CITY OF EL PASO, TEXAS
AGENDA ITEM
DEPARTMENT HEAD'S SUMMARY FORM

DEPARTMENT: Environmental Services

AGENDA DATE: **November 13, 2012**

CONTACT PERSON NAME AND PHONE NUMBER: Kurt Fenstermacher, (915) 621-6892

DISTRICT(S) AFFECTED: All

SUBJECT:
That the Mayor be authorized to sign an Interlocal Agreement between the City of El Paso and the Railroad Commission of Texas on a Texas Alternative Fuel Fleet Pilot Program Stimulus Grant in the amount of $48,486 for the purchase of two natural gas vehicles. Minimum matching funds are required from the City in the amount of $110,514.

BACKGROUND / DISCUSSION:
This program will pay for the incremental cost of purchasing two natural gas vehicles. This purchase will include an automated side loader trash collection vehicle and a passenger vehicle. For grant budgeting purposes, the cost of the automated side loader is $268,723 with grant funding at $41,551 and the City cost share at $227,172. For grant budgeting purposes, the cost of the passenger vehicle is $26,910 with grant funding at $6,935 and the City cost share at $19,975.

PRIOR COUNCIL ACTION:
We currently own and operate a natural gas fueled automated side loader that was reviewed and approved by Council. This vehicle was purchased in Fiscal Year 2009 and approved by City Council on June 23, 2009.

AMOUNT AND SOURCE OF FUNDING:

Environmental Services
Fund: 3150 (Capital Fund)
Account: 580290
Division: 34060
Dept: 334
Project: PSWM00170 (Capital Outlay FY13)

BOARD / COMMISSION ACTION:
Enter appropriate comments or N/A

**********REQUIRED AUTHORIZATION**********

DEPARTMENT HEAD: _____

(If Department Head Summary Form is initiated by Purchasing, client department should sign also)

Information copy to appropriate Deputy City Manager

RESOLUTION

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

WHEREAS, the United States Congress enacted and the President signed the American Recovery and Reinvestment Act of 2009, Public Law 111-5 (2009) ("ARRA") to promote economic recovery, investment and creation of new jobs and opportunities; and

WHEREAS, the Railroad Commission of Texas ("Commission"), an agency of the State of Texas, has been awarded ARRA funds from the U.S. Department of Energy, Award No. DE-EEE0002564 ("DOE Grant"); and

WHEREAS, Chapter 113, Subchapter I, Texas Natural Resources Code, P.L. 111-5, (2009), and the DOE Grant authorize the Commission to award ARRA stimulus funds to local governments, municipalities, and other governmental organizations to be utilized for purposes authorized by ARRA and the DOE Grant; and

WHEREAS, the Commission wishes to grant funding to the City of El Paso ("City") and the Commission and the City wish to enter into a Grant Agreement in the form of an Interlocal Agreement for the Texas Alternative Fuel Fleet Pilot Program Stimulus Grant Agreement #1499056, for the purchase of two compressed natural gas vehicles in the amount of $48,486 with the requirement of a cash match from the City of $110,514; and

WHEREAS, the Texas Interlocal Cooperation Act, Texas Government Code, Section 791.001 *et seq.* allows the City to enter into the referenced agreement with the Commission; and

WHEREAS, the City has funding for the additional monies that the acquisition of the two referenced compressed natural gas vehicles will require in excess of the City's matching funds of $110,514.

NOW THEREFORE, BE IT RESOLVED,

THAT the Mayor be authorized to sign an Interlocal Agreement for the Texas Alternative Fuel Fleet Pilot Program Stimulus Grant Agreement #1499056 between the Railroad Commission of Texas and the City of El Paso, in the amount of $48,486, for the procurement of two compressed natural gas vehicles; and that the Mayor or designee be authorized to sign any grant related documents and to sign all related certifications upon approval by the City Attorney's Office. Matching funds are required from the City in the amount of $110,514.

(Signatures follow on next page)

PASSED AND APPROVED this _____ day of _____, 2012.

CITY OF EL PASO

_____
John F. Cook
Mayor

ATTEST:

_____
Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:

_____
Josette Flores
Assistant City Attorney

APPROVED AS TO CONTENT:

_____
Kurt Fenstermacher, Interim Director
Department of Environmental Services

INTERLOCAL AGREEMENT
TEXAS ALTERNATIVE FUEL FLEET PILOT PROGRAM
STIMULUS GRANT AGREEMENT BETWEEN
RAILROAD COMMISSION OF TEXAS
AND
THE CITY OF EL PASO

RRC Grant Agreement #1499056
U.S. Department of Energy Award No. DE-EE0002564, CFDA No. 81.086

Recitals

Whereas, the United States Congress enacted and the President signed the American Recovery and Reinvestment Act of 2009, Public Law 111-5 (2009) (ARRA) to promote economic recovery, investment and creation of new jobs and opportunities;

Whereas, the Railroad Commission of Texas (Commission), an agency of the State of Texas, has been awarded ARRA funds from the U.S. Department of Energy, Award No. DE-EEE0002564 (DOE Grant);

Whereas, Chapter 113, Subchapter I, Texas Natural Resources Code, P.L. 111-5, (2009), and the DOE Grant authorize the Commission to award ARRA stimulus funds to local governments, municipalities, and other governmental organizations to fund approved grant-funded projects and activities;

Whereas, the City of El Paso (Grantee), a local government agency is eligible to receive an award of ARRA grant funding to be utilized for purposes authorized by ARRA and the DOE Grant;

Whereas, the Commission wishes to award ARRA grant funding to the Grantee and the Commission and Grantee wish to enter into this Grant Agreement (Agreement); and

Whereas, under this Agreement, Grantee shall fully comply with all terms, conditions, requirements, and other requirements of the ARRA, the DOE Grant and this Agreement, including those set forth in the Attachments and Exhibits attached to and incorporated in this Agreement; and

Whereas, in consideration of Grantee's compliance with all eligibility and other requirements of the ARRA, the DOE Grant and this Agreement, Commission agrees to award ARRA funds to Grantee on a cost reimbursement basis in an amount not to exceed **$48,486.00**; and

Whereas, the foregoing grant amount shall be utilized by Grantee solely for the purposes of this Agreement, the DOE GRANT, and the ARRA and Commission's requirements regarding same, in addition to requirements as may be provided by Commission throughout the term of this Agreement.

Now, Therefore, in consideration of all of the foregoing, the parties hereby agree as follows:

I. Parties

This Agreement is made and entered into by the following parties:

Commission: The Railroad Commission of Texas
P.O. Box 12967
Austin, Texas 78711-2967

Grantee: John Cook - Mayor
2 Civic Center Plaza
10th Floor of City Hall
El Paso, TX 79901

II. Authority and Purpose

This Agreement is entered into pursuant to and in compliance with the provisions of Chapter 113, Subchapter I, Texas Natural Resources Code; the American Recovery and Reinvestment Act of 2009, P.L. 111-5 (2009) (ARRA), the Interlocal Cooperation Act, Chapter 791, Texas Government Code, and the DOE Grant. Funding of this grant is provided by the Railroad Commission of Texas via the U.S. Department of Energy Award No. DE-EEE0002564 (DOE Grant). Grantee represents and warrants that by signature on this Agreement, Grantee has full authority to carry out the terms, conditions and requirements of the Agreement.

The Commission and Grantee enter into this Agreement to provide governmental functions or services that each party to the contract is authorized to perform individually.

III. Services

Grantee shall utilize the grant funds solely for the purposes authorized by the Commission and shall maintain full compliance with all terms and conditions described in the Agreement and all Attachments and Exhibits, which are attached to and incorporated in this Agreement for all purposes. In addition, Grantee shall fully comply with all special provisions of this Agreement, including reporting requirements, and with Commission directives, throughout the term of this Agreement.

Grantee shall retain full control over the personnel, equipment, supplies, and other items Grantee selects as necessary to comply with the terms of this Agreement and as described in Exhibit 1, attached to and incorporated in this Agreement. This Agreement does not involve proprietary rights or intellectual property issues.

Grantee shall submit such records, information, and reports in such form and at such times as may be required by Commission; these reports shall include, but are not limited to, the reports specified in this Agreement, Attachment L and Exhibit 1.

IV. Payments

Total payments to Grantee under this Agreement shall not exceed **$48,486.00.** Grantee's payments under this Agreement are limited to reimbursements of actual authorized costs incurred pursuant to the budget provided in Attachment B, attached to and incorporated in this Agreement. No other amounts shall be paid. Grantee shall submit each request for payment by submitting a detailed invoice, listing expenses by budget categories to the Commission. Grantee shall submit invoices that are fully supported by receipts and such other documentation. Commission reserves the right, in its sole discretion, to withhold payment of invoices for which Grantee does not submit documentation acceptable to Commission. Grantee shall submit invoices for services performed and costs incurred in the prior month.

Title to and control over equipment or license of any software so purchased for Grantee's performance under this Agreement shall remain with Grantee so long as it is being used for the purpose for which it was intended under the terms of this Agreement. Commission reserves the right, in its sole discretion, to authorize revisions to budgeted amounts to provide for flexibility within budget categories. Commission must give prior approval of all such revisions through its execution of a written change order to this Agreement.

V. Termination

Commission reserves the right, in its sole discretion, to terminate this Agreement at any time, with or without cause, upon thirty (30) days' written notice to Grantee.

Upon receipt of notice of termination from Commission, Grantee shall immediately cease to submit monthly statements or requests for reimbursement and shall cancel, withdraw or otherwise terminate any outstanding orders or commitments under this Agreement as of the effective date of such termination and shall otherwise cease to incur any costs; Commission shall have no liability whatsoever for any costs incurred after such termination date.

Pursuant to Sections 2155.006 and 2261.053, Government Code, a state agency may not accept a bid or award a contract, including a contract for which purchasing authority is delegated to a state agency, that includes proposed financial participation by a person who, during the five-year period preceding the date of the bid or award, has been convicted of violating a federal law or assessed a penalty in a federal civil or administrative enforcement action in connection with a contract awarded by the federal government for relief, recovery, or reconstruction efforts as a result of Hurricane Rita, as defined by Section 39.459, Utilities Code, Hurricane Katrina (meaning the hurricane of that name that struck the gulf coast region of the United States in August, 2005), or any other disaster as defined by Section 418.004, Government Code, occurring after September 24, 2005. If a state agency determines that an individual or business entity holding this contract is ineligible to have the bid accepted or contract awarded under Section 2155.006 or Section 2261.053, Government Code, the state agency may immediately terminate the contract without further obligation to the vendor.

VI. Subcontracting

Grantee may subcontract or sub-grant for the purposes of this Agreement as specifically authorized by Commission pursuant to the terms and subject to compliance with the flow down provisions of Attachment I of this Agreement.

VII. Amendments

This Agreement may only be amended upon the written agreement of the parties by executing an amendment to this Agreement; however, Commission may unilaterally amend this Agreement as provided in Paragraph XV.

