, SC 29201

TELEPHONE: (803) 734-2382 FAX: (803) 737-3807

ASHLIE LANCASTER  
INTERIM DIRECTOR

HUGH K. LEATHERMAN, SR.  
CHAIRMAN, SENATE FINANCE  
COMMITTEE

DANIEL T. COOPER  
CHAIRMAN, HOUSE WAYS AND MEANS  
COMMITTEE

ELEANOR KITZMAN  
EXECUTIVE DIRECTOR

**AWARD AGREEMENT SIGNATURE FORM**

Recipient: TOWN OF HILTON HEAD ISLAND

Award No.: WSEE-003

Award: \$160,000.00

**NOTE: Please provide signatures below and return (via mail or courier) with a complete award agreement to the Office of Local Government. The Office of Local Government will return an original signed, executed award agreement to you.**

**Recipient's Signature**

"I hereby certify I am authorized to contractually bind my organization to the aforementioned grant award and will comply with all requirements provided in the attached grant agreement".

By: \_\_\_\_\_  
Signature of Recipient's Authorized Official

Witness: \_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

Date: \_\_\_\_\_

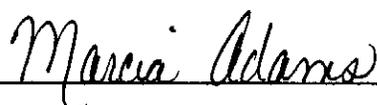
\_\_\_\_\_  
Title (Print)

Date: \_\_\_\_\_

**Office of Local Government Signature**

**Budget and Control Board**

By:   
Signature

By:   
Signature

Ashlie Lancaster  
Print Name

Marcia Adams  
Print Name

Interim Director, Office of Local Government  
Title

Chief of Staff, Budget and Control Board

Date: 5-16-11

Date: 5/16/11

**Budget and Control Board Office of Local Government**  
**SEP-ARRA GRANT AWARD**  
**Water and Sewer Energy Efficiency Grants Program**  
**HILTON HEAD ISLAND - Award No.: WSEE-003**

**Introduction**

The U.S. Department of Energy (DOE) has awarded State Energy Program ARRA funding to the South Carolina Energy Office (SCEO) and approved the allocation of funding for the purpose of supporting energy efficiency and renewable energy in water and wastewater treatment facilities.

SCEO awarded the Budget and Control Board Office of Local Government (OLG) funding for the Water and Sewer Energy Efficiency Grants Program. The project will reduce energy demand and costs for government-owned water and wastewater treatment facilities by offering grants for the replacement of inefficient equipment with new high-efficiency pumps, motors and other equipment.

By this agreement, the Office of Local Government grants **\$160,000.00** to the **Town of Hilton Head Island**, hereafter referred to as the Recipient, for implementation of the project as described in the Recipient's grant application and summarized in Part A herein.

If the Recipient is not the owner of the project, the Recipient must prepare a subgrant in order to transmit funds to the project owner. The subgrant must include verbatim all Grant requirements contained in Parts B, C and D herein. In particular, all subgrantees must be made aware of provisions relating to the Buy American clause and Davis Bacon Act requirements of the Federal ARRA.

This grant award is effective upon execution of this award agreement by final signature of the SC Office of Local Government and the Chief of Staff of the SC Budget and Control Board. By this reference, the final approved application is considered part of this award agreement.

**GRANT PERIOD: Date of Agreement Execution through January 30, 2012**

OLG and the Grantee indicated herein agree to the following obligations as indicated herein:

Notice of Award & Grant Agreement Signature Page

Part A- Project Description, Metrics, and Budget

Part B- Special Provisions & Conditions

Part C- Standard Provisions and Conditions

Part D – Special Recovery Act Provisions & Conditions

Attachment A – Project Implementation Schedule

**Part A - Project Description and Budget**

**A1. Project Description:**

The Town of Hilton Head Island will replace manual valves with motor-operated valves, install dissolved oxygen (DO) analyzers and replace hardware and programming to provide better control for the blower inlet throttling valve at the Reclaimed Water Plant.

**Budget and Control Board Office of Local Government**  
**SEP-ARRA GRANT AWARD**  
**Water and Sewer Energy Efficiency Grants Program**  
**HILTON HEAD ISLAND - Award No.: WSEE-003**

**A2. Project Metrics:**

ARRA Funds Requested	\$160,000	<i>(Amount may not exceed \$300,000)</i>
TOTAL PROJECT COST <i>(ARRA PLUS ALL OTHER FUNDING SOURCES)</i>	\$100,000	
Total Projected Annual Energy Savings by Fuel Type	921,000,000 Btu or 921 MBtu	
Total Projected Annual Cost savings	\$21,600	
Total Projected Life Cycle Cost <i>(base calculation on 15 year equipment life)</i>	\$324,000.00	
Payback Period	7.4 years	
Return on Investment	2.03	
Environmental Benefits (greenhouse gas reduction, etc)	Annual reduction of 194 tons of CO2 equivalents	
Jobs Created/Retained and/or other Economic Development Benefits (if applicable)	Engineering, Construction and Manufacturing Jobs	

**A3. Approved Project Budget**

COST CATEGORY	PROJECTED COST
Equipment and Materials:	\$ 52,000.00
Contract Installation:	\$ 108,000.00
<i>TOTAL Projected Budget</i>	\$160,000.00

- A3.1** Costs must be incurred within the approved grant period. Project costs incurred prior to the award date, but no earlier than February 15, 2011, may be allowable at the discretion of the OLG.
- A3.2** Up to 10% of the total award may be used for administrative costs. Administrative costs are those costs necessary for administration, oversight and financial accounting of the grant.

**Part B – Grant Requirements**

**B1. Execution of Agreement**

The Grantee’s signatory authority must sign the Award Agreement and return it with the following documents: (forms supplied by the OLG)

1. Confirmation of DUNS Number and Central Contract Registration
2. Certification Regarding Lobbying, Debarment, Suspension, and Other Responsibility Matters
3. Assurance of Compliance – Non-discrimination in Federally Assisted Programs
4. Signatory Authorization Form
5. Attachment A – Project Implementation Schedule

**Budget and Control Board Office of Local Government**  
**SEP-ARRA GRANT AWARD**  
**Water and Sewer Energy Efficiency Grants Program**  
**HILTON HEAD ISLAND - Award No.: WSEE-003**

**B2. Project Implementation**

The Grantee is responsible for complying with all of their own internal policies and procedures, as well as be in compliance with all laws and regulations of Federal, State and Local Governments.

**B3. Procurements**

The Recipient shall procure goods and services in accordance with their internally approved procurement policies and procedures. These procedures must reflect applicable State and local laws and regulations and conform to applicable Federal law and the standards specified in 10 CFR 600.236, paragraphs (b) through (i).

In accordance with the Standard Terms and Conditions provided herein, the Grantee shall maintain records of all project procurements including:

- a) Copy of bid advertisement and RFP or specifications;
- b) Copy of all bids submitted;
- c) Criteria used for selections;
- d) Justification (written) for selection of other than low bid;
- e) Justification (written) for sole source selection;
- f) Performance Agreements – require OLG Approval prior to implementation.

These records must be maintained for three years following submission of the Final Approved Report and must be made available for review by OLG when requested.

**B4. Buy American Provisions**

The Grantee must comply with the Buy American Provisions of the American Recovery and Reinvestment Act as detailed in Sections D14.

**B5. Davis Bacon Provisions**

All laborers and mechanics employed by the Grantee and its subgrantees on the project shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality. Applicable wage rates for South Carolina counties are found at: <http://www.wdol.gov>. The Grantee shall state in its grant solicitations that the project is subject to federal guidelines for wage rates (also known as Davis-Bacon Wage Rates) and shall require each contractor to submit weekly reports certifying the wages paid to mechanics and laborers on the project. These weekly reports must be submitted to the OLG. A detailed statement of Davis-Bacon provisions is contained in Section D17.

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**B6. Historic Preservation**

Prior to the expenditure of Federal funds to alter any structure or site, the Grantee is required to comply with the requirements of Section 106 of the National Historic Preservation Act (NHPA). Section 106 applies to historic properties that are listed in or eligible for listing in the National Register of Historic Places.

In order to fulfill the requirements of Section 106, the Grantee must contact the State Historic Preservation Officer (SHPO), and, if applicable, the Tribal Historic Preservation Officer (THPO), to coordinate the Section 106 review outlined in 36 CFR Part 800.

