

**BETTER BUILDINGS PROGRAM/
HOME PERFORMANCE with ENERGY STAR COLLABORATION AGREEMENT
BETWEEN
NEW HAMPSHIRE COMMUNITY DEVELOPMENT FINANCE AUTHORITY
&
NORTHERN UTILITIES INC and UNITIL ENERGY SYSTEMS, INC.**

This Collaboration Agreement (the "Agreement") is made as of June 28, 2012, by and between the New Hampshire Community Development Finance Authority, 14 Dixon Avenue, Concord, NH 03301 ("CDFA") and Northern Utilities, Inc. and Unitil Energy Systems, Inc. ("Utility" or "the Utility"), 6 Liberty Lane West, Hampton, NH (and collectively, the "Parties") for the purpose of setting forth the exclusive terms and conditions by which the Utility shall receive BetterBuildings funding from CDFA to expand the Home Performance with Energy Star Pilot Program, (or its successors) within the Utility's service area.

RECITALS

WHEREAS, CDFA has been awarded funds of \$8,508,332 to implement the BetterBuildings Program ("BetterBuildings"), an initiative funded by the U.S. Department of Energy and New Hampshire Office of Energy and Planning providing a wide range of services, incentives, training and information promoting energy efficiency retrofits to buildings, and CDFA wishes to incent residential homeowners to seek access to rebates and financing for residential energy efficiency projects; and

WHEREAS, the Utility currently operates the Home Performance with Energy Star Pilot Program, as approved by the New Hampshire Public Utilities Commission ("HPwES Program") and would like to collaborate with CDFA to expand that program through the use of BetterBuildings funds, with the new, augmented HPwES Program being known as the "BetterBuildings HPwES Program."

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. The BetterBuildings HPwES Program

1.1. Program Description: Based on the terms of this Agreement, the Utility will offer the BetterBuildings HPwES Program to its customers, which program shall include all of the same features of the HPwES Program with the following three new program elements: (1) "deep dive" efficiency measures; (2) health and safety measures; and (3) enhanced financing, each of which is described below.

Deep Dive Measures: Those measures that result in energy or fossil fuel savings, but would not have to meet the standard cost effectiveness test employed by the PUC in the HPwES Program. Examples of Deep Dive Measures may include but are not limited to: exterior applied insulation, exterior insulated siding, ENERGY STAR appliances, insulation of duct work, ENERGY STAR windows, heat recovery ventilator, pellet heating conversions, and solar-thermal hot water.

Health & Safety Measures: Those measures that are necessary to implement the energy efficiency measures included in the HPwES program or are necessary to ensure that the HPwES energy efficiency measures will function properly; provided that the total cost for Health and Safety Measures shall not total more than 25% of the cost of the installed energy efficiency measures. Examples of Health & Safety Measures include but are not limited to: asbestos abatement, mold/mildew remediation, radon/water mitigation, damaged insulation removal (wet, rodent/insect infested) lead paint removal, replacement of knob & tube wiring, red tag furnace, and moisture management.

Enhanced Customer Financing: Qualifying BetterBuildings HPwES Program participants will be able to finance not only the measures offered under the Utility's HPwES Program, but also the entire cost of approved Deep Dive and Health & Safety Measures as well as heating system upgrades/replacements.

Northern Utilities, Inc. customers participating in the HPwES Program or BetterBuildings HPwES Program will receive heating and water heating equipment and controls rebates via the Utility's natural gas Residential High-Efficiency Heating, Water Heating and Controls program.

- 1.2. Program Goal and Funding: The Utility shall use its best efforts to retrofit 20 homes by Unitil Energy Systems, Inc. and 10 homes by Northern Utilities, Inc. through the BetterBuildings HPwES Program during the term of this Agreement. This figure is a best estimate of the number of retrofits to be completed in the Utility's service areas; however, it may increase or decrease based on a number of factors including but not limited to customer demand, availability of funds, and program staffing requirements. Homes in the portfolio must have an average estimated energy savings of at least 15%, as determined by standard HPwES estimation methodology utilized by the Utility, to be eligible for BetterBuildings funding through CDFA.

CDFA shall make available to the Utility BetterBuildings funds in the amount of \$136,521 for Unitil Energy Systems, Inc. and \$69,603 for Northern Utilities, Inc. to fund the homes to be retrofit through the BetterBuildings HPwES Program. CDFA, with prior consultation with the Utility and with no less than 30 days prior notice, reserves the right to decrease the amount of funding available in order to meet market demand and/or the spending timeliness requirements of the BetterBuildings

Program. Any adjustments to increase funding will be made by written mutual agreement of CDFA and the Utility.