VIII. Incorporation of Attachments and Exhibit; Incorporation by Reference

This Agreement consists of all of the following documents which are attached to and incorporated in this Agreement for all purposes: The Agreement and the following documents, which are attached to and incorporated in this Agreement, constitute the entire agreement between the parties for all purposes

This Agreement;	
Attachment A:	**Statement of Services to be Performed**
Attachment B:	**Project Budget**
Attachment C:	**DOE Required Special Terms & Conditions**
Attachment C-1:	**Assurance of Compliance with Nondiscrimination Laws-Grantee**
Attachment C-2:	**Assurance of Compliance with Nondiscrimination Laws-Subcontractor**
Attachment D:	**Certification Regarding Debarment, Suspension, Eligibility**
Attachment E:	**Certification Regarding Lobbying, Suspension**
Attachment F:	**Lobbying Activities**
Attachment G:	**NEPA Assurances**
Attachment H:	**Intellectual Property Provisions**
Attachment I:	**Subcontractor or Sub-grantees; Flow down Provisions**
Attachment J:	**Affidavit of Compliance**
Attachment K:	**Execution of Application**
Attachment L:	**Reporting Requirements**
Exhibit 1:	**DOE Assistance Agreement, Award No. DE-EE0002564**

In the event of a conflict between this Agreement, its Attachments, or Exhibit 1, then Exhibit 1 shall control.

All applicable rules, regulations and all other requirements imposed by law, including, but not limited to, those pertinent rules and regulations of the Commission and the State of Texas, are incorporated into this Agreement by reference as if specifically written herein.

IX. Funding

The Commission's obligations under this Agreement is contingent upon and subject to availability of and actual receipt by Commission of sufficient and adequate funds from the sources contemplated by this Agreement. This Agreement is subject to immediate cancellation or termination by Commission, without penalty to either party or the State of Texas, subject to the availability and receipt of these funds. In addition, Commission's authority and appropriations are subject to the actions of the Texas Legislature. If Commission becomes subject to a legislative change, revocation of statutory authority, or lack of funds that would render the services to be provided under this Agreement impossible or unnecessary, Commission may terminate this Agreement without penalty to either party or the State of Texas. In the event of a termination or cancellation under this Paragraph, Commission shall, as soon as practicable, give notice to Grantee and neither party shall be liable for damages or losses caused or associated with such termination or cancellation.

X. Term of Agreement

The term of this Agreement shall begin on the date executed by all parties and be effective until January 31, 2014, unless terminated earlier in accordance with other provisions of this Agreement. The provisions of the following shall survive the termination or expiration of this Agreement: Paragraphs XIII, XIV, XVII; Sections 17.2, 17.3, 17.6; and applicable provisions of Exhibit 1 and Attachment C.

XI. Force Majeure

Except as otherwise provided, neither Grantee nor Commission shall be liable to the other for any delay in, or failure of performance of any requirement contained in this Agreement caused by force majeure. The existence of such causes of delay or failure shall extend the period of performance until after the causes of delay or failure have been removed

provided the non-performing party exercises all reasonable due diligence to perform. Force majeure is defined as acts of God, war, terrorist attacks, fires, explosions, earthquakes, hurricanes, floods, failure of transportation, or other causes that are beyond the reasonable control of either party and that by exercise of due foresight such party could not reasonably have been expected to avoid, and which, by the exercise of all reasonable due diligence, such party is unable to overcome. Each party must inform the other in writing with proof of receipt within three (3) business days of the existence of such force majeure or otherwise waive this right as a defense.

XII. Assignment

Grantee shall not transfer or assign any rights or duties under or any interest in this Agreement. Grantee shall not delegate its responsibilities or duties under the terms of this Agreement.

XIII. Severability Clause

In the event that any provision of this Agreement is later determined to be invalid, void, or unenforceable, then the remaining provisions of this Agreement shall remain in full force and effect, and shall in no way be affected, impaired, or invalidated.

XIV. Dispute Resolution Process

Chapter 2260 of the Texas Government Code ("Chapter 2260") prescribes dispute resolution processes for certain breach of contract claims applicable to certain contracts for goods and services. As required by Chapter 2260, Commission has adopted rules under Chapter 2260, codified at 16 Texas Administrative Code §§20.21 – 20.75, and may adopt revisions to these rules throughout the term of this Agreement, including any extensions. Grantee shall comply with such rules.

XV. Applicable Law and Conforming Amendments

Grantee shall comply with all applicable state and federal laws, regulations, requirements and guidelines, as these laws, regulations, requirements and guidelines currently exist and as they are amended throughout the term of this Agreement. Commission reserves the right, in its sole discretion, to unilaterally amend this Agreement prior to award and throughout the term of this Agreement to incorporate any modifications necessary for Commission's or Grantee's compliance with all applicable state and federal laws, regulations, requirements and guidelines. Other than this provision, this Agreement may only be amended by the written agreement of the parties.

The Agreement shall be governed by the laws of the State of Texas, and venue for any legal action under this Agreement shall be in Travis County, Texas.

XVI. ARRA Reporting, Data Collection, and Access to Records Requirements

16.1. Reporting Requirements.

Grantee shall submit performance reports as required by Attachment L, attached to and incorporated in this Agreement. Grantee shall promptly prepare and submit such periodic reports and information as identified by Commission regarding the status of any project undertaken pursuant to this Agreement at any time prior to completion of the project in the form and manner requested by Commission. Promptly upon completion of the project, Grantee shall prepare and submit to Commission, in the form and manner provided by Commission, such completion or close-out reports and information as identified by Commission regarding the status of the project. 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.

16.2. Data Collection and Access to Records.

Grantee agrees to compile and maintain information pertaining to programs or activities developed as a result of this Grant Agreement.

16.3 Notice and Authorized Representatives

Written notice shall be deemed to have been duly served when received by hand delivery, or when sent and received by certified mail or other verifiable delivery service, in each case to the following representative for COMMISSION and GRANTEE. Each party shall advise the other in writing of any change in authorized representative or address:

COMMISSION'S REPRESENTATIVE
Heather Ball
Marketing
P.O. Box 12967
Austin, TX 78711-2967

Phone: 512-463-7680
Fax: 512-463-7200
e-mail: heather.ball@rrc.state.tx.us

GRANTEE'S REPRESENTATIVE
John Cook
Mayor
2 Civic Center Plaza 10th Floor
El Paso, TX 79901

Phone: (915) 541-4145
Fax:
e-mail: mayor@elpasotexas.gov

XVII. Additional Provisions

17.1 Time Limits

Time is of the essence in the performance of this Agreement and accordingly all time limits shall be strictly construed and rigidly enforced.

17.2 No Waiver

This Agreement shall not constitute or be construed as a waiver of any of the privileges, rights, defenses, remedies, or immunities available to Commission as an agency of the State of Texas or otherwise available to Commission. The failure to enforce or any delay in the enforcement of any privileges, rights, defenses, remedies, or immunities available to Commission under this Agreement or under applicable law shall not constitute a waiver of such privileges, rights, defenses, remedies, or immunities or be considered as a basis for estoppel. Commission does not waive any privileges, rights, defenses, or immunities available to Commission as an agency of the State of Texas, or otherwise available to Commission, by entering into this Agreement or by its conduct prior to or subsequent to entering into this Agreement. **The modification of any privileges, rights, defenses, remedies, or immunities available to Commission must be in writing, must reference this section, and must be signed by Commission to be effective, and such modification of any privileges, rights, defenses, remedies, or immunities available to Commission shall not constitute waiver of any subsequent privileges, rights, defenses, remedies, or immunities under this Agreement or under applicable law.**

17.3 No Liability upon Termination

If this Agreement is terminated for any reason, Commission and the State of Texas shall not be liable for any damages, claims, losses, expenses, costs or any other amounts of any kind whatsoever arising from or related to any such termination.

17.4 Limitation on Authority; No Other Obligations

Grantee shall have no authority to act for or on behalf of Commission except as expressly provided for in this Agreement; no other authority, power, use, or joint enterprise is granted or implied. Grantee may not incur any debts, obligations, expenses or liabilities of any kind on behalf of Commission. It is understood and agreed that the Grantee is acting under this Agreement as an independent contractor. Nothing in this Agreement shall create any employer/employee or agency relationship between the parties, their officers, or their employees.

17.5 No Other Benefits

Grantee shall have no exclusive rights or benefits other than those set forth herein.

17.6 Supporting Documents; Right to Audit; Independent Audits

Grantee shall maintain and retain supporting fiscal documents adequate to ensure that claims for contract funds are in accordance with applicable Commission and State of Texas requirements. Grantee shall maintain all such documents and other records relating to this Agreement and the State's property for a period of four (4) years after the date of submission of the final invoices or until a resolution of all billing questions, whichever is later. Grantee shall make available at reasonable times and upon reasonable notice, and for reasonable periods, all information related to the State's property, such as work papers, reports, books, data, files, software, records, and other supporting documents pertaining to this Agreement, for purposes of inspecting, monitoring, auditing, or evaluating by Commission, the State of Texas or their authorized representatives. Grantee shall cooperate with auditors and other authorized Commission and State of Texas representatives and shall provide them with prompt access to all of such State's property as requested by Commission or the State of Texas. By example and not as exclusion to other breaches or failures, Grantee's failure to comply with this Section shall constitute a material breach of this Agreement. In addition to and without limitation on the other audit provisions of this Agreement, pursuant to Section 2262.003, Tex. Gov't Code, the state auditor may conduct an audit or investigation of the Grantee or any other entity or person receiving funds from the state directly under this Agreement or indirectly through a subcontract under this Agreement. The acceptance of funds by the Grantee or any other entity or person directly under this Agreement or indirectly through a subcontract under this Agreement acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. Under the direction of the legislative audit committee, the Grantee or other entity that is the subject of an audit or investigation by the state auditor must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit. The Grantee shall ensure that this paragraph concerning the authority to audit funds received indirectly by subgrantees through the Grantee and the requirement to cooperate is included in any subcontract it awards relating to this Agreement.

17.7 Davis Bacon Act

Grantee shall comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction sub-agreements as implemented through 29 CFR 5.5(a)", as more fully set forth in Attachment C.

The Commission is a "Recipient," and the Grantee is a "Subrecipient," as those terms are defined in the section entitled "DAVIS BACON ACT AND CONTRACT WORK HOURS AND SAFETY STANDARDS ACT" in Attachment C.

17.8 Buy American Act – ARRA 1606

In purchasing iron, steel and manufactured goods for this project, Grantee shall comply with Section 1606 of the American Recovery and Reinvestment Act as more fully set forth in Attachment C.

17.12 National Environmental Policy Act

Grantee shall comply with the National Environmental Policy Act, 42 U.S.C. §§4321 *et. seq.* "NEPA" and shall not take any action that will have an adverse environmental impact (e.g., physical disturbance of a site such as breaking of ground) or limit the choice of reasonable alternatives until either a NEPA clearance or final NEPA decision is provided by the National Energy Technology Laboratory (NETL) NEPA compliance Officer. If this funds provided by this Agreement is used for the purchase of equipment for new alternative fuel(s) refueling stations and/or purchase of equipment for retrofits of existing refueling stations, Grantee shall provide additional project information and, if requested, shall prepare or provide any assistance necessary to assist DOE in the preparation of any required Environmental Impact Statements or other environmental documentation. See Attachment G, attached to and incorporated in this Agreement.

17.13 National Historic Preservation Act of 1966

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

Grantee is considered in compliance with this agreement and Section 106 of the NHPA only when Grantee submits adequate background documentation to the SHPO/THPO for its review, and the SHPO/THPO has provided written concurrence to Grantee that Grantee does not object to its Section 106 finding or determination. Grantee shall provide a copy of this concurrence to the Commission.