A Programmatic Agreement between the State Historic Preservation Office and the SCEO exempts from Section 106 review any projects that involve properties less than fifty years old and any projects that are included on a list of routine energy measures issued by the US Department of Energy. The Programmatic Agreement with the list of exempt energy measures is provided at [www.energy.sc.gov/sep/resources](http://www.energy.sc.gov/sep/resources).

Grantees shall avoid taking any action that results in an adverse effect to historic properties pending compliance with Section 106.

**B7. Allowable Costs**

OLG will reimburse costs that are incurred in accordance with the approved grant award that are reasonable and necessary to plan and implement the approved project(s).

Costs must be incurred within the approved grant period. Project costs incurred prior to the grant execution date may be allowable at the total discretion of the OLG.

Allowance of costs is subject to the applicable federal cost principles for the Recipient, OMB Circular A-21 (public colleges) or A-87 (state agencies and school districts).

**B8. Payment Requests**

Recipient may request reimbursement of costs incurred for goods and services as project work progresses. **Final payment requests must be submitted no later than 60 days after the award agreement ending date.**

Each Payment Request must be submitted on the form provided by OLG located at <http://www.olg.sc.gov/programs.aspx>

The Payment Request **must** be accompanied by:

1. Itemized list of expenses to be reimbursed. List must be organized by cost category and show subgrantee name, description and cost for each element of the project.

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2. Documentation verifying any equipment, materials, or services purchased for the project.
3. Copy of subgrant award letter, including DUNS Number, address and 9-digit zip code for each recipient.
4. For each subgrantee for which payment is sought, provide the following:
  - a) copy of the contractor's certification indicating compliance with Davis-Bacon wages rate requirements for laborers and mechanics unless work is performed by government workers.
  - b) number of hours worked on approved project by subgrantee's employees
5. The model and serial number and location of any non-expendable equipment item. (See Part D., Item 4 for definition of non-expendable equipment.)
6. Payroll accounts showing costs and hours worked for any Grantee personnel costs to be reimbursed. Grantee must maintain documentation that hours worked were devoted solely to the project.

Payment Request must be mailed to:

**ATTN: WASEE GRANT REIMBURSEMENT**  
Office of Local Government  
1200 Senate Street  
406 Wade Hampton Building  
Columbia, SC 29201

**B9. Modification of Agreement**

Excluding required changes by the Budget and Control Board, Legislative action, State or Federal Law, any request for modification of this Agreement must be in writing and executed by the signature of all parties prior to becoming effective. Requests for modifications may include but are not limited to:

1. Expanding an existing energy measure
2. Adding a new energy measure
3. Modifying an existing energy measure
4. Revising the approved budget

Instructions for requesting an agreement modification are located at  
<http://www.olg.sc.gov/programs.aspx>

The following are examples of changes that should be submitted for modification approval:

- Addition of an energy measure
- Change in type of equipment being installed
- Change in efficiency rating of equipment being installed if lower than specified in application
- Reduction in scope of measure—number of installations, area covered
- Change in locations where measure will be implemented

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- Changes that reduce the Return on Investment

- 

Required changes by the Budget and Control Board, Legislative action, State or Federal Law will be automatically incorporated into this agreement. The OLG will notify the Recipient of such changes in writing as a modification to this agreement.

**B10. Monitoring and Reporting Requirements**

**ARRA Reporting:** The SCEO will report the following data elements to *Recovery.gov* for each Recipient and update quarterly thereafter:

1. Recipient's DUNS Number
2. Recipient's Award Number
3. Recipient's Congressional District
4. Amount of Award
5. Date of Award
6. Funds paid to Recipient through end of quarter.
7. Place of Performance: City, 9-digit zip code, and Congressional District
8. Funds paid to each of Recipient's contractors.

**Monitoring**

The OLG will conduct a project monitoring visit and complete a monitoring report prior to making the final payment/reimbursement. The OLG may retain up to 5% of the grant award until the monitoring report is completed and all findings satisfactorily resolved.

**Reporting**

The recipient shall provide a summary of the impact that the ARRA-funded energy efficiency measures had on energy usage in the final grant report.

**Part C - Standard Provisions and Conditions**

This award is subject to all the Provisions and Conditions listed herein.

**C1. Grantee's Responsibility**

The Grantee shall fully acquaint himself with conditions relating to the scope and restrictions attending the execution of the work under the conditions of this award. The failure or omission of the Grantee to acquaint himself with existing conditions shall in no way relieve him of any obligation with respect to this award.

**Budget and Control Board Office of Local Government**  
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**HILTON HEAD ISLAND - Award No.: WSEE-003**

The Grantee will be required to assume sole responsibility for the complete effort as required by this award. OLG will consider the Grantee to be the sole point of contact with regard to award matters.

**C2. Rules and Regulations**

This award is covered by all appropriate State of South Carolina and U. S. Department of Energy rules and regulations, including State Energy Program Regulations (10 CFR 420) and Federal Financial Assistance Regulations (10 CFR 600, Subpart B for Institutions of Higher Education or Subpart C for State and Local Governments.) Should inconsistencies arise, the more restrictive rules shall apply.

**C3. Interest of Members, Officers, or Employees of Grantee, Members of Local Governing Body, or Other Public Officials**

No member, officer, or employee of the Grantee, or its designees or agents, no member of the governing body of the locality in which the Project is situated, and no other public official of such locality or localities who exercises any functions or responsibilities with respect to the Project during his tenure or for one year thereafter, shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed in connection with the Project or this Agreement. The Grantee shall incorporate, or cause to be incorporated, in all of its contracts or subcontracts relating to the Project and this Agreement this provision prohibiting such interest.

In the use of these award funds, officials or employees of state or local units of government and non-governmental Grantees shall avoid any action that might result in or create the appearance of:

- 1) Using his or her official position for private gain;
- 2) Giving preferential treatment to any person;
- 3) Losing complete independence or impartiality;
- 4) Making an official decision outside official channels; or
- 5) Affecting adversely the confidence of the public in the integrity of the government or the program.

**C4. Equipment**

Nonexpendable equipment, defined as equipment with an acquisition cost in excess of Five Thousand (\$5,000.00) Dollars and a life greater than one (1) year, must be appropriately inventoried and must be used for purposes consistent with the purpose of this award. Records of purchases must be maintained throughout the Award period, and the disposition of each item must be reported with the Final Report. Such equipment may not be removed from the premises without written permission from the OLG.

**Budget and Control Board Office of Local Government**  
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**HILTON HEAD ISLAND - Award No.: WSEE-003**

**C5. Termination of Award**

If, through any cause, the Grantee shall fail to fulfill in a timely and proper manner the obligations under this award, or if the Grantee shall violate any of the covenants, agreements, or stipulations of the award, or otherwise default on the award due to negligence, OLG shall have the right to terminate this award without giving a thirty (30) day advance notice.

If the funds under which the award is made are terminated by the U. S. Department of Energy (DOE), or in the event sufficient appropriations are not made to pay the charges under this award, OLG shall have the right to terminate this award.

If the Grantee is unable or unwilling to comply with such additional conditions as may be lawfully imposed by DOE or OLG, the Grantee shall have the right to terminate the award by giving OLG thirty (30) days written notice.

In the event of termination, all property, either finished or unfinished, documents, data, studies, and reports purchased or prepared by the Grantee under this award shall, at the option of OLG, become its property, and the Grantee shall be entitled to compensation for any unreimbursed expenses necessarily incurred in satisfactory performance of the award.