Notwithstanding any provision of this Agreement to the contrary, all obligations of the Parties relating to the BetterBuildings Program, including, without limitation, the continuance of payments hereunder, are contingent upon the continued availability of BetterBuildings funds through the U.S. Department of Energy and New Hampshire Office of Energy and Planning. CDFA shall not be required to utilize its own funds or funds from any other account in the event BetterBuildings funds are reduced or become unavailable.

The following table depicts the anticipated costs to complete this work. The figures shown here are estimates. Invoices will be based on agreed upon pricing as detailed under Section 1.5 of this Agreement.

Unitil Energy Systems, Inc.

Cost Category	BetterBuildings	Utility	Total
HPwES Rebates			
Weatherization Rebates	\$20,110	\$20,110	\$40,220
HVAC Rebates	\$4,000	\$4,000	\$8,000
BetterBuilding Loans			
Weatherization	\$40,000		\$40,000
HVAC	\$40,000		\$40,000
Deep Dive Measures	\$10,000		\$10,000
Health & Safety Measures	\$10,000		\$10,000
Program Delivery Charge	\$12,411		\$12,411
Totals	\$136,521	\$24,110	\$160,631

Northern Utilities, Inc.

Cost Category	BetterBuildings	Utility	Total
HPwES Rebates			
Weatherization Rebates	\$13,275	\$13,275	\$26,550
HVAC Rebates			\$0

BetterBuilding Loans			
Weatherization	\$20,000		\$20,000
HVAC	\$20,000		\$20,000
Deep Dive Measures	\$5,000		\$5,000
Health & Safety Measures	\$5,000		\$5,000
Program Delivery Charge	\$6,328		\$6,328
Totals	\$69,603	\$13,275	\$82,878

1.3. Use of BetterBuildings Funds: Under the terms of this Agreement, BetterBuildings funds provided by CDFA to the Utility shall be used for the following purposes:

1.3.1. Customer Rebate

Customers participating in the Better Buildings HPwES Program receive a rebate in compliance with the PUC approved HPwES program. Up to half of the Customer Rebate may be paid with the BetterBuildings funds provided by CDFA hereunder and the remaining amount will be paid from the Utility's funds as part of the HPwES Program.

1.3.2. Customer Financing

BetterBuildings funds will be used to enable qualifying customers participating in the BetterBuildings HPwES Program to finance their portion of the cost of installing energy efficiency and other qualified measures up to a maximum of \$20,000. Loans will be offered at 0% interest, with no fees and invoiced on the customer's monthly utility bill. Loan repayment periods will vary depending on the amount borrowed. To be eligible for financing, customers must have a good payment history with the Utility and pass any other Utility other qualification requirement for financing.

The BetterBuildings HPwES Program will use the Utility's currently approved loan program as set forth in its tariff until such time as the Utility obtains approval from the New Hampshire Public Utilities Commission ("PUC") for an expanded program that will provide financing of up to \$20,000. Repayment periods and other loan specifics for any future loan program will be detailed in the Utility's tariff.

BetterBuildings HPwES Program participants may borrow additional amounts for measures that do not qualify for financing under the Utility's HPwES Program. These additional amounts may be used for Deep Dive and Health & Safety Measures. As long as the underlying BetterBuildings HPwES project is estimated to result in at least 15% energy savings, no additional analysis or modeling is needed for additional measures.

Customers that participate in either the BetterBuildings HPwES Program or the HPwES Program are eligible to receive financing under the BetterBuildings HPwES Program.

1.3.3. Program Delivery Charge

As compensation for delivering the BetterBuildings HPwES Program, CDFA shall pay the Utility a Program Delivery Charge equal to 10% of all funds expended by the Utility on the BetterBuildings HPwES Program.

1.4. Return of BetterBuildings Loan Funds: The Utility will invoice BetterBuilding HPwES borrowers as part of their monthly utility bill. The Utility will collect all customer repayments of BetterBuildings loans, and return all funds collected to CDFA on a quarterly basis. The Utility may not retain customer repayments as an offset to anticipated advances (see Section 3) of funds due from CDFA. The Utility's obligation to return customer payments of BetterBuildings loan funds to CDFA shall not lapse upon termination of this Agreement but shall continue until all loans made under this Agreement have been repaid or credited as set forth in Section 4 of the Agreement.