17.14 Solid Waste Disposal Act

Prior to the expenditure of Federal funds to store, process, or disposal of hazardous materials shall comply with the Solid Waste Disposal Act, Texas Health & Safety Code, Chapter 361, and Title 30, Texas Administrative Code, Chapter 335 "Industrial Solid Waste and Municipal Hazardous Waste" administered by the Texas Commission on Environmental Quality. Sanitary or hazardous waste is defined in 40 CFR Part 260 and 30 TAC Chapter 335 and includes, but is not limited to, old light bulbs, lead ballasts, piping, roofing material, discarded equipment, debris, asbestos, etc. Grantee shall obtain any required permit and retain all compliance documentation related to the project.

17.15 Report of Fraud, Waste and Abuse: Texas Government Code, Section 321.022

If the administrative head of a department or entity that is subject to audit by the Texas State Auditor has reasonable cause to believe that money received from the State by the Grantee or by a client or contractor of the Grantee may have been lost, misappropriated, or misused, or that other fraudulent or unlawful conduct has occurred in relation to the operation of the Grantee, the administrative head shall report the reason and basis for the belief to the Texas State Auditor. The Texas State Auditor may investigate the report or may monitor any investigation conducted by the Grantee. See http://sao.fraud.state.tx.us/.

Grantee shall also promptly refer to the U. S. Department of Energy 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.

XVIII. Audit Requirements

The Grantee agrees to arrange for a financial and compliance audit (Single Audit) if required by the Single Audit Act or OMB CIRCULAR A-133, "Audits of States, Local Governments, and Non-Profit Organizations." The audit must be conducted by an independent certified public accountant (CPA) in accordance with applicable Government Auditing Standards, OMB circulars, and Uniform Grant Management Standards (UGMS). Provided that, if Grantee is an independent school district, the audit is not required to comply with UGMS.

If Grantee is not covered by the Single Audit Act or OMB Circular A-133, Grantee must maintain records to support federal financial assistance programs and agree to have a financial audit performed by an independent certified public accountant (CPA) under generally accepted auditing standards (GAAS) and Government Auditing Standards (GAS), also referred to as the Yellow Book.

Grantees must submit two copies of the entire audit report, any management letter issued in conjunction with the audit report, and all findings, recommendations, and questioned costs contained in the audit report and management letter, including a detailed corrective action plan, to the Commission within six months after the end of the audit period, unless a longer period is agreed to in advance by the Commission.

XIX. Signatories

The undersigned signatories represent and warrant that they have full authority to enter into this Agreement on behalf of the respective parties.

XX. Merger

This Agreement contains the entire agreement between the parties relating to the rights granted and the obligations assumed in it. Any oral representations or modifications concerning this Agreement shall be of no force or effect unless contained in a subsequent writing, signed by both parties.

IN WITNESS WHEREOF, the parties have executed this Agreement in duplicate originals, each of which shall constitute only one instrument.

RAILROAD COMMISSION OF TEXAS

By: _____
Milton Rister
Executive Director

Date: _____

GRANTEE:

By: _____
Printed Name: John Cook
Title: Mayor

Date: _____

ATTACHMENT A
STATEMENT OF SERVICES TO BE PERFORMED

Deliverable Requirements for Alternative Fuel Vehicle Retrofits, Conversions and Purchasing:

Planning and Purchasing

- For new purchase of alternative fuel vehicles the incremental cost shall be based on the calculated difference between the cost of the AFV and the cost of a comparable conventional models verified by manufacturer estimate, after all other applicable manufacturer and local/state rebates, tax credits, and cash equivalent incentives are applied;
- For vehicle conversions, the incremental cost shall be based on the cost of the new fuel system plus installation after all other applicable manufacturer and local/state rebates and cash equivalent incentives are applied.

Measurement and Verification

- Grantee shall prepare and submit a Monthly Progress Report via the internet on or by the 25th day of each month and follow all the State and Federal reporting requirements.
- Grantee shall prepare and submit Final Project Report 30-days after the end of the Agreement.

Deliverable Requirements for Alternative Fuels Refueling Infrastructure:

Planning and Purchasing

- Grantee shall purchase station components and materials in accordance with all federal, state, and local laws concerning purchase of goods and services.
- Grantee shall oversee the implementation plan and schedules: 1) finalize permits with building and safety, fire departments; 2) site preparation with concrete, piping and electrical; 3) CNG station installation; 4) facility start-up, training and operation; and 5) Grand opening and media event.

Measurement and Verification

- Grantee shall develop a test plan to collect and analyze data on vehicles using the new infrastructure.
- Grantee shall prepare and submit a Monthly Progress Report via internet on or by the 25th day of each month and follow all the State and Federal reporting requirements.
- Grantee shall prepare and submit Final Project Report 30-days after the expiration of the Grant Agreement.

Reporting Requirements

Reporting requirements for all applicant/grantees are as follows:

- ARRA Section 1512, DOE, OMB, and state issued rules and regulations impose an array of reporting requirement on the Commission who must, in turn, rely on its Grantees in order to meet these reporting obligations. The Grant Agreement, and in particular Attachment L to the Grant Agreement, identifies initial and monthly reporting requirements that the Grantee shall provide. Due to the importance of the reporting requirements, a Grantee's failure to meet its reporting obligations under the Grant Agreement may result in termination of the grant award and the entity being ineligible for future grants.

- An initial information report shall be submitted that provides key grantee and project information that will likely remain constant through the term of grant including the congressional representatives for Grantee's primary location and primary project locations and key personnel. Additionally, when the Grantee, sub-grantee, or subcontractor has received 80% of its gross revenue or more than $25 million from federal awards in the last year and the grant award or sub-award is over $25,000, then such entity must also provide the names and compensation of the five most highly compensated individuals of the Grantee, sub-grantee, or subcontractor, as

applicable.

- The required information that must be provided in the Monthly Report is summarized as follows:

I. Grantee Identification. Must include the Grantee name, the contact information for the individual filing the report, grant award number, and grant award date and performance period.

II. Grant Award/Budget Information. This portion must include the grant award amount, the cumulative total amount of funds received at the time of the report, the cumulative total amount of funds disbursed by the Grantee at the time of the report, and show funds budgeted and funds disbursed for each budget item.

III. Project Information. This information must include the project name, performance location, project objective and status, a progress evaluation comparing the objectives to the status, and description of project efforts that may adversely affect obtaining the objectives. Also, a brief description of any products produced or technology transfer activities accomplished that reflect accomplishments of the project.

IV. Job Created/Retained. Grantees must provide a tally of the jobs created or retained as a result of the grant funding and a brief description of the types of jobs and anticipated or likely duration.

V. Technical Measures. Reports must include, for the Transportation Efficiency program, the technical measures which are the number of alternative fuel vehicles purchased; the number of conventional vehicles converted to alternative fuel use; the number of new alternative refueling stations emplaced; the number of energy-efficient traffic signals installed; and the number of street lane-miles for which synchronized traffic signals were installed.

Grantee shall require that any of its sub-grantees or subcontractors shall provide monthly reports that provide the information necessary for the Grantee to fulfill its reporting obligations.

Commission reserves the authority to change these reporting requirements as the federal government more fully identifies the information that it will require of the Commission.

ATTACHMENT B

City of El Paso
Contract # 1499056

BUDGET

Vehicles:		**$ 48,486**
Quantity	**Make and Model**	
1	**OEM Honda Civic with CNG**	**$ 6,935**
1	**OEM Autocar with CNG**	**$ 41,551**
Total Equipment:		**$ 48,486**
Total Cost Share:		**$110,514**
Total Amount:		**$159,000**

Commission may authorize revisions to budgeted amounts to provide for flexibility within budget categories, as provided in Paragraph IV of this Agreement.

ATTACHMENT C
DEPARTMENT OF ENERGY
SPECIAL TERMS AND CONDITIONS

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.

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

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

b. Grantee is expected to manage its indirect costs. DOE will not amend an award solely to provide additional funds for changes in indirect cost rates. DOE recognizes that the inability to obtain full reimbursement for indirect costs means the Grantee must absorb the underrecovery. Such underrecovery may be allocated as part of the organization's required cost sharing.

STATEMENT OF FEDERAL STEWARDSHIP –

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

SITE VISITS –

DOE'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.

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-EE0002564.

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

FEDERAL, STATE, AND MUNICIPAL REQUIREMENTS –

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

INTELLECTUAL PROPERTY PROVISIONS AND CONTACT INFORMATION –

a. The intellectual property provisions applicable to this award are provided as Attachment H to this award.

LOBBYING RESTRICTIONS –

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

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

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

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 Grantee for (i) Decontamination and/or Decommissioning (D&D) of any of the Grantee's facilities, or (ii) any costs which may be incurred by the Grantee in connection with the D&D of any of its facilities due to the performance of the work under this Agreement, whether said work was performed prior to or subsequent to the effective date of this Agreement.

SPECIAL PROVISIONS 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. Grantee shall use grant funds in a manner that maximizes job creation and economic benefit.

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

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

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

Definitions

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

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

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

Special Provisions

A. Segregation of Costs

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

C. Prohibition on Use of Funds

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

D. Access to Records

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

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

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

E. Publication

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

Notice of Restriction on Disclosure and Use of Data

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

from any source, including the applicant.

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

F. Protecting State and Local Government and Contractor Whistleblowers.

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

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

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

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

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

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

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

G. Request for Reimbursement
(RESERVED)

H. False Claims Act

Grantee 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 or interest, bribery, gratuity or similar misconduct involving those funds.

I. Information in supporting of Recovery Act Reporting

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

REGISTRATION REQUIREMENTS UNDER SECTION 1512 OF THE RECOVERY ACT

Grantee 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.

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

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

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

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

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

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

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

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

(2) This requirement does not apply to the material listed by the Federal Government as follows:

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 Grantee 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 Grantee 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 Grantee could not reasonably foresee the need for such determination and could not have requested the determination before the funds were obligated. If the Grantee 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 Grantee shall include the following information and any applicable supporting data based on the survey of suppliers:

Foreign and Domestic Items Cost Comparison

Description	Unit of measure	Quantity	Cost (dollars)*
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	_____	_____	_____

[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.]

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. Grantee of grants, cooperative agreements and loans should direct their initial inquiries concerning the application of Davis-Bacon requirements to a particular federally assisted project to the Federal agency funding the project. The Secretary of Labor retains final coverage authority under Reorganization Plan Number 14.

RECOVERY ACT TRANSACTIONS LISTED IN SCHEDULE OF EXPENDITURES OF FEDERAL AWARDS AND GRANTEE 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, Grantee agrees 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) If Grantee is covered by the Single Audit Act Amendments of 1996 and OMB Circular A--133, "Audits of States, Local Governments, and Non-Profit Organizations," Grantee agrees 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.

DAVIS BACON ACT AND CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

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

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

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

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

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

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

(6) "Subaward" means an award of financial assistance in the form of money, or property in lieu of money, made under an award by a Recipient to an eligible Subrecipient or by a Subrecipient to a lower- tier subrecipient. The term includes

financial assistance when provided by any legal agreement, even if the agreement is called a contract, but does not include the Recipient's procurement of goods and services to carry out the program nor does it include any form of assistance which is excluded from the definition of "Award" above.

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

(a) Davis Bacon Act

(1) Minimum wages.

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

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

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

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

(2) The classification is utilized in the area by the construction industry; and

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

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

(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 Subrecipient 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 Subrecipient, 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/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 Subrecipient (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 Subrecipient (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 who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the 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, Subrecipient, the Recipient's and Subrecipient'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, Subrecipient, 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 therefor 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 Subrecipient 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, Subrecipient, and Recipient's and Subrecipient'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.