**C6. Procurement**

The Grantee shall procure goods and services in accordance with its own procurement procedures. These procedures must reflect applicable State and local laws and regulations and conform to applicable Federal law and the standards specified in 10 CFR 600.236, paragraphs (b) through (i). Contracts for project work must contain clauses required by Federal statutes and executive orders and their implementing regulations:

(1) Administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate. (Contracts more than the simplified acquisition threshold)

(2) Termination for cause and for convenience by the Grantee or subrecipient including the manner by which it will be effected and the basis for settlement. (All contracts in excess of \$10,000)

(3) Compliance with Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR Chapter 60). (All construction contracts awarded in excess of \$10,000 by Grantees and their contractors or sub Recipients)

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**Water and Sewer Energy Efficiency Grants Program**  
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- (4) Compliance with the Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3). (All contracts and sub grants for construction or repair)
- (5) Compliance with the Davis-Bacon Act (40 U.S.C. 276a to 276a - 7) as supplemented by Department of Labor regulations (29 CFR Part 5). (Construction contracts in excess of \$2000 awarded by Grantees and subrecipients when required by Federal grant program legislation)
- (6) Compliance with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327 - 330) as supplemented by Department of Labor regulations (29 CFR Part 5). (Construction contracts awarded by Grantees and subrecipients in excess of \$2000, and in excess of \$2500 for other contracts which involve the employment of mechanics or laborers)
- (7) Notice of awarding agency requirements and regulations pertaining to reporting.
- (8) Notice of awarding agency requirements and regulations pertaining to patent rights with respect to any discovery or invention which arises or is developed in the course of or under such contract.
- (9) Awarding agency requirements and regulations pertaining to copyrights and rights in data.
- (10) Access by the Grantee, the subrecipient, the Federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions.
- (11) Retention of all required records for three years after Grantees or subrecipients make final payments and all other pending matters are closed.
- (12) Compliance with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15). (Contracts, subcontracts, and subgrants of amounts in excess of \$100,000).
- (13) Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94 - 163, 89 Stat. 871).

**Budget and Control Board Office of Local Government**  
**SEP-ARRA GRANT AWARD**  
**Water and Sewer Energy Efficiency Grants Program**  
**HILTON HEAD ISLAND - Award No.: WSEE-003**

**C7. Audit Procedures**

The Grantee agrees to comply with the requirements of OMB Circular A-133 or audit regulations as set forth by the American Institute of Certified Public Accountants (AICPA), as applicable.

All records with respect to all matters covered by this award must be made available to OLG, or its representatives, for examination at any time during normal business hours and as often as OLG may deem necessary. Further, records with respect to all matters covered by this award shall be made available for audit and inspection by OLG and/or any of their duly authorized representatives. The audit report must specifically cite that the report was done in accordance with the applicable OMB Circular or AICPA standards.

**C8. Accounting Procedures (Maintenance of Records)**

The Grantee shall maintain all records pertinent to all awards, agreements and accounts in accordance with generally accepted accounting principles, including financial, statistical, property, participant records, and supporting documentation, as deemed necessary by OLG to assure proper accounting for all project funds. These records shall be retained for a period of three (3) years from the date of the submission of the final expenditure report.

Furthermore, these records shall be subject to Federal and State laws pertaining to freedom of information.

**C9. Insurance**

The Grantee shall maintain adequate property insurance for the life of equipment purchased under this award.

**C10. Travel Expenses**

If the Grantee is to be reimbursed for travel under this award, expenses charged for travel shall not exceed those allowable under customary practices by the State of South Carolina. All out of state travel must be approved in advance by OLG. The request for approval must state trip destination, purpose, dates, persons traveling, and the estimated cost.

**C11. Political Activity Prohibited**

None of the funds, materials, property, or services contributed by OLG or the Grantee under this award shall be used for any partisan political activity, or to further the election or defeat of any candidate for public office, or otherwise in violation of the provisions of the "Hatch Act".

**Budget and Control Board Office of Local Government**  
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**C12. Prohibition of Gratuities**

Amended Section 8-13-705 of the 1976 Code of Laws of South Carolina states: “(A) A person may not, directly or indirectly, give, offer, or promise anything of value to a public official, public member, or public employee with the intent to:

- (1) influence the discharge of a public official’s, public member’s, or public employee’s official responsibilities;
- (2) influence a public official, public member, or public employee to commit, aid in committing, collude in, or allow fraud on a governmental entity; or
- (3) induce a public official, public member, or public employee to perform or fail to perform an act in violation of the public official’s, public member’s, or public employee’s official responsibilities.”

**C13. Non-Supplanting Agreement**

The Grantee shall not use award funds to supplant state or local funds or other resources that would otherwise have been made available for energy conservation or weatherization projects.

**C14. Guideline for Procurement of Building Insulation Products Containing Recovered Materials (40 CFR 248)**

Any Grantee who purchased \$10,000.00 worth of insulation in the preceding fiscal year, or who will purchase \$10,000.00 worth of insulation in whole or in part with Federal funds during the current fiscal year, must establish an affirmative action policy for recovered materials as outlined in 40 CFR 248.

**C15. Utilization of Minority Businesses**

The contractor is encouraged to utilize qualified minority firms where cost and performance will not conflict with the time schedules.

**C16. Disclosure of Federal Participation**

In compliance with Section 623 of Public Law of 102-141, the Grantee agrees that no amount of this award shall be used to finance the acquisition of goods and services (including construction services) for the Project unless the Grantee:

- a. specifies in any announcement of the awarding of the contract for the procurement of the goods and services involved (including construction services) the amount of Federal funds that will be used to finance the acquisition; and
- b. expresses the amount announced pursuant to paragraph (a) as a percentage of the total cost of the planned acquisition.

The above requirements only apply to a procurement for goods or services (including construction services) that has an aggregate value of \$500,000.00 or more.

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**C17. Compliance with Section 504 of the Rehabilitation Act of 1973**

All recipients of federal funds must comply with Section 504 of the Rehabilitation Act of 1973 (The Act). Therefore, the Grantee, pursuant to the requirements of The Act, hereby gives assurance that no otherwise qualified handicapped person shall, solely by reason of handicap be excluded from participation in, be denied the benefits of or be subject to discrimination, including discrimination in employment, in any program or activity that receives or benefits from federal financial assistance. The Grantee agrees it will ensure that requirements of The Act shall be included in the agreements with and be binding on all of its subrecipients, contractors, subcontractors, assignees or successors.

**C18. Americans with Disabilities Act of 1990 (ADA)**

The Grantee must comply with all requirements of the Americans with Disabilities Act of 1990 (ADA), as applicable.

**C19. Affirmative Action**

The Grantee will take affirmative action in complying with all Federal and State requirements concerning fair employment and employment of the handicapped; and concerning the treatment of all employees, without regard to or discrimination by reason of race, color, religion, sex, national origin, or physical handicap.

**C20. Federal Debarment and Suspension**

The Grantee must comply with Federal Debarment and Suspension regulations (10 CFR 1036.510b) by requiring completion of "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions" by subrecipients prior to entering into a financial agreement with the subrecipients for any transaction as outlined below:

- a. Any procurement contract for goods and services, regardless of type, expected to equal or exceed the Federal procurement small purchase threshold (currently \$25,000).
- b. Any procurement contract for goods and services, regardless of amount, under which the subrecipient will have a critical influence on or substantive control over the transaction.

The Grantee is responsible for monitoring the submission and maintaining the official document.

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**C21. Liabilities and Losses**

Except as provided in the Federal Tort Claims Act, OLG and U.S. DOE assume no responsibility with respect to any damages or loss arising out of any activities undertaken with the financial support of this award. OLG and U.S. DOE make no express or implied warranty as to the conditions of the research, or any intellectual property, or product made or developed under this award, or the ownership, merchantability or fitness for a particular purpose of the research or resulting product.

**C22. Permits and Responsibilities**

The Grantee shall be responsible for obtaining any necessary licenses and/or permits and for complying with applicable federal, state, municipal laws, codes, and regulations in connection with the execution of the work hereunder. The Grantee shall take proper safety and health precautions to protect the work, the workers, and the property of others.

**C23. Sanctions:**

If the Grantee fails or refuses at any time to comply with any of the terms and conditions of this Agreement, the OLG may take, in addition to any relief that it is entitled to at law, any or all of the following actions: require repayment of all or a portion of any Grant funds provided; cancel, terminate, or suspend, in whole or in part, the Grant and this Agreement; or refrain from extending any further assistance or Grant funds to the Grantee until such time as the Grantee is in full compliance with the terms and conditions of this Agreement.

**C24. Severability:**

If any provision of this Agreement is or becomes illegal, invalid, or unenforceable in any respect, the legality, validity, and enforceability of the other provisions of this Agreement shall not in any way be affected or impaired thereby.

**Part D - Special Recovery Act Provisions & Conditions**

***AS REQUIRED BY THE US DEPARTMENT OF ENERGY, THE FOLLOWING ARE SUBGRANT FLOW-DOWN PROVISIONS THAT MUST BE INCLUDED, VERBATIM, IN ALL GRANTEE AND SUBGRANTEE GRANT AGREEMENTS AND CONTRACTS***

**D1. 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.

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**D2. 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.