1.5. Invoicing and Pricing: The Utility will submit invoices to CDFA within 10 days following the end of each month for those services provided pursuant to this Agreement. Standard items will be billed in accordance with the Unit Price Schedule included as **Attachment A** to this Agreement. Invoices will be provided electronically and include a Summary Report indicating the billing for each project, as well as a Project Detail Report indicating the number of units of each item used on each project. Projects containing custom measures (e.g. Deep Dive, Health & Safety, heating systems) will include the vendor invoice or other supporting documentation for each custom measure.

1.6. Periodic Reporting: The Utility shall provide to the CDFA a report within 15 calendar days of the end of each calendar quarter in a form and manner as prescribed by CDFA. **Attachment B** attached provides a list and format of the information to be included in that report.

1.7. Utility's Responsibilities and Discretion: The Utility will run the BetterBuildings HPwES Program in the same manner as it runs the Utility's HPwES Program. Utility shall be responsible for all underwriting, funding and servicing of loans made with BetterBuildings Funds, including compliance with all applicable legal

requirements. The determination of whether or not to make a BetterBuildings HPwES Program loan under this Agreement to any customer is wholly within the Utility's discretion.

This Agreement specifies the terms under which the Utility and CDFA agree to collaborate to achieve the goal of retrofitting homes within the Utility's service area on a "best effort" basis. This Agreement makes no warranty as to the number of homes that will be retrofitted, and CDFA agrees not to hold the Utility liable for failure to meet the retrofit goal specified herein; provided; however, that Utility shall keep CDFA apprised of the status of its progress towards meeting the retrofit goal consistent with the requirements of Section 1.6.

2. Term

The term of this Agreement shall commence effective with the date of its execution by the Parties and shall terminate on the earliest of (1) April 30, 2013, (2) the expenditure of all funds available for the BetterBuildings HPwES Program, or (3) 30 days after receipt of written notice of termination from either Party; provided, however, that CDFA shall pay Utility for all work in progress, rebates, and any loans enrolled under the BetterBuildings HPwES Program and any other services provided by the Utility pursuant to this Agreement through the date of termination. CDFA acknowledges that the Utility cannot begin providing services under this Agreement until the PUC authorizes the Utility to conduct the BetterBuildings HPwES Program.

CDFA agrees to provide the Utility with advance notice, in writing, of the potential for all available BetterBuildings funds to be fully expended as CDFA is best able to estimate. Upon receiving such notice, Utility will cease offering the BetterBuildings HPwES Program.

3. Advance of Funds

CDFA shall advance the Utility \$25,000 within 5 business days from the date the Utility notifies CDFA that the PUC authorizes the Utility to provide the BetterBuildings HPwES Program so that the Utility has funds sufficient to begin providing services under this Agreement. The Utility shall notify CDFA in writing when it needs further advances of funds to provide services under this Agreement. CDFA shall make additional advances to Utility within five (5) business days of receiving a request from Utility. At the time the total advances held by the Utility equals or exceeds the amount of funding that remains available, CDFA shall make no further advances of funds and Utility shall use the advances that remain to pay the remainder of the claims for the program. If, after all claims have been paid, there remain advances in the possession of Utility, Utility shall remit to CDFA those amounts within 30 days.

The Utility shall disburse rebates as well as any loaned customer co-payment amounts directly to the HPwES contractor. Loans made for approved Deep Dive, Health & Safety, or heating system work, will be disbursed to the customer.

4. Loan Defaults

In the event that a customer participating in the BetterBuildings HPwES Program fails to repay a loan made by the Utility, the Utility will make every reasonable effort to collect the unpaid balance consistent with its existing collections programs. Upon default, the Utility shall submit a notice to CDFA of the default. In the event that the Utility is unsuccessful in the collection effort, the BetterBuildings Program shall incur the loss of the unpaid loan amount, and the Utility shall not be responsible for the return of those BetterBuildings funds to CDFA, unless the customer later provides full or partial payment of its loan in which case the funds, net of any collection fees, shall be returned to CDFA.

5. Party Representatives

5.1. Prior to commencement of the Agreement, each Party shall identify to the other a representative authorized to receive all communications, provide approvals or authorizations required, and act on behalf of each party in all matters concerning this Agreement. At its sole discretion, either Party may change its representative at any time by providing written notice to the other Party.

5.2. Each Party's representative will make decisions in writing within a reasonable time on all matters relating to this Agreement.

5.3. All notices, instructions, and other communications shall be in writing and shall be delivered by registered mail or by confirmed email or fax to the parties at the following addresses:

For the Utility:

Thomas Palma
Manager, DER
Unitil Service Corp.
325 West Road
Portsmouth, NH 03801
Phone: 603-294-5172

Fax: 603-294-5272
Email: palma@unitil.com

For CDFA:

Katharine Bogle Shields
Executive Director
NH Community Development Finance Authority
14 Dixon Avenue, Suite 102
Concord, NH 03301
Phone: 603-226-2170

Fax: 603-226-2816
Email: kshields@nhcdfa.org

All such notices and communications shall be deemed to have been delivered on the date of delivery, if delivered by certified mail, or on the date confirmation was sent if delivered by confirmed email or fax.