DOE F 1600.5
(06-94)
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OMB Control No.
1910-0400

U.S. DEPARTMENT OF ENERGY
Assurance of Compliance
Nondiscrimination in State Assisted Programs
OMB Burden Disclosure Statement

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Office of Information Resources Management Policy, Plans, and Oversight, Records Management Division, HR-422-GTN, Paperwork Reduction Project (1910-0400), U.S. Department of Energy, 1000 Independence Avenue, S.W., Washington, DC 20585; and to the Office of Management and Budget (OMB), Paperwork Reduction Project (1910-0400), Washington, DC 20503.

City of El Paso (Hereinafter called the "Applicant") HEREBY AGREES to comply with Title VI of the Civil Rights Act of 1964 (Pub. L. 88-352), Section 16 of the Federal Energy Administration Act of 1974 (Pub. L. 93-275), Section 401 of the Energy Reorganization Act of 1974 (Pub. L. 93-438), Title IX of the Education Amendments of 1972, as amended (Pub. L. 92-318, Pub. L. 93-568, and Pub. L. 94-482), Section 504 of the Rehabilitation Act of 1973 (Pub. L. 93-112), the Age Discrimination Act of 1977 (Pub. L. 94-135), Title VIII of the Civil Rights Act of 1968 (Pub. L. 90-284), the Department of Energy Organization Act of 1977 (Pub. L. 95-91), the Energy Conservation and Production Act of 1976, as amended, (Pub. L. 94-385) and Title 10 Code of Federal Regulations, Part 1040. In accordance with the above laws and regulations issued pursuant thereto, the Applicant agrees to assure that no person in the United States shall, on the ground of race, color, national origin, sex, age, or disability, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity in which the Applicant receives Federal assistance from the Department of Energy.

Applicability and Period of Obligation
In the case of any service, financial aid, covered employment, equipment, property, or structure provided, leased, or improved with Federal assistance funding extended to the Applicant by the Department of Energy, this assurance obligates the Applicant for the period during which the Federal assistance is extended. In the case of any transfer of such service, financial aid, equipment, property, or structure, this assurance obligates the transferee for the period during which Federal assistance is extended. If any personal property is so provided, this assurance obligates the Applicant for the period during which it retains ownership or possession of the property. In all other cases, this assurance obligates the Applicant for the period during which the Federal assistance is extended to the Applicant by the Department of Energy.

Employment Practices
Where a primary objective of the Federal assistance is to provide employment or where the Applicant's employment practices affect the delivery of services in programs or activities resulting from Federal assistance extended by the Department of Energy, the Applicant agrees not to discriminate on the ground of race, color, national origin, sex, and disability, in its employment practices. Such employment practices may include, but are not limited to, recruitment, advertising, hiring, layoff or termination, promotion, demotion, transfer, rates of pay, training and participation in upward mobility programs, or other forms of compensation and use of facilities.

Subrecipient Assurance
The Applicant shall require any individual, organization, or other entity with whom it subcontracts, subgrants, or subleases for the purpose of providing any service, financial aid, equipment, property, or structure to comply with laws cited above. To this end, the subrecipient shall be required to sign a written assurance form; however, the obligation of both recipient and subrecipient to ensure compliance is not relieved by the collection or submission of written assurance forms.

Data Collection and Access to Records
The Applicant agrees to compile and maintain information pertaining to programs or activities developed as a result of the Applicant's receipt of Federal assistance from the Department of Energy. Such information shall include, but is not limited to the following: (1) the manner in which services are or will be provided and related data necessary for determining whether any persons are or will be denied such services on the basis of prohibited discrimination; (2) the population eligible to be serviced by race, color, national origin, sex, and disability; (3) data regarding covered employment, including use or planned use of bilingual public contact employees serving beneficiaries of the program where necessary to permit effective participation by beneficiaries unable to speak or understand English; (4) the location

of existing or proposed facilities connected with the program and related information adequate for determining whether the location has or will have the effect of unnecessarily denying access to any person on the basis of prohibited discrimination; (5) the present or proposed membership by race, color, national origin, sex, and disability, in any planning or advisory body which is an integral part of the program; and (6) any additional written data determined by the Department of Energy to be relevant to the obligation to assure compliance by recipients with laws cited in the first paragraph of this assurance.

The Applicant agrees to submit requested data to the Department of Energy regarding programs and activities developed by the Applicant from the use of Federal funds extended by the Department of Energy. Facilities of the Applicant (including the physical plants, buildings, or other structures) and all records, books, accounts, and other sources of information pertinent to the Applicant's compliance with the civil rights laws shall be made available for inspection during normal business hours of request of an officer or employee of the Department of Energy specifically authorized to make such inspections. Instructions in this regard will be provided by the Director, Office of Civil Rights, U. S. Department of Energy.

This assurance is given in consideration of and for the purpose of obtaining any and all Federal grants, loans, contracts (excluding procurement contracts), property, discounts or other Federal assistance extended after the date hereto, to the Applicants by the Department of Energy, including installment payments on account after such date of application for Federal assistance which are approved before such date. The Applicant recognizes and agrees that such Federal assistance will be extended in reliance upon the representations and agreements made in this assurance and that the United State shall have the right to seek judicial enforcement of this assurance. This assurance is binding on the Applicant, its successors, transferees, and assignees, as well as the person(s) whose signature appears below and who is authorized to sign this assurance on behalf of the Applicant.

Applicant Certification

The Applicant certifies that it has complied, or that, within 90 days of the date of the grant, it will comply with all applicable requirements of 10 C.F.R. § 1040.5 (a copy will be furnished to the Applicant upon written request to DOE.)

Designated Responsible Employee Eduardo De Castro – Administrative Services Manager **Name and Title (Printed or Typed)** **Signature**	**Telephone Number**(915) 621-6723 **Date**
~~Contractor~~ ~~Company Name~~ ~~Name of Organization~~ ~~Street Address, City, State, Zip Code~~ ~~Address~~ ~~Authorized Official~~ ~~Name, Title~~ ~~Name and Title (Printed or Typed)~~ ~~Signature~~	~~(000) 000-0000~~ ~~Telephone Number~~ ~~(000) 000-0000~~ ~~Telephone Number~~ ~~Date~~

DOE F 1600.5
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Assurance of Compliance
Nondiscrimination in State Assisted Programs

OMB Burden Disclosure Statement

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The Applicant certifies that it has complied, or that, within 90 days of the date of the grant, it will comply with all applicable requirements of 10 C.F.R. § 1040.5 (a copy will be furnished to the Applicant upon written request to DOE.)

~~Designated Responsible Employee~~

~~Name and Title (Printed or Typed)~~ ~~Telephone Number~~

~~Signature~~ ~~Date~~

Contractor____ _____
Name of Organization **Telephone Number**

Address

Authorized Official:____ _____
Name and Title (Printed or Typed) **Telephone Number**
Signature Date

ATTACHMENT D Contract No. 1499056

Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion-Lower Tier Covered Transactions

Instructions for Certification

1. The prospective lower tier participant is required to sign the attached certification.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this application is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principle," "application," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the person to which this application is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this application that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this application that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Non-procurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

   (1) The prospective lower tier participant certifies, by submission of this application, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
   (2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this application.

City of El Paso
Organization Name

John Cook - Mayor
Name and Title of Authorized Representative

Signature Date

CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Energy determines to award the covered transaction, grant, or cooperative agreement.

1. LOBBYING

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

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

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

2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

(1) The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period receding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

(2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

3. DRUG-FREE WORKPLACE

This certification is required by the Drug-Free Workplace Act of 1988 (Pub. L. 100-690, Title V, Subtitle D) and is implemented through additions to the Debarment and Suspension regulations, published in the Federal Register on January 31, 1989, and May 25, 1990.

ALTERNATE I
(GRANTEES OTHER THAN INDIVIDUALS)

(1) The grantee certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees

that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an ongoing drug-free awareness program to inform employees about:
  (1) The dangers of drug abuse in the workplace;
  (2) The grantee's policy of maintaining a drug-free workplace;
  (3) Any available drug counseling, rehabilitation, and employee assistance programs; and
  (4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:
  (1) Abide by the terms of the statement; and
  (2) Notify the employer in writing, of his or her conviction for a violation of criminal drug statute occurring in the work-place not later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within ten calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to energy grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:
  (1) Taking appropriate actions against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act 9f 1973, as amended; or
  (2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

(2) The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance:
Environmental Services
7968 San Paulo
El Paso, TX 79907
El Paso

☐ Check if there are workplaces on file that are not identified here.

ALTERNATE II (GRANTEES WHO ARE INDIVIDUALS)

(1) The grantee certifies that, as a condition of the grant, he or she will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substances in conducting any activity with the grant.

(2) If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, he or she will report the conviction, in writing, within 10 calendar days of the conviction, to every grant officer or other designee, unless the Federal agency designates a central point for the receipt of such notices. When notice is made to such a central point, it shall include the identification number(s) of each affected grant.

---

4. LOBBYING DISCLOSURE ACT OF 1995, SIMPSON-CRAIG AMENDMENT

Applicant organization which are described in section 501 (c)(4) of the Internal Revenue Code of 1986 and engage in lobbying activities after December 31, 1995, shall not be eligible for the receipt of Federal funds constituting an award, grant, or loan. Section 501(c)(4) of the Internal Revenue Code of 1986 covers:

Civic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare, or local associations of employees, the membership of which is limited to the employees of a designated persons or person in a particular municipality, and the net earning of which are devoted exclusively to charitable, educational, or recreational purposes.

As set forth in the Lobbying Disclosure Act of 1995 (Public Law 104-65, December 19, 1995), as amended ["Simpson-Craig Amendment," see Section 129 of The Balanced Budget Downpayment Act, I (Public Law 104-99, January 26, 1996)], lobbying activities is defined broadly. (See section 3 of the Act.)

The undersigned certifies, to the best of his or her knowledge and belief, that: it IS NOT an organization described in section 501 (c)(4) of the Internal Revenue Code of 1986: OR that it IS an organization described in section 501 (c)(4) of the Internal Revenue Code of 1986, which, after December 31, 1995, HAS NOT engaged in any lobbying activities as defined in the Lobbying Disclosure Act of 1995, as amended.

(Remainder of Page deliberately left blank.
Signatures on following page)

As the duly authorized representative of the Applicant, I hereby certify that the Applicant will comply with the above certifications.