**D3. SITE VISITS**

DOE's authorized representatives have the right to make site visits at reasonable times to review project accomplishments and management control systems and to provide technical assistance, if required. You must provide, and must require your sub awardees 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.

**D4. 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.

**D5. 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:

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Acknowledgment: "This material is based upon work supported by the Department of Energy under Award Number DE-EE00000158.

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."

**D6. FEDERAL, STATE, AND MUNICIPAL**

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

**D7. 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)

**D8. 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.

**D9. 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.

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**D10. 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.

**D11. HISTORIC PRESERVATION -**

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

Section 110(k) of the NHPA applies to DOE funded activities. Recipients shall avoid taking any action that results in an adverse effect to historic properties pending compliance with Section 106.

Recipients should be aware that the DOE Contracting Officer will consider the recipient in compliance with Section 106 of the NHPA only after the Recipient has submitted adequate background documentation to the SHPO/THPO for its review, and the SHPO/THPO has provided written concurrence to the Recipient that it does not object to its Section 106 finding or determination. Recipient shall provide a copy of this concurrence to the Contracting Officer.

***Prescription:*** *This clause must be included in all grants, cooperative agreement, contracts and TIAs (new or amended) when funds appropriated under the Recovery Act are obligated to the agreement.*

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**D12. SPECIAL PROVISIONS RELATING TO WORK FUNDED UNDER  
AMERICAN RECOVERY AND REINVESTMENT ACT OF 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 sub recipients, 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,

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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 sub award including contracts.

**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 sub grantees, or any State or local agency administering such contract that pertain to, and involve transactions relation to, the subcontract, subcontract, grant, or sub grant; and
- (2) to interview any officer or employee of the contractor, grantee, sub grantee, or agency regarding such transactions.

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

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

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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. Request for Reimbursement (this version is included in WAP/SEP awards with states)

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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.

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**I. Information in supporting 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.

**Prescription:** *The following award term shall be used to implement the recipient reporting and registration requirements in the Recovery Act section 1512.*

**D13. 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.

**Prescription:** *When awarding Recovery Act funds for construction, alteration, maintenance, or repair of a public building or public work and the total project value is estimated less than \$7,443,000, the agency shall use this award term*

**D14. REQUIRED USE OF AMERICAN IRON, STEEL, AND MANUFACTURED GOODS -- SECTION 1605 OF THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009**

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

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

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

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

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

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

(b) Domestic preference.

(1) This award term and condition implements Section 1605 of the American Recovery and Reinvestment Act of 2009 (Recovery Act) (Pub. L. 111--5), by requiring that all iron, steel, and manufactured goods used in the project are produced in the United States except as provided in paragraph (b)(3) and (b)(4) of this section and condition.

(2) This requirement does not apply to the material listed by the Federal Government as follows: [Award official to list applicable excepted materials or indicate "none"]

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

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

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

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

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

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

(B) Unit of measure;

(C) Quantity;

(D) Cost;

(E) Time of delivery or availability;

(F) Location of the project;

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

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

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

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

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

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

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

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

Foreign and Domestic Items Cost Comparison [List name, address, telephone number, email address, and contact for suppliers surveyed. Attach copy of response; if oral, attach summary.] [Include other applicable supporting information.] [\*Include all delivery costs to the construction site.]

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	_____	_____	_____

***Prescription:*** When issuing announcements or requesting applications for Recovery Act programs or activities that may involve construction, alteration, maintenance, or repair the agency shall use this award term.

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**D15. 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.

***Prescription:*** *The award term described in this section shall be used by agencies to clarify recipient responsibilities regarding tracking and documenting Recovery Act expenditures.*

**D16. RECOVERY ACT TRANSACTIONS LISTED IN SCHEDULE OF EXPENDITURES OF FEDERAL AWARDS AND RECIPIENT RESPONSIBILITIES FOR INFORMING**

(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>.

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(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 sub recipient, and document at the time of sub award 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 sub recipients shall distinguish the sub awards of incremental Recovery Act funds from regular sub awards under the existing program.

(d) Recipients agree to require their sub recipients 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 sub recipient expenditure of ARRA funds as well as oversight by the Federal awarding agencies, Offices of Inspector General and the Government Accountability Office.

**Prescription:** *Include for ARRA Awards (other than Weatherization Assistance Program and Loan Program awards) when WAGE RATE REQUIREMENTS UNDER SECTION 1606 OF THE AMERICAN RECOVERY AND REINVESTMENT ACT ("RECOVERY ACT") term is required.*

**D17. 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) Sub recipients, 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, Sub recipients, and Recipients' or Sub recipients' 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."

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(3) "Contract" means a contract executed by a Recipient, Sub recipient, 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) "Sub award" 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 Sub recipient or by a Sub recipient to a lower-tier sub recipient. 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) "Sub recipient" 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.

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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.

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

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii)(B) or (C) of this section, shall be paid to all workers performing work in the classification under this Contract from the first day on which work is performed in the classification.

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

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

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

(3) Payrolls and basic records.

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

(ii) (A) The Contractor shall submit weekly for each week in which any Contract work is performed a copy of all payrolls to the Department of Energy if the agency is a party to the Contract, but if the agency is not such a party, the Contractor will submit the payrolls to the Recipient or Sub recipient (as applicable), applicant, sponsor, or owner, as the case may be, for transmission to the Department of Energy. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime Contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the Department of Energy if the agency is a party to the Contract, but if the agency is not such a party, the Contractor will submit them to the Recipient or Sub recipient (as applicable), applicant, sponsor, or owner, as the case may be, for transmission to the Department of Energy, the Contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the sponsoring government agency (or the Recipient or Sub recipient (as applicable), applicant, sponsor, or owner).

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

(1) That the payroll for the payroll period contains the information required to be provided under § 5.5 (a) (3) (ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under § 5.5 (a) (3) (i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the Contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

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

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the Contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 3729 of title 31 of the United States Code.

(iii) The Contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the Department of Energy or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the Contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) Apprentices and trainees—

(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a Contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate

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specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices.

Any employee listed on the payroll at a trainee rate that is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

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

(5) Compliance with Copeland Act requirements. The Contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this Contract.

(6) Contracts and Subcontracts. The Recipient, Sub recipient, the Recipient's and Sub recipient's contractors and subcontractor shall insert in any Contracts the clauses contained herein in (a) (1) through (10) and such other clauses as the Department of Energy may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The Recipient shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of the paragraphs in this clause.

(7) Contract termination: debarment. A breach of the Contract clauses in 29 CFR 5.5 may be grounds for termination of the Contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this Contract.

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(9) Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this Contract shall not be subject to the general disputes clause of this Contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the Recipient, Sub recipient, the Contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(10) Certification of eligibility.

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

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

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

**(b) Contract Work Hours and Safety Standards Act.** As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

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

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (b)(1) of this section the Contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.

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

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(4) Contracts and Subcontracts. The Recipient, Sub recipient, and Recipient's and Sub recipient's contractor or subcontractor shall insert in any Contracts, the clauses set forth in paragraph (b)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The Recipient shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (b) (1) through (4) of this section.

(5) The Contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the Contract for all laborers and mechanics, including guards and watchmen, working on the Contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. The records to be maintained under this paragraph shall be made available by the Contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the Department of Energy and the Department of Labor, and the Contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

**D.18 From 10 CFR 600.236-Procurement**

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

Note: 600.236 (i)-Contract provisions. A grantee's and sub-grantee's contracts MUST contain provisions in paragraph (i) of this section (1) through (13).

**10 CFR 600.236** --<http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&sid=1d87da29f6087f0251f78954c8888ff1&rgn=div8&view=text&node=10:4.0.1.3.9.3.20.23&idno=10>

**From 10 CFR 600.237-Subgrants**

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

In accordance with Federal requirements, the SCEO identifies this award as follows:

- 1) Federal Award Number: DE-EE0000158
- 2) CFDA Number: 81.041
- 3) American Recovery and Reinvestment Act 2009 – the entire award amount is funding under this Act.

# Sub-Recipient Agreement



**Purpose:**

It is the purpose and intent of this Subrecipient Agreement to enable the Recipient to pass the responsibility and Water and Sewer Energy Grant funds to the Subrecipient to carry out the project described in the grant application which was approved and funded by the SC Budget and Control Board OLG as the Grant.