6. Confidential Information

Each Party acknowledges that it may be necessary to disclose Confidential Information to the other. The Utility may disclose to CDFA information about participating customers to the extent necessary to carry out its responsibilities under this Agreement. Personally identifiable Customer Information (including name, phone number, address and financial information) shall be kept confidential by CDFA and its agents, employees, and representatives in compliance with all applicable federal and state laws, and CDFA shall take appropriate measures to protect Customer Information.

Except to the extent set forth in this article, or as otherwise agreed to in writing by the Parties, each Party agrees not to disclose to third parties, unless required by the American Recovery and Reinvestment Act flow down requirements, any Confidential Information that is disclosed pursuant to this Agreement.

Any Information transmitted to either party will not be deemed Confidential Information if that information is: (a) in the receiving party's possession without restriction on disclosure prior to disclosure hereunder; (b) at the time of disclosure, generally available to the public without restriction on disclosure; (c) after disclosure, generally available to the public without restriction on disclosure, by publication or otherwise, through no fault of the receiving party; or (d) after the time of disclosure, received from a third party who imposes no obligation of confidentiality and who, insofar as the receiving party can reasonably determine, did not acquire any such Confidential Information directly or indirectly from the other party subject to requirements of confidentiality.

7. Indemnification

Utility shall indemnify, hold and save harmless, and defend, at Utility's own expense, CDFA, its officials, agents, and employees from and against all suits, claims, demands, and liability of any nature or kind, including its costs and expenses, arising out of acts or omissions of the Utility's employees, officers, agents, or sub-contractors, in the execution and implementation of this Agreement.

CDFA shall indemnify, hold and save harmless, and defend, at CDFA's own expense, ~~the Utility, its officials, agents, and employees from and against all suits, claims, demands, and liability of any nature or kind, including its costs and expenses, arising out of acts or omissions of CDFA's employees, officers, agents, or sub-contractors, in the execution and implementation of this Agreement.~~

8. Miscellaneous

- 8.1. Notification of Material Changes: Each Party shall notify the other Party of any material changes in the mode of operation, change of premises, significant negative change in financial position or source or method of funding, as well as any litigation or proceedings before any court or administrative agency that may adversely affect its ability to fulfill its contractual obligations under this Agreement.
- 8.2. Entire Agreement; Waiver and Modification: This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes any and all prior agreements and undertakings, written or oral, with respect to the subject matter. Any waiver, amendment, or modification of the provisions shall not be effective unless in writing and signed by the Parties. Any waiver or consent shall be effective only in the specific instance and for the specific purpose for which given and shall not be construed to affect any other or future waiver or consent.
- 8.3. Severability: If any one or more of the provisions of this Agreement shall be found to be invalid, illegal, or unenforceable in any respect or to any extent, such finding shall not affect the validity, legality, or enforceability of such provisions in any other jurisdiction, and the validity, legality, and enforceability of the remaining provisions of this Agreement shall not in any way be affected, impaired, or restricted.
- 8.4. Counterparts: This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall be deemed to be a single agreement.
- 8.5. No Waiver; Remedies: No failure on the part of CDFA or the Utility to exercise, and no delay in exercising, and no course of dealing with respect to, any right, power, or privilege under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power, or remedy under this Agreement preclude any other or further exercise thereof or the exercise of any other right, power, or remedy. The remedies provided herein are cumulative and not exclusive of any remedies provided by law.
- 8.6. Governing Laws: This Agreement shall be governed by and construed in accordance with the laws of the State of New Hampshire, without regard to its conflicts of laws principles. In any legal action arising from this Agreement, the substantially prevailing party shall be entitled to reasonable attorney's fees, including costs allocated for in-house counsel, other costs, and necessary disbursements incurred in connection with the action or proceeding as determined by a court. Any legal action brought with respect to this Agreement shall be brought in the state or federal court in New Hampshire having jurisdiction.
- 8.7. Nondiscrimination in Customer Services: The Utility shall not, on the grounds of race, color, sex, sexual orientation, religion, national origin, creed, marital status,

age, or disability, unlawfully:

8.7.1. Deny an Eligible Customer any facilities, financial aid, services, or other benefits provided under this Agreement;

8.7.2. Provide any service(s) or other benefits to an Eligible Customer that are different, or are provided in a different manner, from those provided to others under this Agreement or confer separate treatment in any manner related to the receipt of any service(s) or other benefits provided under this Agreement; and

8.7.3. Deny an Eligible Customer an opportunity to participate in any program provided by this Agreement through the provision of service(s) or otherwise, or any Eligible Customer an opportunity to do so that is different from that afforded others under this Agreement.