City of El Paso
Name of Applicant

Pre/Award Number and/or Project Name

John Cook Mayor
Printed Name and Title of Authorized Representative

Signature

Date

ATTACHMENT F **Contract No. _1499056_____**

DISCLOSURE OF LOBBYING ACTIVITIES

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352

1. Type of Federal Action: ____ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	2. Status of Federal Action: ____ a. bid/offer/application b. initial award c. post award	3. Report Type: ____ a. initial filing b. material change For Material Change Only: year _____ quarter _____ date of last report _____
. Name and Address of Reporting Entity: Name Address ____ Prime ____ Subawardee Tier, if known:	5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:	
6. Federal Department/Agency:	7. Federal Program Name/Description CFDA Number, if applicable:	
8. Federal Action Number, If known:	9. Award Amount, if known:	
10.a. Name and Address of Lobbying Entity: (if individual, last name, first name, MI): (attach Continuation Sheet(s) SF-LLL-A, if necessary)	10.b. Individual Performing Services (including address if different from No. 10A) (last name, first name, MI):	
11. Amount of Payment (check all that apply): $_____ ____ actual ____ planned	12. Form of Payment (check all that apply): a. cash b. in-kind; specify: nature _____ value _____	
13. Type of Payment (check all that apply): ____ a. retainer ____ c. commission ____ e. deferred ____ b. one-time fee ____ d. contingent fee ____ f. other; specify _____		
14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment indicated in Item 11:		
15. Continuation Sheet(s) SF-LLL-A attached: ____ Yes ____ No		
16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annual and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure	Authorized Representative: Name Title:_____ Signature:_____ Telephone: (000) 000-0000 Date: _____	

ATTACHMENT G
NEPA Assurances as Award Terms
(Version August 2008)

- To the extent that a term does not apply to a particular type of activity or award, it is self-deleting.
- The term "You" refers to Grantees and subcontractors of Grantees.
- The term "We" or "Us" refers to the Department of Energy and the Railroad Commission of Texas.

To the extent that a term does not apply to a particular type of activity or award, it is self-deleting.

I. Nondiscrimination Policies

You must comply with applicable provisions of the following national policies prohibiting discrimination:

1 On the basis of race, color, or national origin, in Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.), as implemented by DOE regulations at 10 CFR part 1040;

2 On the basis of sex or blindness, in Title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.), as implemented by DOE regulations at 10 CFR parts 1041 and 1042;

3 On the basis of age, in the Age Discrimination Act of 1975 (42 U.S.C.6101 et seq.), as implemented by Department of Health and Human Services regulations at 45 CFR part 90 and DOE regulations at 10 CFR part 1040;

4 On the basis of disability, in Section 504 of the Rehabilitation Act of 1973 (29 U.S.C.794), as implemented by Department of Justice regulations at 28 CFR part 41 and DOE regulations at 10 CFR part 1041;

5 On the basis of race, color, national origin, religion, disability, familial status, and sex under Title VIII of the Civil Rights Act (42 U.S.C. 3601 et seq.) as implemented by the Department of Housing and Urban Development at 24 CFR part 100; and

6 On the basis of disability in the Architectural Barriers Act of 1968(42 U.S.C. 4151 et seq.) for the design, construction, and alteration of buildings and facilities financed with Federal funds.

II. Environmental Policies

You must:

1 Comply with applicable provisions of the Clean Air Act (42 U.S.C.740 I, et. seq.) and Clean Water Act (33 U.S.C. 1251, et. seq.), as implemented by Executive Order 11738 [3 CFR,1971-1975 Comp., p. 799] and Environmental Protection Agency rules at 40 CFR part 32,
Subpart J.

2 Immediately identify to us, as the awarding agency, any potential impact that you find this award may have on:

a. The quality of the human environment, including wetlands, and provide any help we may need to comply with the National Environmental Policy Act (NEPA, at 42 U.S.C. 4321 et. seq.) and assist us to prepare Environmental Impact Statements or other environmental documentation. In such cases, you may take no action that will have an adverse environmental impact (e.g., physical disturbance of a site such as breaking of ground) or limit the choice of reasonable alternatives until we provide written notification of Federal compliance with NIEPA, as implemented by DOE at 10 CFR part 1021.

b. Flood-prone areas, and provide any help we may need to comply with the National Flood Insurance Act of 1968 and Flood Disaster Protection Act of 1973 (42 U.S.C. 4001 et. seq.), which require flood insurance, when available, for Federally assisted construction or acquisition in flood-prone areas, as implemented by DOE at 10 CFR part 1022.

c. Use of land and water resources of coastal zones, and provide any help we may need to comply with the Coastal Zone Management Act of 1972(16 U.S.C. 1451, et. seq.).

d. Coastal barriers along the Atlantic and Gulf coasts and Great Lakes' shores, and provide help we may need to comply with the Coastal Bathers Resource Act (16 U.S.C. 3501 et. seq.), concerning preservation of barrier resources.

e. Any existing or proposed component of the National Wild and Scenic Rivers system, and provide any help we may need to comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. 1271 et seq.).

f. Underground sources of drinking water in areas that have an aquifer that is the sole or principal drinking water source, and provide any help we may need to comply with the Safe Drinking Water Act(42 U.S.C. 300h-3).

3 Comply with applicable provisions of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821-4846), as implemented by the Department of Housing and Urban Development at 24 CFR part 35. The requirements concern lead-based paint in housing owned by the Federal Government or receiving Federal assistance.

4 Comply with section 6002 of the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6962), and implementing regulations of the Environmental Protection Agency, 40 CFR Part 247, which require the purchase of recycled products by States or political subdivision of States.

III. Live Organisms

1 **Human research subjects.** You must protect the rights and welfare of individuals that participate as human subjects in research under this award in accordance with the Common Federal Policy for the Protection of Human Subjects (45 CFR part 46), as implemented by DOE at 10 CFR part 745.

2 **Animals and plants.**

a. You must comply with applicable provisions of Department of Agriculture rules at 9 CFR parts 1-4 that implement the Laboratory Animal Welfare Act of 1966(7 U.S.C. 2131-*2156)* and provide for humane transportation, handling, care, and treatment of animals used in research, experimentation, or testing under this award.

b. You must follow the guidelines in the National Academy of Sciences(NAS) Publication "Guide for the Care and Use of Laboratory Animals"(1996, which may be found currently at http://www.nap.edu/readingroomlbooks/labrats/) and comply with the Public Health Service Policy and Government principles Regarding the Care and use of animals (included as Appendix D to the NAS Guide).

c. You must immediately identify to us, as the awarding agency, any potential impact that you find this award may have on endangered species, as defined by the Endangered Species Act of 1973, as amended ("the Act," 16 U.S.C. 1531-1543), and implementing regulations of the Departments of the Interior *(50* CFR parts 10-24) and Commerce (50 CFR parts 217-227). You also must provide any help we may need to comply with 16 U.S.C. 1536(a)(2). This is not in lieu of responsibilities you have to comply with provisions of the Act that apply directly to you as a U.S. entity, independent of receiving this award.

IV. Other National Policies

1. **Debarment and suspension.** You must comply with requirements regarding debarment and suspension in Subpart C of 2 CFR parts 180 and 901.

2. **Drug-free workplace.** You must comply with drug-free workplace requirements in Subpart B of 10 CFR part 607, which implements sec. 5151-5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100-690, Title V, Subtitle D; 41 U.S.C. 701, et seq.).

3. **Lobbying.**

a. You must comply with the restrictions on lobbying in 31 U.S.C. 1352, as implemented by DOE at 10 CFR part 601, and submit all disclosures required by that statute and regulation.

b. If you are a nonprofit organization described in section 501(c)(4)of title 26, United States Code (the Internal Revenue Code of 1968),you may not engage in lobbying activities as defmed in the Lobbying Disclosure Act of 1995 (2 U.S.C., Chapter 26). If we determine that you have engaged in lobbying activities, we will cease all payments to you under this and other awards and terminate the awards unilaterally for material failure to comply with the award terms and conditions. By submitting an application and accepting fluids under this agreement, you assure that you are not an organization described in section 501(c)(4) that has engaged in any lobbying activities described in the Lobbying Disclosure Act of *1995* (2 U.S.C. 1611).

c. You must comply with the prohibition in 18 U.S.C. 1913 on the use of Federal funds, absent express Congressional authorization, to pay directly or indirectly for any service, advertisement or other written matter, telephone communication, or other device intended to influence at any time a Member of Congress or official of any government concerning any legislation, law, policy, appropriation, or ratification.

4. **Officials not to benefit.** You must comply with the requirement that no member of Congress shall be admitted to any share or part of this agreement, or to any benefit arising from it, in accordance with 41U.S.C. 22.

5. **Hatch Act.** If applicable, you must comply with the provisions of the Hatch Act *(5*U.S.C. 1501-1508 and 7324-7326), as implemented by the Office of Personnel Management at *5* CFR part 151, which limits political activity of employees or officers of State or local governments whose employment is connected to an activity financed in whole or part with Federal funds.

6. **Native American graves protection and repatriation.** If you control or possess Native American remains and associated funerary objects, you must comply with the requirements of 43 CFR part 10, the Department of the Interior implementation of the Native

American Graves Protection and Repatriation Act of 1990 (25 U.S.C., chapter 32).

7. **Fly America Act.** You must comply with the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118), commonly referred to as the "Fly America Act," and implementing regulations at 41 CFR 301-10.131 through 301-10.143. The law and regulations require air transport of people or property to, from, between or within a country other than the United States, the cost of which is supported under this award, to be performed by or under a cost-sharing arrangement with a U.S. flag carrier, if service is available.

8. **Use of United States-flag vessels.**

a. Pursuant to Pub. L. 664 (43 U.S.C. 1241(b)), at least 50 percent of any equipment, materials or commodities procured, contracted for or otherwise obtained with funds under this award, and which may be transported by ocean vessel, must be transported on privately owned United States-flag commercial vessels, if available.

b. Within 20 days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph 9.a of this section shall be furnished to both our award administrator (through you in the case of your contractor's bill-of-lading) and to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590.

9. **Research misconduct.** You must comply with the government-wide policy on research misconduct issued by the Office of Science and Technology Policy (available in the Federal Register at *65* FR 76260, December 6,2000, or on the Internet at www.ostp.gov), as implemented by DOE at 10 CFR part 733 and 10 CFR 600.31.

10. **Requirements for an Institution of Higher Education Concerning Military recruiters and Reserve Officers Training Corps (ROTC).**

a. As a condition for receiving funds under an award by the National Nuclear Security Administration of the Department of Energy, you agree that you are not an institution of higher education that has a policy or practice placing any of the restrictions specified in 10 U.S.C. 983. as implemented by 32 CFR part 216, on:

i. Maintenance, establishment, or operation of Senior ROTC units, or student participation in those units; or

ii. Military recruiters' access to campuses, students on campuses, or information about students.

b. If you are determined, using the procedures in 32 CFR part 216, to be such an institution of higher education during the period of performance of this award, we:

i. Will cease all payments to you of funds under this award and all other awards subject to the requirements in 32 CFR part 216; and

ii. May suspend or terminate those awards unilaterally for material failure to comply with the award terms and conditions.

11. **Historic preservation.** You must identify to us any:

a. Any property listed or eligible for listing on the National Register of Historic Places that will be affected by this award, and provide any help we may need, with respect to this award, to comply with Section 106 of the National Historic Preservation Act of 1966 (16 U.S.C. 4700, as implemented by the Advisory Council on Historic Preservation regulations at 36 CFR part 800 and Executive Order 11593, "Identification and Protection of Historic Properties," [3 CFR, 1971-1975 Comp., p. *559].*

b. Potential under this award for irreparable loss or destruction of significant scientific, prehistorical, historical, or archeological data, and provide any help we may need, with respect to this award, to comply with the Archaeological and Historic Preservation Act of 1974 (16 U.S.C.469a-1, et seq.).

12. **Relocation and real property acquisition.** You must comply with applicable provisions of 49 CFR part 24, which implements the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970(42 U.S.C. 4601, et seq.) and provides for fair and equitable treatment of persons displaced by federally assisted programs or persons whose property is acquired as a result of such programs.