Under this Subrecipient Agreement, it is the intent of the Recipient to limit its responsibilities associated with the Grant to those administrative duties related to providing the Grant funds to the Subrecipient. All responsibilities for the Grant administration, reporting, expenditure of funds and carrying out the project including overseeing installation services are to be assigned to the Subrecipient by this Agreement. As required by the SC Budget and Control Board OLG this Subrecipient Agreement will include verbatim all Grant requirements contained in the Grant notice of award Parts B, C, and D.

**Grant Period: Date of Agreement Execution through January 30, 2012**

The Recipient and Subrecipient agree to the following obligations as indicated herein:

Part A- Project Description, Metrics, and Budget

Part B- Special Provisions & Conditions

Part C- Standard Provisions and Conditions

Part D – Special Recovery Act Provisions & Conditions

Attachment A – Project Implementation Schedule

**Part A - Project Description and Budget****A1. Project Description:**

HHPSD will replace manual valves with motor-operated valves, install dissolved oxygen (DO) analyzers and replace hardware and programming to provide better control for the blower inlet throttling valve at the Reclaimed Water Plant.

**A2. Project Metrics:**

ARRA Funds Requested <i>(Amount may not exceed \$300,000)</i>	\$160,000
TOTAL,PROJECT COST <i>(ARRA PLUS A LL OTHER FUNDING SOURCES)</i>	\$100,000
Total Projected Annual Energy Savings by Fuel Type <i>( i Bt )</i>	921,000,000 Btu or 921 MBtu
Total Projected Annual Cost savings	\$21,600
Total Projected Life Cycle Cost <i>(base calculation on 15 year equipment life)</i>	\$324,000.00
Payback Period 7.4 years	
Return on Investment 2.03	
Environmental Benefits (greenhouse gas reduction, etc) Annual reduction of 194 tons of C02 equivalents	
Jobs Created/Retained and/or other Economic Development	

Benefits (if applicable) Engineering, Construction and Manufacturing Jobs
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### **A3. Approved Project Budget**

COST CATEGORY	PROJECTED COST
Equipment and Materials:	\$ 52,000.00
Contract Installation:	\$ 108,000.00
<i>TOTAL Projected Budget</i>	\$160,000.00

**A3.1** Costs must be incurred within the approved grant period. Project costs incurred prior to the award date, but no earlier than February 15, 2011, may be allowable at the discretion of the OLG.

**A3.2** Up to 10% of the total award may be used for administrative costs. Administrative costs are those costs necessary for administration, oversight and financial accounting of the grant.

### **Part B – Grant Requirements**

#### **B1. Execution of Agreement**

The Subrecipient's signatory authority must sign the Award Agreement and return it with the following documents: (forms supplied by the OLG)

1. Confirmation of DUNS Number and Central Contract Registration
2. Certification Regarding Lobbying, Debarment, Suspension, and Other Responsibility Matters
3. Assurance of Compliance – Non-discrimination in Federally Assisted Programs
4. Signatory Authorization Form
5. Attachment A – Project Implementation Schedule

#### **B2. Project Implementation**

The Subrecipient is responsible for complying with all of their own internal policies and procedures, as well as be in compliance with all laws and regulations of Federal, State and Local Governments.

#### **B3. Procurements**

The Subrecipient shall procure goods and services in accordance with their internally approved procurement policies and procedures. These procedures must reflect applicable State and local laws and regulations and conform to applicable Federal law and the standards specified in 10 CFR 600.236, paragraphs (b) through (i).

In accordance with the Standard Terms and Conditions provided herein, the Subrecipient shall maintain records of all project procurements including:

- a) Copy of bid advertisement and RFP or specifications;
- b) Copy of all bids submitted;
- c) Criteria used for selections;
- d) Justification (written) for selection of other than low bid;
- e) Justification (written) for sole source selection;
- f) Performance Agreements – require OLG Approval prior to implementation.

These records must be maintained for three years following submission of the Final Approved Report and must be made available for review by OLG when requested.

**B4. Buy American Provisions**

The Subrecipient must comply with the Buy American Provisions of the American Recovery and Reinvestment Act as detailed in Sections D14.

**B5. Davis Bacon Provisions**

All laborers and mechanics employed by the Recipient and its subrecipients on the project shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality. Applicable wage rates for South Carolina counties are found at: <http://www.wdol.gov>. The Recipient shall state in its grant solicitations that the project is subject to federal guidelines for wage rates (also known as Davis-Bacon Wage Rates) and shall require each contractor to submit weekly reports certifying the wages paid to mechanics and laborers on the project. These weekly reports must be submitted to the OLG. A detailed statement of Davis-Bacon provisions is contained in Section D17.

**B6. Historic Preservation**

Prior to the expenditure of Federal funds to alter any structure or site, the Subrecipient is required to comply with the requirements of Section 106 of the National Historic Preservation Act (NHPA). Section 106 applies to historic properties that are listed in or eligible for listing in the National Register of Historic Places.

In order to fulfill the requirements of Section 106, the Subrecipient must contact the State Historic Preservation Officer (SHPO), and, if applicable, the Tribal Historic Preservation Officer (THPO), to coordinate the Section 106 review outlined in 36 CFR Part 800.

A Programmatic Agreement between the State Historic Preservation Office and the SCEO exempts from Section 106 review any projects that involve properties less than fifty years old and any projects that are included on a list of routine energy measures issued by the US Department of Energy. The Programmatic Agreement with the list of

exempt energy measures is provided at [www.energy.sc.gov/sep/resources](http://www.energy.sc.gov/sep/resources) .  
 Subrecipient shall avoid taking any action that results in an adverse effect to historic properties pending compliance with Section 106.

**B7. Allowable Costs**

OLG will reimburse costs that are incurred in accordance with the approved grant award that are reasonable and necessary to plan and implement the approved project(s).

Costs must be incurred within the approved grant period. Project costs incurred prior to the grant execution date may be allowable at the total discretion of the OLG.

Allowance of costs is subject to the applicable federal cost principles for the Subrecipient, OMB Circular A-21 (public colleges) or A-87 (state agencies and school districts).

**B8. Payment Requests**

Subrecipient may request reimbursement of costs incurred for goods and services as project work progresses. **Final payment requests must be submitted no later than 60 days after the award agreement ending date.**

Each Payment Request must be submitted on the form provided by OLG located at <http://www.olg.sc.gov/programs.aspx>

The Payment Request **must** be accompanied by:

1. Itemized list of expenses to be reimbursed. List must be organized by cost category and show Subrecipient name, description and cost for each element of the project.
2. Documentation verifying any equipment, materials, or services purchased for the project.
3. Copy of subgrant award letter, including DUNS Number, address and 9-digit zip code for each recipient.
4. For each Subrecipient for which payment is sought, provide the following:
  - a) copy of the contractor's certification indicating compliance with Davis-Bacon wages rate requirements for laborers and mechanics unless work is performed by government workers.
  - b) number of hours worked on approved project by Subrecipient's employees
5. The model and serial number and location of any non-expendable equipment item. (See Part D., Item 4 for definition of non-expendable equipment.)

6. Payroll accounts showing costs and hours worked for any Subrecipient personnel costs to be reimbursed. Subrecipient must maintain documentation that hours worked were devoted solely to the project.

Payment Request must be mailed to:

**ATTN: WASEE GRANT REIMBURSEMENT**  
Office of Local Government  
1200 Senate Street  
406 Wade Hampton Building  
Columbia, SC 29201

**B9. Modification of Agreement**

Excluding required changes by the Budget and Control Board, Legislative action, State or Federal Law, any request for modification of this Agreement must be in writing and executed by the signature of all parties prior to becoming effective. Requests for modifications may include but are not limited to:

1. Expanding an existing energy measure
2. Adding a new energy measure
3. Modifying an existing energy measure
4. Revising the approved budget

Instructions for requesting an agreement modification are located at <http://www.olg.sc.gov/programs.aspx>

The following are examples of changes that should be submitted for modification approval:

- Addition of an energy measure
- Change in type of equipment being installed
- Change in efficiency rating of equipment being installed if lower than specified in application
- Reduction in scope of measure—number of installations, area covered
- Change in locations where measure will be implemented
- Changes that reduce the Return on Investment

Required changes by the Budget and Control Board, Legislative action, State or Federal Law will be automatically incorporated into this agreement. The OLG will notify the Recipient of such changes in writing as a modification to this agreement, at which time the Recipient will notify the Subrecipient of such changes in writing as a modification to this agreement.

**B10. Monitoring and Reporting Requirements**

**ARRA Reporting:** The SCEO will report the following data elements to *Recovery.gov* for each Recipient and update quarterly thereafter:

1. Recipient's DUNS Number
2. Recipient's Award Number
3. Recipient's Congressional District
4. Amount of Award
5. Date of Award
6. Funds paid to Recipient through end of quarter.
7. Place of Performance: City, 9-digit zip code, and Congressional District
8. Funds paid to each of Recipient's contractors.

### **Monitoring**

The OLG will conduct a project monitoring visit and complete a monitoring report prior to making the final payment/reimbursement. The OLG may retain up to 5% of the grant award until the monitoring report is completed and all findings satisfactorily resolved.

### **Reporting**

The recipient shall provide a summary of the impact that the ARRA-funded energy efficiency measures had on energy usage in the final grant report.

## **Part C - Standard Provisions and Conditions**

This award is subject to all the Provisions and Conditions listed herein.

### **C1. Subrecipient 's Responsibility**

The Subrecipient shall fully acquaint himself with conditions relating to the scope and restrictions attending the execution of the work under the conditions of this award. The failure or omission of the Subrecipient to acquaint himself with existing conditions shall in no way relieve him of any obligation with respect to this award.

The Subrecipient will be required to assume sole responsibility for the complete effort as required by this award. OLG will consider the Recipient to be the sole point of contact with regard to award matters.

### **C2. Rules and Regulations**

This award is covered by all appropriate State of South Carolina and U. S. Department of Energy rules and regulations, including State Energy Program Regulations (10 CFR 420) and Federal Financial Assistance Regulations (10 CFR 600, Subpart B for Institutions of Higher Education or Subpart C for State and Local Governments.) Should inconsistencies arise, the more restrictive rules shall apply.

### **C3. Interest of Members, Officers, or Employees of Recipient, Members of Local Governing Body, or Other Public Officials**

No member, officer, or employee of the Subrecipient, or its designees or agents, no member of the governing body of the locality in which the Project is situated, and no other public official of such locality or localities who exercises any functions or responsibilities with respect to the Project during his tenure or for one year thereafter, shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed in connection with the Project or this Agreement. The Subrecipient shall incorporate, or cause to be incorporated, in all of its contracts or subcontracts relating to the Project and this Agreement this provision prohibiting such interest.

In the use of these award funds, officials or employees of state or local units of government and non-governmental Subrecipients shall avoid any action that might result in or create the appearance of:

- 1) Using his or her official position for private gain;
- 2) Giving preferential treatment to any person;
- 3) Losing complete independence or impartiality;
- 4) Making an official decision outside official channels; or
- 5) Affecting adversely the confidence of the public in the integrity of the government or the program.

#### **C4. Equipment**

Nonexpendable equipment, defined as equipment with an acquisition cost in excess of Five Thousand (\$5,000.00) Dollars and a life greater than one (1) year, must be appropriately inventoried and must be used for purposes consistent with the purpose of this award. Records of purchases must be maintained throughout the Award period, and the disposition of each item must be reported with the Final Report. Such equipment may not be removed from the premises without written permission from the OLG.

#### **C5. Termination of Award**

If, through any cause, the Recipient shall fail to fulfill in a timely and proper manner The obligations under this award, or if the Recipient shall violate any of the covenants, agreements, or stipulations of the award, or otherwise default on the award due to negligence, OLG shall have the right to terminate this award without giving a thirty (30) day advance notice.

If the funds under which the award is made are terminated by the U. S. Department of Energy (DOE), or in the event sufficient appropriations are not made to pay the charges under this award, OLG shall have the right to terminate this award.

If the Subrecipient is unable or unwilling to comply with such additional conditions as may be lawfully imposed by DOE or OLG, the Subrecipient shall have the right to terminate the award by giving OLG thirty (30) days written notice.

In the event of termination, all property, either finished or unfinished, documents, data, studies, and reports purchased or prepared by the Subrecipient under this award shall, at the option of OLG, become its property, and the Subrecipient shall be entitled to compensation for any unreimbursed expenses necessarily incurred in satisfactory performance of the award.

## **C6. Procurement**

The Subrecipient shall procure goods and services in accordance with its own procurement procedures. These procedures must reflect applicable State and local laws and regulations and conform to applicable Federal law and the standards specified in 10 CFR 600.236, paragraphs (b) through (i). Contracts for project work must contain clauses required by Federal statutes and executive orders and their implementing regulations:

(1) Administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate. (Contracts more than the simplified acquisition threshold)

(2) Termination for cause and for convenience by the Recipient or subrecipient including the manner by which it will be effected and the basis for settlement. (All contracts in excess of \$10,000)

(3) Compliance with Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR Chapter 60). (All construction contracts awarded in excess of \$10,000 by Recipients and their contractors or sub Recipients)

(4) Compliance with the Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3). (All contracts and sub grants for construction or repair)

(5) Compliance with the Davis-Bacon Act (40 U.S.C. 276a to 276a - 7) as supplemented by Department of Labor regulations (29 CFR Part 5). (Construction contracts in excess of \$2000 awarded by Recipients and subrecipients when required by Federal grant program legislation)

(6) Compliance with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327 - 330) as supplemented by Department of Labor regulations (29 CFR Part 5). (Construction contracts awarded by Recipients and

subrecipients in excess of \$2000, and in excess of \$2500 for other contracts which involve the employment of mechanics or laborers)

(7) Notice of awarding agency requirements and regulations pertaining to reporting.

(8) Notice of awarding agency requirements and regulations pertaining to patent rights with respect to any discovery or invention which arises or is developed in the course of or under such contract.

(9) Awarding agency requirements and regulations pertaining to copyrights and rights in data.

(10) Access by the Recipient, the subrecipient, the Federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions.

(11) Retention of all required records for three years after Recipients or subrecipients make final payments and all other pending matters are closed.

(12) Compliance with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15). (Contracts, subcontracts, and subgrants of amounts in excess of \$100,000).

(13) Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94 - 163, 89 Stat. 871).

## **C7. Audit Procedures**

The Subrecipient agrees to comply with the requirements of OMB Circular A-133 or audit regulations as set forth by the American Institute of Certified Public Accountants (AICPA), as applicable.

All records with respect to all matters covered by this award must be made available to OLG, or its representatives, for examination at any time during normal business hours and as often as OLG may deem necessary. Further, records with respect to all matters covered by this award shall be made available for audit and inspection by OLG and/or any of their duly authorized representatives. The audit report must specifically cite that the report was done in accordance with the applicable OMB Circular or AICPA standards.

**C8. Accounting Procedures (Maintenance of Records)**

The Subrecipient shall maintain all records pertinent to all awards, agreements and accounts in accordance with generally accepted accounting principles, including financial, statistical, property, participant records, and supporting documentation, as deemed necessary by OLG to assure proper accounting for all project funds. These records shall be retained for a period of three (3) years from the date of the submission of the final expenditure report.

Furthermore, these records shall be subject to Federal and State laws pertaining to freedom of information.

**C9. Insurance**

The Subrecipient shall maintain adequate property insurance for the life of equipment purchased under this award.

**C10. Travel Expenses**

If the Subrecipient is to be reimbursed for travel under this award, expenses charged for travel shall not exceed those allowable under customary practices by the State of South Carolina. All out of state travel must be approved in advance by OLG. The request for approval must state trip destination, purpose, dates, persons traveling, and the estimated cost.

**C11. Political Activity Prohibited**

None of the funds, materials, property, or services contributed by OLG, Recipient, or the Subrecipient under this award shall be used for any partisan political activity, or to further the election or defeat of any candidate for public office, or otherwise in violation of the provisions of the "Hatch Act".

**C12. Prohibition of Gratuities**

Amended Section 8-13-705 of the 1976 Code of Laws of South Carolina states:

“(A) A person may not, directly or indirectly, give, offer, or promise anything of value to a public official, public member, or public employee with the intent to:

- (1) influence the discharge of a public official’s, public member’s, or public employee’s official responsibilities;
- (2) influence a public official, public member, or public employee to commit, aid in committing, collude in, or allow fraud on a governmental entity; or
- (3) induce a public official, public member, or public employee to perform or fail to perform an act in violation of the public official’s, public member’s, or public employee’s official responsibilities.”