13. **Confidentiality of patient records.** You must keep confidential any records that you maintain of the identity, diagnosis, prognosis, or treatment of any patient in connection with any program or activity relating to substance abuse education, prevention, training, treatment, or rehabilitation that is assisted directly or indirectly under this award, in accordance with 42 U.S.C. 290dd-2.

14. **Constitution Day.** You must comply with Public Law 108-447, Div. J, Title I, Sec. 111(36 U.S.C. 106 note), which requires each educational institution receiving Federal funds in aFederal fiscal year to hold an educational program on the United States Constitution on September 17th during that year for the students served by the educational institution.

15. **Trafficking in Persons**

a. Provisions applicable to a recipient that is a private entity.

1. You as the recipient, your employees, subrecipients under this award, and subrecipients'

employees may not—

i. Engage in severe forms of trafficking in persons during the period of time that the award is in effect;

ii. Procure a commercial sex act during the period of time that the award is in effect;

or

iii. Use forced labor in the performance of the award or subawards under the award.

2. We as the Federal awarding agency may unilaterally terminate this award, without penalty, if you or a subrecipient that is a private entity —

i. Is determined to have violated a prohibition in paragraph a. 1 of this award term;

or

ii. Has an employee who is determined by the agency official authorized to terminate the award to have violated a prohibition in paragraph a.l of this award term through conduct that is either—

A. Associated with performance under this award; or

B. Imputed to you or the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR part 180, "0MB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," as implemented by our agency at 2 CFR part 901.

b. Provision applicable to a recipient other than a private entity. We as the Federal awarding agency may unilaterally terminate this award, without penalty, if a subrecipient that is a private entity—

1. Is determined to have violated an applicable prohibition in paragraph a. 1 of this award term; or

2. Has an employee who is determined by the agency official authorized to terminate the award to have violated an applicable prohibition in paragraph a. 1 of this award term through conduct that is either—

i. Associated with performance under this award; or

ii. Imputed to the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR part 180, "0MB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," as implemented by our agency at 2 CFR part 901.

c. Provisions applicable to any recipient.

1. You must inform us immediately of any information you receive from any source alleging a violation of a prohibition in paragraph a.l of this award term.

2. Our right to terminate unilaterally that is described in paragraph a.2 orb. of this section:

i. Implements section 106(g) of the Trafficking Victims Protection Act of 2000 (TWA), as amended (22 U.S.C. 7104(g)), and

ii. Is in addition to all other remedies for noncompliance that are available to us under this award.

3. You must include the requirements of paragraph a. 1 of this award term in any subaward you make to a private entity.

d. Definitions. For purposes of this award term:

1. "Employee" means either:

i. An individual employed by you or a subrecipient who is engaged in the performance of the project

i. An individual employed by you or a subrecipient who is engaged in the performance of the project or program under this award; or

ii. Another person engaged in the performance of the project or program under this award and not compensated by you including, but not limited to, a volunteer or individual whose services are contributed by a third party as an in-kind contribution toward cost sharing **or** matching requirements.

2. "Forced labor" means labor obtained by any of the following methods: the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

3. "Private entity":

i. Means any entity other than a State, local government, Indian tribe, or foreign public entity, as those terms are defined in 2 CFR 175.25.

ii. Includes:

A. A nonprofit organization, including any nonprofit institution of higher education, hospital, or tribal organization other than one included in the definition of Indian tribe at 2 CFR 175.25(b).

B. A for-profit organization.

4. `"Severe forms of trafficking in persons," "commercial sex act," and "coercion" have the meanings given at section 103 of the TWA, as amended (22 U.S.C. 7102).

V. National Policy Requirements for Subawards.

Recipient responsibility. You must include in any subaward you make under this award the requirements of the national policy requirements in Sections I through IV of this document that apply, based on the type of subawardee organization and situation.

As the duly authorized representative of the Subrecipient, I hereby certify that Subrecipient will comply with the above requirements.

City of El Paso
SUBRECIPIENT:

By:_____ Date: _____

As the duly authorized representative of the Subcontractor, I hereby certify that Subcontractor will comply with the above requirements.

_____
SUBCONTRACTOR

By:_____ Date: _____
[Printed Name and Title]

AUTHORIZATION AND CONSENT (41 CFR 9-9.102-1)

The Government hereby gives its authorization and consent (without prejudice to any rights of indemnification) for all use and manufacture, in the performance of this grant or any part hereof or any amendment hereto or any subcontract hereunder (including all lower-tier subcontracts hereunder), of any invention described in and covered by a patent of the United States.

(a) embodied in the structure or composition of any article, the delivery of which is accepted by the Government under this grant, or

(b) utilized in the machinery, tools, or methods, the use of which necessarily results from compliance by the Grantee or the using subcontractor with

(i) specifications or written provisions now or hereafter forming a part of this grant, or

(ii) specific written instructions given by the Contracting Officer directing the manner of performance.

The entire liability to the Government for infringement of a patent of the United States shall be determined solely by the provisions of the indemnity clauses, if any, included in this grant or any subcontract hereunder (including all lower-tier subcontracts hereunder), and the Government assumes liability for all other infringement to the extent of the authorization and consent herein above granted.

NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT (41 CFR 9-9.104(b))

The provisions of this clause shall be applicable only if the amount of this grant exceeds $10,000.

(a) The Grantee shall report to the Contracting Officer, promptly and in reasonable written detail, each notice of claim of patent or copyright infringement based on the performance of this grant of which the Grantee has knowledge.

(b) In the event of any claim or suit against the Government on account of any alleged patent or copyright infringement arising out of the performance of this grant or out of the use of any supplies furnished or work or services performed hereunder, the Grantee shall furnish to the Government, when requested by the Contracting Officer, all evidence and information in possession of the Grantee pertaining to such suit or claim. Such evidence and information shall be furnished at the expense of the Government except where the Grantee has agreed to indemnify the Government.

(c) This clause shall be included in all contracts and subgrants under this grant.

REPORTING OF ROYALTIES (41 CFR 9-9.110)

If this grant is in an amount which exceeds $10,000 and if any royalty payments are directly involved in the grant or are reflected in the grant price to the Government, the Grantee agrees to report in writing to the Patent Counsel (with notification by Patent Counsel to the Contracting Officer) during the performance of this grant and prior to its completion of final settlement the amount of any royalties or

other payments paid or to be paid by it directly to others in connection with the performance of this grant together with the names and addresses of licensers to whom such payments are made and either the patent numbers involved or such other information as will permit the identification of the patents or other basis on which the royalties are to be paid. The approval of DOE of any individual payments or royalties shall not stop the Government at any time from contesting the enforceability, validity or scope of, or title to, any patent under which a royalty or payments are made.

RIGHTS IN TECHNICAL DATA (SHORT FORM)

(a) Definitions. The definitions of terms set forth in DEAR 927.401 apply to the extent these terms are used herein.

(b) Allocation of Rights.

(1) The Government shall have:

(i) Unlimited rights in technical data first produced or specifically used in the performance of this grant;

(ii) The right of the Contracting Officer or his representatives to inspect, at all reasonable times up to three years after final payment under this grant, all technical data first produced or specifically used in the grant (for which inspection the Grantee or its contractor or subgrantee shall afford proper facilities to DOE); and

(iii) The right to have any technical data first produced or specifically used in the performance of this grant delivered to the Government as the Contracting Officer may from time-to-time direct during the progress of the work, or in any event as the Contracting Officer shall direct upon completion or termination of this grant.

(2) The Grantee shall have:

The right to use for its private purposes, subject to patent, security or other provisions of this grant, technical data it first produces in the performance of this grant provided the date requirements of this grant have been met as of the date of the private use of such data. The Grantee agrees that to the extent it receives or is given access to proprietary data or other technical, business or financial data in the form of recorded information from DOE or a DOE contractor or subcontractor, the Grantee shall treat such data in accordance with any restrictive legend contained thereon, unless use is specially authorized by prior written approval of the Contracting Officer.

(c) Copyrighted Material.

(1) The Grantee agrees to, and does hereby grant to the Government, and to others acting on its behalf:

(i) A royalty-free, nonexclusive, irrevocable, worldwide license for Governmental purposes to reproduce, distribute, display, and perform all copyrighted material first produced or composed in the performance of this grant by the Grantee, its employees or any individual or concern specifically employed or assigned to originate and prepare such material and to prepare derivative works based thereon; and

(ii) A license as aforesaid under any and all copyrighted or copyrighted work not first produced or composed by the Grantee in the performance of this grant but which is incorporated in the material furnished under the grant, provided that such license shall be only to the extent the Grantee now has, or prior to completion or close-out of the grant, may acquire the right to grant such license without becoming liable to pay compensation to others solely because of such grant.

(2) The Grantee agrees that it will not knowingly include any material copyrighted by others in any written or copyrighted material furnished or delivered under this grant without a license as provided for in subparagraph (c) (1) (ii) of this section, or without the consent of the copyright owner, unless it obtains specific written approval of the Contracting Officer for the inclusion of such copyrighted material.

RIGHTS TO PROPOSAL DATA (TECHNICAL) (48 CFR 52.227-23)

It is agreed that as a condition of award of this grant or modification and notwithstanding the conditions of any notice appearing on the proposal(s), the Government shall have the right to use, duplicate, and disclose and have others to do so for any purpose whatsoever, the technical data contained in the proposal(s) upon which the grant or modification is based.

City of El Paso

John Cook - Mayor

Signature Date

ATTACHMENT I **Contract No._ 1499056_____**

SUBCONTRACTING PROVISIONS; MANDATORY FLOWDOWN PROVISION

Grantee, if subcontracting any of its performance hereunder, shall legally bind subgrantees to perform and make such subgrantees subject to all the duties, requirements, and obligations of Grantee under this Agreement. Grantee shall be jointly and severally liable for all performances under this Agreement, including, but not limited to, the performance of its subgrantees to the extent permitted under the Constitution and laws of the State of Texas, and all applicable provisions of 10 CFR Part 600 – DOE Assistance Regulations, as well as full compliance with all reporting requirements set forth in Section XIX of the Agreement.

Grantee represents and warrants that it has obtained all necessary permits, licenses, easements, waivers and permissions of whatsoever kind required for its performance and the performance of its subgrantees under this Agreement. In no event shall any provision of this Paragraph, including, but not limited to, the requirement that Grantee obtain the prior approval of Agency on Grantee's proposed subcontracts, be construed as relieving Grantee of the responsibility for ensuring that all services rendered under any subcontracts comply with all the terms and provisions of this Agreement as if they were rendered by Grantee. Grantee shall, upon request, furnish Agency with copies of all proposed subcontracts and all proposed amendments, assignments, cancellations or terminations of said subcontracts no later than thirty (30) days prior to the proposed effective date of such contracts, amendments, assignments, cancellations or terminations; provided, however, that this thirty (30) day period may be shortened by written agreement of the parties. Upon request from the Commission, Grantee shall provide any and all documentation deemed necessary by the Commission to evidence Subcontractors compliance with all terms, conditions and performance pertaining to the Agreement and all applicable law.

As the duly authorized representative of the Grantee and the Subgrantee, I hereby certify that Grantee and Subgrantee will comply with the above requirements.