**C13. Non-Supplanting Agreement**

The Subrecipient shall not use award funds to supplant state or local funds or other resources that would otherwise have been made available for energy conservation or weatherization projects.

**C14. Guideline for Procurement of Building Insulation Products Containing Recovered Materials (40 CFR 248)**

Any Recipient or Subrecipient who purchased \$10,000.00 worth of insulation in the preceding fiscal year, or who will purchase \$10,000.00 worth of insulation in whole or in part with Federal funds during the current fiscal year, must establish an affirmative action policy for recovered materials as outlined in 40 CFR 248.

**C15. Utilization of Minority Businesses**

The Subrecipient is encouraged to utilize qualified minority firms where cost and performance will not conflict with the time schedules.

**C16. Disclosure of Federal Participation**

In compliance with Section 623 of Public Law of 102-141, the Subrecipient agrees that no amount of this award shall be used to finance the acquisition of goods and services (including construction services) for the Project unless the Subrecipient:

- a. specifies in any announcement of the awarding of the contract for the procurement of the goods and services involved (including construction services) the amount of Federal funds that will be used to finance the acquisition; and
- b. expresses the amount announced pursuant to paragraph (a) as a percentage of the total cost of the planned acquisition.

The above requirements only apply to procurement for goods or services (including construction services) that has an aggregate value of \$500,000.00 or more.

**C17. Compliance with Section 504 of the Rehabilitation Act of 1973**

All recipients of federal funds must comply with Section 504 of the Rehabilitation Act of 1973 (The Act). Therefore, the Subrecipient, pursuant to the requirements of The Act, hereby gives assurance that no otherwise qualified handicapped person shall, solely by reason of handicap be excluded from participation in, be denied the benefits of or be subject to discrimination, including discrimination in employment, in any program or activity that receives or benefits from federal financial assistance. The Subrecipient agrees it will ensure that requirements of The Act shall be included in the agreements with and be binding on all of its subrecipients, contractors, subcontractors, assignees or successors.

**C18. Americans with Disabilities Act of 1990 (ADA)**

The Subrecipient must comply with all requirements of the Americans with Disabilities Act of 1990 (ADA), as applicable.

**C19. Affirmative Action**

The Subrecipient will take affirmative action in complying with all Federal and State requirements concerning fair employment and employment of the handicapped; and concerning the treatment of all employees, without regard to or discrimination by reason of race, color, religion, sex, national origin, or physical handicap.

**C20. Federal Debarment and Suspension**

The Subrecipient must comply with Federal Debarment and Suspension regulations (10 CFR 1036.510b) by requiring completion of "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions" by Subrecipients prior to entering into a financial agreement with the subrecipients for any transaction as outlined below:

- a. Any procurement contract for goods and services, regardless of type, expected to equal or exceed the Federal procurement small purchase threshold (currently \$25,000).
- b. Any procurement contract for goods and services, regardless of amount, under which the Subrecipient will have a critical influence on or substantive control over the transaction.

The Subrecipient is responsible for monitoring the submission and maintaining the official document.

**C21. Liabilities and Losses**

Except as provided in the Federal Tort Claims Act, OLG and U.S. DOE assume no responsibility with respect to any damages or loss arising out of any activities undertaken with the financial support of this award. OLG and U.S. DOE make no express or implied warranty as to the conditions of the research, or any intellectual property, or product made or developed under this award, or the ownership, merchantability or fitness for a particular purpose of the research or resulting product.

Except as provided in the State Tort Claims Act, Recipient assumes no responsibility with respect to any damages or loss arising out of any activities undertaken with the financial support of this award. Recipient makes no express or implied warranty as to the conditions of the research, or any intellectual property, or product made or developed under this award, or the ownership, merchantability or fitness for a particular purpose of the research or resulting product.

**C22. Permits and Responsibilities**

The Subrecipient shall be responsible for obtaining any necessary licenses and/or permits and for complying with applicable federal, state, municipal laws, codes, and regulations in connection with the execution of the work hereunder. The Recipient shall take proper safety and health precautions to protect the work, the workers, and the property of others.

**C23. Sanctions:**

If the Subrecipient fails or refuses at any time to comply with any of the terms and conditions of this Agreement, the OLG may take, in addition to any relief that it is entitled to at law, any or all of the following actions: require repayment of all or a portion of any Grant funds provided; cancel, terminate, or suspend, in whole or in part, the Grant and this Agreement; or refrain from extending any further assistance or Grant funds to the Recipient until such time as the Subrecipient is in full compliance with the terms and conditions of this Agreement.

**C24. Severability:**

If any provision of this Agreement is or becomes illegal, invalid, or unenforceable in any respect, the legality, validity, and enforceability of the other provisions of this Agreement shall not in any way be affected or impaired thereby.

**Part D - Special Recovery Act Provisions & Conditions**

***AS REQUIRED BY THE US DEPARTMENT OF ENERGY, THE FOLLOWING ARE SUBGRANT FLOW-DOWN PROVISIONS THAT MUST BE INCLUDED, VERBATIM, IN ALL RECIPIENT AND SUBRECIPIENT GRANT AGREEMENTS AND CONTRACTS***

**D1. 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.

**D2. 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.

### **D3. SITE VISITS**

DOE's authorized representatives have the right to make site visits at reasonable times to review project accomplishments and management control systems and to provide technical assistance, if required. You must provide, and must require your sub awardees 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.

### **D4. 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.

### **D5. 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-EE00000158.

**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."

**D6. FEDERAL, STATE, AND MUNICIPAL**

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

**D7. 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)

**D8. 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.

**D9. 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.

**D10. 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.

**D11. HISTORIC PRESERVATION -**

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

Section 110(k) of the NHPA applies to DOE funded activities. Recipients shall avoid taking any action that results in an adverse effect to historic properties pending compliance with Section 106.

Recipients should be aware that the DOE Contracting Officer will consider the recipient in compliance with Section 106 of the NHPA only after the Recipient has submitted adequate background documentation to the SHPO/THPO for its review, and the SHPO/THPO has provided written concurrence to the Recipient that it does not object to its Section 106 finding or determination. Recipient shall provide a copy of this concurrence to the Contracting Officer.

***Prescription:*** *This clause must be included in all grants, cooperative agreement, contracts and TIAs (new or amended) when funds appropriated under the Recovery Act are obligated to the agreement.*

**D12. SPECIAL PROVISIONS RELATING TO WORK FUNDED UNDER AMERICAN RECOVERY AND REINVESTMENT ACT OF 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 sub recipients, 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, Recipient, or recipient, as the case may be, if the contractor, subcontractor, Recipient, 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 sub award including contracts.

#### **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 Recipient, any of its subcontractors or sub Recipients, or any State or local agency administering such contract that pertain to, and involve transactions relation to, the subcontract, subcontract, grant, or sub grant; and

(2) to interview any officer or employee of the contractor, Recipient, sub Recipient, 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 grant jury, the head of a Federal agency, or their representatives information that the employee believes is evidence of:

- gross management of an agency contract or grant relating to covered funds;
- a gross waste of covered funds

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

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

Order the employer to take affirmative action to abate the reprisal

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

Nonenforceability of Certain Provisions Waiving Rights and remedies or requiring Arbitration:

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

Requirement to Post Notice of Rights and Remedies

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

G. Request for Reimbursement (this version is included in WAP/SEP awards with states)

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#### 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-Recipient, 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 supporting of Recovery Act Reporting

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

***Prescription:** The following award term shall be used to implement the recipient reporting and registration requirements in the Recovery Act section 1512.*

### **D13. 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 and sub-recipients 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.

***Prescription:*** *When awarding Recovery Act funds for construction, alteration, maintenance, or repair of a public building or public work and the total project value is estimated less than \$7,443,000, the agency shall use this award term*

**D14. REQUIRED USE OF AMERICAN IRON, STEEL, AND MANUFACTURED GOODS -- SECTION 1605 OF THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009**

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

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

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

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

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

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

(b) Domestic preference.

(1) This award term and condition implements Section 1605 of the American Recovery and Reinvestment Act of 2009 (Recovery Act) (Pub. L. 111--5), by requiring that all iron, steel, and manufactured goods used in the project are produced in the United States except as provided in paragraph (b)(3) and (b)(4) of this section and condition.

(2) This requirement does not apply to the material listed by the Federal Government as follows: [Award official to list applicable excepted materials or indicate "none"]

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

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

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

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

(c) Request for determination of inapplicability of Section 1605 of the Recovery Act.

(1)(i) Any recipient request to use foreign iron, steel, and/or manufactured goods in accordance with paragraph (b)(3) of this section shall include adequate information for Federal Government evaluation of the request, including:

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

(B) Unit of measure;

(C) Quantity;

(D) Cost;

(E) Time of delivery or availability;

(F) Location of the project;

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

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

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

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

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

(2) If the Federal Government determines after funds have been obligated for a project for construction, alteration, maintenance, or repair that an exception to section 1605 of the Recovery Act applies, the award official will amend the award to allow use of the foreign iron, steel, and/or relevant manufactured goods. When the basis for the exception is nonavailability or public interest, the amended award shall reflect

adjustment of the award amount, redistribution of budgeted funds, and/or other actions taken to cover costs associated with acquiring or using the foreign iron, steel, and/or relevant manufactured goods. When the basis for the exception is the unreasonable cost of the domestic iron, steel, or manufactured goods, the award official shall adjust the award amount or redistribute budgeted funds by at least the differential established in 2 CFR 176.110(a).

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

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

Foreign and Domestic Items Cost Comparison [List name, address, telephone number, email address, and contact for suppliers surveyed. Attach copy of response; if oral, attach summary.] [Include other applicable supporting information.] [\*Include all delivery costs to the construction site.]

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 \_\_\_\_\_

***Prescription:*** When issuing announcements or requesting applications for Recovery Act programs or activities that may involve construction, alteration, maintenance, or repair the agency shall use this award term.

#### **D15. 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.

***Prescription:*** *The award term described in this section shall be used by agencies to clarify recipient responsibilities regarding tracking and documenting Recovery Act expenditures.*

**D16. RECOVERY ACT TRANSACTIONS LISTED IN SCHEDULE OF EXPENDITURES OF FEDERAL AWARDS AND RECIPIENT RESPONSIBILITIES FOR INFORMING**

(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 sub recipient, and document at the time of sub award 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 sub recipients shall distinguish the sub awards of incremental Recovery Act funds from regular sub awards under the existing program.

(d) Recipients and subrecipient agree to require their sub recipients 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 sub recipient expenditure of ARRA funds as well as oversight by the Federal awarding agencies, Offices of Inspector General and the Government Accountability Office.

***Prescription:*** *Include for ARRA Awards (other than Weatherization Assistance Program and Loan Program awards) when WAGE RATE REQUIREMENTS UNDER SECTION 1606 OF THE AMERICAN RECOVERY AND REINVESTMENT ACT (“RECOVERY ACT”) term is required.*

#### **D17. 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) Sub recipients, 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, Sub recipients, and Recipients’ or Sub recipients’ 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, Sub recipient, 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) “Sub award” 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 Sub recipient or by a Sub recipient to a lower- tier sub recipient. 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) “Sub recipient” 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.

(C) In the event the Contractor, the laborers or mechanics to be employed in the classification or their representatives, and the Contracting Officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the Contracting Officer shall refer the questions, including the views of all interested parties and the recommendation of the Contracting Officer, to the Administrator for determination. The Administrator, or an

authorized representative, will issue a determination within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii)(B) or (C) of this section, shall be paid to all workers performing work in the classification under this Contract from the first day on which work is performed in the classification.

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

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

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

(3) **Payrolls and basic records.**

(i) Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of three years thereafter for

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

(ii) (A) The Contractor shall submit weekly for each week in which any Contract work is performed a copy of all payrolls to the Department of Energy if the agency is a party to the Contract, but if the agency is not such a party, the Contractor will submit the payrolls to the Recipient or Subrecipient (as applicable), applicant, sponsor, or owner, as the case may be, for transmission to the Department of Energy. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime Contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the Department of Energy if the agency is a party to the Contract, but if the agency is not such a party, the Contractor will submit them to the Recipient or Sub recipient (as applicable), applicant, sponsor, or owner, as the case may be, for transmission to the Department of Energy, the Contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the

sponsoring government agency (or the Recipient or Sub recipient (as applicable), applicant, sponsor, or owner).

(B) Each payroll submitted shall be accompanied by a “Statement of Compliance,” signed by the Contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the Contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be provided under § 5.5 (a) (3) (ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under § 5.5 (a) (3) (i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the Contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

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

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the “Statement of Compliance” required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the Contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 3729 of title 31 of the United States Code.

(iii) The Contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the Department of Energy or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the Contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) Apprentices and trainees—

(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to

and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a Contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits,

trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices.

Any employee listed on the payroll at a trainee rate that is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

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

(5) Compliance with Copeland Act requirements. The Contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this Contract.

(6) Contracts and Subcontracts. The Recipient, Sub recipient, the Recipient's and Sub recipient's contractors and subcontractor shall insert in any Contracts the clauses contained herein in (a) (1) through (10) and such other clauses as the Department of Energy may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The Recipient shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of the paragraphs in this clause.

(7) Contract termination: debarment. A breach of the Contract clauses in 29 CFR 5.5 may be grounds for termination of the Contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this Contract.

(9) Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this Contract shall not be subject to the general disputes clause of this Contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the

meaning of this clause include disputes between the Recipient, Sub recipient, the Contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(10) Certification of eligibility.

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

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

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

**(b) Contract Work Hours and Safety Standards Act.** As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

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

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (b)(1) of this section the Contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.

(3) Withholding for unpaid wages and liquidated damages. The Department of Energy or the Recipient or Sub recipient shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be

withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any other Federal contract with the same prime Contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.

(4) Contracts and Subcontracts. The Recipient, Sub recipient, and Recipient's and Sub recipient's contractor or subcontractor shall insert in any Contracts, the clauses set forth in paragraph (b)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The Recipient shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (b) (1) through (4) of this section.

(5) The Contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the Contract for all laborers and mechanics, including guards and watchmen, working on the Contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. The records to be maintained under this paragraph shall be made available by the Contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the Department of Energy and the Department of Labor, and the Contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

#### **D.18 From 10 CFR 600.236-Procurement**

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

Note: 600.236 (i)-Contract provisions. A Recipient's and sub-Recipient's contracts MUST contain provisions in paragraph (i) of this section (1) through (13).

**10 CFR 600.236** --<http://ecfr.gpoaccess.gov/cgi/t/text/textidx?c=ecfr&sid=1d87da29f6087f0251f78954c8888ff1&rgn=div8&view=text&node=10:4.0.1.3.9.3.20.23&idno=10>

#### **From 10 CFR 600.237-Subgrants**

Retention and Access Requirements for Records

[http://ecfr.gpoaccess.gov/cgi/t/text/textidx?  
type=simple;c=ecfr;cc=ecfr;sid=4c22613d54c8ee557f9dc9d6015ec1c9;idno=10;region=DIV1;q1=600.242;rgn=div8;view=text;node=10%3A4.0.1.3.9.3.20.27](http://ecfr.gpoaccess.gov/cgi/t/text/textidx?type=simple;c=ecfr;cc=ecfr;sid=4c22613d54c8ee557f9dc9d6015ec1c9;idno=10;region=DIV1;q1=600.242;rgn=div8;view=text;node=10%3A4.0.1.3.9.3.20.27)

In accordance with Federal requirements, the SCEO identifies this award as follows:

- 1) Federal Award Number: DE-EE0000158
- 2) CFDA Number: 81.041
- 3) American Recovery and Reinvestment Act 2009 – the entire award amount is funding under this Act.

**WITNESSES:**

\_\_\_\_\_

\_\_\_\_\_

**RECIPIENT:**

**THE TOWN OF HILTON HEAD ISLAND,  
SOUTH CAROLINA**

By: \_\_\_\_\_  
**Drew Laughlin, Mayor**

Attest: \_\_\_\_\_  
**Stephen G. Riley, Town Manager**

**WITNESSES:**

\_\_\_\_\_

\_\_\_\_\_

**SUBRECIPIENT:**

**HILTON HEAD PUBLIC SERVICE DISTRICT,**

By: \_\_\_\_\_

Its \_\_\_\_\_