_____

GRANTEE

_____

SUBGRANTEE:

By: _____

[Printed Name]

[Title]

Date: _____

ATTACHMENT J
AMERICAN RECOVERY & REINVESTMENT ACT--RECIPIENT AFFIDAVIT
This Affidavit must be signed and sworn (notarized) and returned with all Applications for this RFA

I, _John Cook_, an authorized representative of: City of El Paso_, a [person, sole proprietorship, partnership, corporation, limited liability company, nonprofit organization, governmental entity, political subdivision, or other entity] (circle one) that is receiving American Recovery and Reinvestment Act of 2009 (ARRA or the Act) funding, hereby swear and affirm that, to the best of my knowledge, internal controls, processes and procedures have been designed and implemented to help ensure that the recipient and its use of these funds complies with the following: applicable state law; federal law, including federal reporting requirements under Section 1512 of the Act, if applicable; rules; regulations; and other relevant guidance. I further swear and affirm that all of the statements made and information provided herein, including statements made and information provided in any attachments are true, complete, and correct, to the best of my knowledge.

I understand that I am receiving ARRA funding from the Railroad Commission of Texas, a [state agency, institution of higher education, governmental entity, political subdivision, or other entity] (circle one).

I understand that non-compliance with reporting requirements could be treated as a violation of the award agreement resulting in the withholding of funds, debarment, or award termination or suspension, as appropriate.

I understand that it is a federal crime under 18 U.S.C. Section 1001 to, in any matter within the jurisdiction of the executive branch of the U.S. Government, knowingly and willfully make any materially false, fictitious, or fraudulent statement or representation, or to make or use any false writing or document knowing that it contains the same.

I understand that presenting a false or fraudulent claim, in whole or in part, or causing same, may subject me to civil penalties as provided for in 31 U.S.C. Section 3729.

I understand that it is a felony offense under Section 37.10, Texas Penal Code, to knowingly make a false entry in, or false alteration of, a governmental record, or to make, present, or use a governmental record with knowledge of its falsity, when the actor has the intent to harm or defraud another.

I understand that the offense of perjury, under Section 37.02, Texas Penal Code, is committed when a person, with intent to deceive and with knowledge of the statement's meaning, makes a false statement under oath or swears to the truth of a false statement previously made and the statement is required or authorized by law to be made under oath.

I understand my obligation to track all ARRA funds and that ARRA funds cannot be comingled with Non-ARRA funds. I also understand my obligation to immediately report any known or suspected waste, fraud, and abuse of funds received under the Act to the United States Government Accountability Office at (800) 424-5454 and the Texas State Auditor's Office at (800) 892-8348. I further understand that I will require all sub-recipients with whom I contract using funds made available under the Act to sign a similar affidavit swearing to all of the above. I hereby swear and affirm that I have read the entire affidavit, and I understand its contents.

_____
Recipient Name

_____
Affiant Signature

_____
Full Name

_____
Title

_____
Date

Sworn and subscribed before me by the said

_____
(Printed Name of Recipient's Authorized Representative)

this ___ day of _____, 20___.

Notary Public, State of Texas

Notary's printed name: _____ My commission expires: _____ (Seal)

ATTACHMENT K

Execution of Application

1. By signature hereon, Applicant represents and warrants that the provisions in this Execution of Application apply to Applicant and all of Applicant's principals, officers, directors, shareholders, partners, owners, agents, employees, subcontractors, independent contractors, and any other representatives who may provide services under, who have a financial interest in, or otherwise are interested in this RFA or any contract resulting from it.

2. By signature hereon, Applicant represents and warrants its intent to furnish the requested items at the prices quoted in its application.

3. By signature hereon, Applicant represents and warrants that it has read and understood and shall comply with Texas Government Code, Section 321.022 and shall report any fraud, waste and abuse to the Texas State Auditor's as required at http://sao.fraud.state.tx.us/.

4. By signature hereon, Applicant represents and warrants that its prices include all costs of Applicant in providing the requested items that meet all specifications of this RFA, and that its prices will remain firm for acceptance for a minimum of ninety (90) days from deadline for submission of applications.

5. By signature hereon, Applicant represents and warrants that each employee, including 'replacement employees', will possess the qualifications, education, training, experience and certifications necessary to perform the services in the manner required by this RFA.

6. By signature hereon, Applicant represents and warrants that it has no actual or potential conflicts of interest in providing the requested items to Commission under the RFA and any resulting contract, if any, and that Applicant's provision of the requested items under the RFA and any resulting contract, if any, would not reasonably create an appearance of impropriety.

7. By signature hereon, pursuant to Section 2155.004(a), Texas Government Code, Applicant represents and warrants that it has not given, nor intends to give at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor or service to a public servant in connection with the submitted.

8. By signature hereon, Applicant represents and warrants that it is not currently delinquent in the payment of any franchise taxes owed the State of Texas under Chapter 171, Texas Tax Code. In addition, if Applicant is an individual not residing in Texas or a business entity not incorporated in or whose principal domicile is not in Texas, the following certification applies. Applicant represents and warrants that it holds a permit issued by the Texas Comptroller of Public Accounts to collect or remit all state and local sales and use taxes that become due and owing as a result of the individual's or entity's business in Texas or represents and warrants that it does not sell tangible personal property or services that are subject to the state and local sales and use tax. Under Section 2155.004(a), Texas Government Code, a state agency may not accept a bid or award a contract that includes proposed financial participation by a person who received compensation from the Commission to participate in preparing the specifications or request for applications on which the bid or contract is based. Further, Applicant certifies that the individual or business entity named in this Application or any contract resulting from this RFA is not ineligible to receive the specified contract and acknowledges that the contract may be terminated and payment withheld if this certification is inaccurate. See Texas Government Code Section 2155.004(b).

9. By signature hereon, Applicant hereby represents and warrants that, pursuant to 15 U.S.C. Sec. 1, et seq. and Tex. Bus. & Comm. Code Sec. 15.01, et seq., neither Applicant nor the firm, corporation, partnership, or institution represented by Applicant, or anyone acting for such a firm, corporation or institution has violated the antitrust laws of this state, federal antitrust laws, nor communicated directly or indirectly the Application made to any competitor or any other person engaged in such line of business.

10. By signature hereon, Applicant represents and warrants that all statements and information prepared and submitted in response to this RFA are current, complete and accurate.

11. By signature hereon, Applicant represents and warrants that the individual signing this document and the documents made part of this RFA and Application is authorized to sign such documents on behalf of the company and to bind the company under any contract which may result from the submission of this Application.

12. By signature hereon, Applicant represents and warrants that if a Texas address is shown as the address of the Applicant, Applicant qualifies as a Texas Bidder as defined by 34 Texas Administrative Code §20.32(68).

13. Check below if preference claimed under 34 Texas Administrative Code §20.38:
    - Goods produced or offered by a Texas bidder that is owned by a Texas resident service-disabled veteran
    - Goods produced in Texas or offered by a Texas bidder that is not owned by a Texas resident service-disabled veteran
    - Agricultural products grown in Texas
    - Agricultural products offered by a Texas bidder
    - Services offered by a Texas bidder that is owned by a Texas resident service-disabled veteran
    - Services offered by a Texas bidder that is not owned by a Texas resident service disabled veteran
    - Texas Vegetation Native to the Region
    - USA produced supplies, materials or equipment
    - Products of persons with mental or physical disabilities
    - Products made of recycled, remanufactured, or environmentally sensitive materials including recycled steel
    - Energy Efficient Products
    - Rubberized asphalt paving material
    - Recycled motor oil and lubricants
    - Products produced at facilities located on formerly contaminated property
    - Products and services from economically depressed or blighted areas
    - Vendors that meet or exceed air quality standards
    - Recycled or Reused Computer Equipment of Other Manufacturers
    - Foods of Higher Nutritional Value

14. By signature hereon, under Section 231.006, Texas Family Code, regarding child support, Applicant certifies that the individual or business named in the Application is not ineligible to receive the specified payment and acknowledges that the contract may be terminated and payment may be withheld if this certification is inaccurate. Furthermore, any Applicant subject to Section 231.006, Texas Family Code, must include names and Social Security numbers of each person with at least 25% ownership of the business entity submitting the Application. This information must be provided prior to award. Enter the Name and Social Security Number for each person below:

Name:	SSN:
Name:	SSN:
Name:	SSN:

FEDERAL PRIVACY ACT NOTICE: This notice is given pursuant to the Federal Privacy Act. Disclosure of your Social Security Number (SSN) is required under Section 231.006(c) and Section 231.302(c)(2), Texas Family Code. The SSN will be used to identify persons that may owe child support. The SSN will be kept confidential to the fullest extent allowed under Section 231.302(e), Texas Family Code.

15. By signature hereon, Applicant represents and warrants that no relationship, whether by relative, business associate, capital funding contract or by any other such kinship exist between Applicant and an employee of the Commission, and Applicant has not been an employee of the Commission within the immediate twelve (12) months prior to Applicant's Application. By signature hereon, Applicant certifies that it is in compliance with Section 669.003, Texas Government Code, relating to contracting with executive head of a state agency. All such disclosures will be subject to administrative review and approval prior to Commission entering into any agreement with Applicant. Applicant acknowledges that any contract resulting from this RFA may be terminated at any time, and payments withheld, if this information is false.

16. By signature hereon, pursuant to Section 2155.004, Texas Government Code Applicant represents and warrants that neither it nor any person or entity which will participate financially in any contract resulting from this RFA has received compensation for participation in the preparation of specifications for this RFA.

17. By signature hereon, Applicant represents and warrants that all articles and services quoted in response to this RFA meet or exceed the safety standards established and promulgated under the *Federal Occupational Safety and Health Law* and its regulations in effect or proposed as of the date of this solicitation.

18. By signature hereon, Applicant represents and warrants its compliance with all federal laws and regulations pertaining to Equal Employment Opportunities and Affirmative Action.

19. By signature hereon, Applicant represents and warrants its compliance with the requirements of the Americans With Disabilities Act (ADA). Applicant further represents and warrants that it will comply with all applicable Texas Accessibility requirements.

20. By signature hereon, in accordance with Section 2155.4441, Texas Government Code, Applicant agrees that during the performance of a contract for services it shall purchase products and materials produced in Texas when they are available at a price and time comparable to products and materials produced outside this state.

21. By signature hereon, Applicant represents and warrants that Commission's payments to Applicant and Applicant's receipt of appropriated or other funds under any contract resulting from this RFA are not prohibited by Section 556.005 or Section 556.008, Texas Government Code.

22. By signature hereon, Applicant represents and warrants that the offering entity and its principals are eligible to participate in this transaction and have not been subjected to suspension, debarment, or similar ineligibility determined by any federal, state, or local governmental entity and that Applicant is in compliance with the State of Texas statutes and rules relating to procurement and that Applicant is not listed on the federal government's terrorism watch list as described in Executive Order 13224. Entities ineligible for federal procurement are listed at http://www.epls.gov.

23. Under Section 2155.006(b), Texas Government Code, a state agency may not accept a bid or award a contract, including a contract for which purchasing authority is delegated to a state agency, that includes proposed financial participation by a person who, during the five-year period preceding the date of the bid or award, has been: (1) convicted of violating a federal law in connection with a contract awarded by the federal government for relief, recovery, or reconstruction efforts as a result of Hurricane Rita, as defined by Section 39.459, Utilities Code, Hurricane Katrina, or any other disaster occurring after September 24, 2005; or (2) assessed a penalty in a federal civil or administrative enforcement action in connection with a contract awarded by the federal government for relief, recovery, or reconstruction efforts as a result of Hurricane Rita, as defined by Section 39.459, Utilities Code, Hurricane Katrina, or any other disaster occurring after September 24, 2005. Under Section 2155.006, Texas Government Code, Applicant certifies that the individual or business entity named in the Application is not ineligible to receive the specified contract and acknowledges that any contract resulting from this RFA may be terminated and payment withheld if this certification is inaccurate.

24. By signature hereon and by checking or initialing **either** Subsection (a) **or** Subsection (b), as applicable, Applicant represents and warrants the following:

    (a) X Applicant represents and warrants that it is not aware of and has received no notice of any court or governmental agency actions, proceedings or investigations, etc., pending or threatened against Applicant or any of the individuals or entities included in Section 1 of this document that would or could impair Applicant's performance under any contract resulting from this RFA, relate to the solicited or similar goods or services, or otherwise be relevant to the Commission's consideration of Applicant's Application. Applicant represents and warrants that it is not aware of any such court or governmental agency actions, proceedings or investigations, etc. against Applicant or any of these individuals or entities within the five (5) calendar years immediately preceding the submission of Applicant's Application in response to this RFA. In addition, Applicant represents and warrants that it shall notify Commission in writing within five (5) business days of any changes to the representations or warranties in this Subsection (a) and understands that failure to so timely update the Commission shall constitute breach of contract and may result in immediate termination of the contract.

    (b) Applicant is unable to make the representation and warranty in Subsection (a) above and instead

represents and warrants that it has included as a detailed attachment in its Application, which expressly references this Subsection (b), a complete disclosure of any such court or governmental agency actions, proceedings or investigations, etc., and specifically addresses whether any of such past, pending or threatened actions, proceedings or investigations, etc., would or could (1) impair Applicant's performance under any contract resulting from this RFA; (2) relate to the solicited or similar goods or services; or (3) be otherwise relevant to the Commission's consideration of Applicant's Application. In addition, Applicant represents and warrants that it shall notify Comptroller in writing within five (5) business days of any changes to the representations or warranties in this Subsection (b) or attachments in response to Subsection (b) and understands that failure to so timely update the Commission shall constitute breach of contract and may result in immediate termination of the contract.

Applicant understands that a Application returned without the appropriate checked or initialed representation and warranty and the detailed attachment required in Subsection (b), when applicable, may be automatically disqualified.

25. By signature hereon, Applicant represents and warrants that it has read and agrees to all terms and conditions of this RFA, unless Applicant specifically takes an exception and offers an alternative provision in Applicant's Application as provided in Exhibit C, Section 2 of this RFA.

Authorized signatory on behalf of Applicant must complete and sign the following:

Authorized Signature	**Date Signed**
John Cook - Mayor **Printed Name and Title of Authorized Signature**	**(915) 541-4145** **Phone Number**
City of El Paso **Company Name**	**Fax Number**
74-6000749 **Federal Employer Identification Number**	**CookJF@elpasotexas.gov** **E-Mail Address**
2 Civic Center Plaza **10th Floor** **Physical Street Address**	**El Paso, TX 79901** **City, State, Zip Code**
same **Mailing Address, if different**	**City, State, Zip Code**

ATTACHMENT L
ARRA REPORTING REQUIREMENTS

1. Grantee shall submit to the Commission the following reports:

A. INITIAL INFORMATION REPORT. The Grantee shall submit the following information upon the execution of the Grant Agreement and return this report when the executed Grant Agreement is submitted to the Agency:

I. Grantee Identification:

a. Grantee name: Provide the following information for the Grantee;

(i) the official name of the Grantee as it appears on the Grant Agreement;
(ii) the street address, city, and county of the official place of business;
(iii) City, County, and U.S. Postal Zip Code + four digits;
(iv) the url designation or address of any official web site for the Grantee;
(v) U.S. Congressional District;
(vi) the state senatorial district;
(vii) the state house district;
(viii) a copy of the minutes or resolution by which the Grantee approved the Grant agreement and designated an authorized representative for the Grantee;
(ix) the grant/award number assigned to the Grantee by the Agency;
(x) the date the Grant Agreement was signed (mm/dd/yyyy); and
(xi) the performance period established in the Grant Agreement during which sponsorship begins and ends.

b. Authorized Representative: Provide the following information for the person designated by the Grantee to represent the Grantee in the performance of the Grant Agreement:

(i) the name of the authorized representative and official title, if any;
(ii) the street address, city, and county of the primary business location;
(iii) City, County, and U.S. Postal Zip Code + four digits;
(iv) area code and telephone number; and
(v) email address.

c. Key Personnel: Provide the following information for each employee or agent designated by the Grantee or the Authorized Representative that may assist or serve as representative for the Grantee in the performance of the Grant Agreement:

(i) the name of the key personnel and official title, if any;
(ii) primary role served for the Grantee with respect to the Grant;
(iii) the street address, city, and county of the primary business location;
(iv) City, County, and U.S. Postal Zip Code + four digits;
(v) area code and telephone number; and
(vi) email address.

d. Five most highly compensated individuals: The information required in this subsection is ONLY required when the reporting entity (A) received 80 percent or more of its annual gross revenues in Federal awards the recipient in its preceding fiscal year, or (B) received $25,000,000 or more in annual gross revenues from Federal awards; and (C) the public does not have access to information about the compensation of the senior executives of the entity through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 *(15 U.S.C. 78m*(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986 [26 USC §6104]. If this subsection is applicable, the report shall include:

(i) the names and total compensation for the five most highly compensated officers of the entity;
(ii) "Total compensation" means the cash and noncash dollar value earned by the executive during the subrecipient's past fiscal year of the following: Salary and bonus; Awards of stock, stock options, and stock appreciation rights. Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with FAS 123R; Earnings for services under non-equity incentive plans. Does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees; Change in pension value. This is the change in present value of defined benefit and actuarial pension plans; Above-market earnings on deferred compensation which are not tax-qualified;. Other compensation, for example, severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property if the value for the executive exceeds $10,000.

II. Project Identification:

a. Project Name: Provide the brief descriptive title of the project or activity as identified in the Grant Agreement.

b. Primary Performance Location: Provide physical location of primary place of performance by:

(i) street address,
(ii) City, County, and U.S. Postal Zip Code + four digits
(iii) U.S. Congressional District;
(iv) the state senatorial district; and
(v) the state house district;

c. Project Objective: A description of the overall purpose and expected outputs and outcomes or results of the Grant Agreement, including significant deliverables and, if appropriate, units of measure.

B. MONTHLY REPORT. On 25th day of each calendar month, the Grantee shall submit a report in the format required by the Commission containing the following information:

I. Grantee Identification:

a. Grantee name: Provide the name of the Grantee as it appears on the Grant Agreement.

b. Report Contact: Provide the name of person preparing and submitting the report and contact information including telephone number and email address.

c. Award Number: Provide the grant/award number (if any) assigned to the Grantee by the Agency.

d. Grant Dates: Provide the date the Grant Agreement was signed (mm/dd/yyyy) and the performance period established in the Grant Agreement during which sponsorship begins and ends.

e. Changes to the Initial Information Report: Provide any amendments or changes to the information provided in the Initial Information Report.

II. Grant Award/Budget Information:

a. Total Amount of Grant: Provide the anticipated total amount of cash to be disbursed to Grantee by the expiration date of the Grant Agreement, respectively.

b. Amount of Grant Funds Received: Provide the cumulative amount of cash received by the Grantee as of the reporting period end date.

c. Amount of Grant funds Disbursed: Provide the cumulative amount of cash disbursed by the Grantee as of the reporting period end date.

d. Cost Status: Show funds budgeted and funds disbursed for each budget item. If cost sharing is required break out by Commission share, Grantee share, and total costs.

III. Project Information:

a. Project Name: Provide the brief descriptive title of the project or activity as identified in the Grant Agreement.

b. Project Objective: A description of the overall purpose and expected outputs and outcomes or results of the Grant Agreement, including significant deliverables and, if appropriate, units of measure.

c. Schedule Status: List milestones, anticipated completion dates and actual completion dates. If you submitted a project management plan with your application, you must use this plan to report schedule and budget variance.

d. Progress Evaluation Provide a brief description of overall progress on each project objective (such as: Not started; Less than 50% completed; Completed 50% or more; Fully Completed) and a comparison of the actual accomplishments with the goals and objectives established for the period and reasons why the established goals were not met.

e. Project Efforts: Provide a brief narrative of any changes in approach or aims and reasons for change (remember significant changes to the objectives and scope require prior approval by the contracting officer), actual or anticipated problems or delays and actions taken or planned to resolve them; and any absence of key personnel or changes in consortium/teaming arrangement.

g. Product or technology transfer activities: A description of any product produced or technology transfer activities accomplished during this reporting period, such as:

(i) Publications (list journal name, volume, issue); conference papers; or other public releases of results;
(ii) Web site or other Internet sites that reflect the results of this project;

(iii) Networks or collaborations fostered;
(iv) Technologies/Techniques;
(v) Inventions/Patent Applications
(vi) Other products, such as data or databases, physical collections, audio or video, software or netware, models, educational aid or curricula, instruments or equipment.

IV. Job Created/Retained:

a. Definitions: In providing information for Jobs Created/Retained, please use the following definitions:

"Jobs created" means those new positions created and filled, or previously existing unfilled positions that are filled, as a result of funding provided pursuant to this Grant Agreement. A job reported as a job created cannot be also reported as a job retained.

"Jobs retained" means those previously existing filled positions that are retained as a result of funding provided pursuant to this Grant Agreement. This description may rely on job titles, broader labor categories, or the contractor's existing practice for describing jobs as long as the terms used are widely understood and describe the general nature of the work. A job reported as a job retained cannot be also reported as a job created.

"The United States and outlying areas" means the 50 States, the District of Columbia, the Commonwealths of Puerto Rico, and the Northern Mariana Islands, the Territories of American Samoa, Guam, and the U.S. Virgin Islands; and the Minor outlying islands of Baker, Howland, Jarvis, Midway, and Navassa Islands; Johnston, Palmyra, and Wake Atolls, and Kingman Reef.

b. Jobs Created:

(i) The number of jobs created in the United States and outlying areas;
(ii) a brief description of the types of jobs created; and
(iii) the anticipated or likely duration of the jobs created.

c. Jobs Retained:

(i) The number of jobs retained in the United States and outlying areas;
(ii) a brief description of the types of jobs retained; and
(iii) the anticipated or likely duration of the jobs retained.

V. Technical Measures:

a. Number of alternative fuel vehicles purchased;
b. Number of conventional vehicles converted to alternative fuel use;
c. Number of new alternative refueling stations emplaced;
d. Number of new carpools and vanpools formed;
e. Number of energy-efficient traffic signals installed; and
f. Number of street lane-miles for which synchronized traffic signals were installed.

C. FINAL REPORT. No later than 30 days following the grant ending date, the Grantee shall submit a Final Report in the format required by the Commission containing all the information required for the Monthly Report cumulative through the last day of the grant performance period.

2. Grantee shall require any of its Sub-Grantees or subcontractors that are remitted any funds provided under this agreement to submit the reports identified in this attachment substituting the word "Grantee" and replacing it with Sub-grantee or subcontractor, as appropriate.

3. Failure to comply with the requirements of this attachment may result in termination of the grant award and the Grantee being ineligible for future grants.

4. The form and substance of these reporting requirements may be amended by the Commission at any time.

As the duly authorized representative of the Grantee, I hereby certify that Grantee will comply with the above requirements.

[Name of Grantee]_City of El Paso_
GRANTEE:

By: John Cook, Mayor Date: _____
[Printed name, Title]