8.8. Survivability: Sections 1.4, 1.5, 2, 4, 6, and 8 shall survive termination of this Agreement.

8.9. Acknowledgements: Participating Utilities agree to comply with the ARRA Standard Terms, where applicable, as outlined in Exhibit C of this agreement.

IN WITNESS WHEREOF, the Parties to this Agreement have caused this Agreement to be duly executed as of the date first written above.

Unitil Energy Systems, Inc.
Northern Utilities, Inc.

COMMUNITY DEVELOPMENT
FINANCE AUTHORITY

By: Todd Black
Its duly authorized agent

By: Katharine Bogle Shields
Its duly authorized agent

Todd Black
Printed Name

Katharine Bogle Shields
Printed Name

SVP
Title

Executive Director
Title

EXHIBIT C TO P-37 (ARRA PROVISIONS)



Exhibit C

American Recovery and Reinvestment Act Standard Terms

Notwithstanding any provision of this Agreement to the contrary, the following terms and conditions shall govern and take precedence over any conflicting provision in this Agreement.

The Contractor/Grantee shall obtain a DUNS number (www.dnb.com), and register with the Central Contractor Registry (CCR, www.ccr.gov). The Contractor/Grantee shall require any subcontractor/subgrantee to obtain a DUNS number.

The Contractor/Grantee agrees to advertise any sub-contract/sub-grant opportunity arising from this contract/grant to be paid for with American Recovery and Reinvestment Act funds on the State of New Hampshire, Department of Administrative Services "Bidding Opportunities" web site, by completing a bid description form available at: http://www.sunspot.admin.state.nh.us/statecontracting/Documents/bid_form.doc and submitting it to the Contracting Officer or Grant Manager who will submit the form to purchweb@nh.gov. The bid description form may also be obtained in person from the Office of Economic Stimulus at the State House Annex, Room 202-A, 25 Capitol Street, Concord, New Hampshire 03301, by U.S. mail to 107 North Main Street, State House – Room 208 Concord, New Hampshire 03301. Requests can be made by phone, (603) 271-2121, or by email, NHOES@nh.gov.

The Contractor/Grantee, upon entering into any sub-contract/sub-grant to be paid for with American Recovery and Reinvestment Act funds received through this contract/grant for the purpose of carrying out this agreement, agrees to provide the Contracting Officer/Grant Manager and the Office of Economic Stimulus redacted PDF or paper copies of the executed sub-contracts/sub-grants. A copy may be submitted by e-mail to NHOES@nh.gov or by U.S. Mail to 107 North Main Street, State House – Room 208 Concord, New Hampshire 03301 or by delivery to the Office of Economic Stimulus, State House Annex, Room 202-A, 25 Capitol Street, Concord, New Hampshire 03301. The copies provided to the State shall have any proprietary or non-public information, the disclosure of which would constitute an invasion of privacy, redacted. All contracts/grants to individuals and those for amounts of less than \$25,000 shall be reported in the aggregate by written narrative in a manner that protects the privacy interests of any individual recipient. The written narrative shall include the purpose of the sub-contract(s)/grant(s), the aggregate amount of the sub-contract(s)/grant(s), and an estimate of the jobs created and the jobs retained by job type, if any, as a result of the sub-contract(s)/grant(s). All contracts/grants awarded using American Recovery and Reinvestment Act funds will be posted on the NH Recovery web site and may be posted on the federal Recovery.gov web site.

The Contractor/Grantee shall comply, and require any subcontractor/subgrantee to comply with all applicable statutes, laws, regulations, and orders of federal, state, county or municipal authorities which shall impose any obligation or duty upon the Contractor/Grantee and subcontractor/subgrantee, including, but not limited to:

The Contractor/Grantee shall comply with, and shall require any subcontractor/subgrantee to comply with, applicable provisions of the American Recovery and Reinvestment Act of 2009, Public Law 111-5 ("ARRA"), and applicable federal, rules, orders, regulations and guidelines issued pursuant thereto, as amended from time to time, including, but not limited to:

Section 1512 Reporting:

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

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

EXHIBIT C TO P-37 (ARRA PROVISIONS)

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

First-tier subcontract: means a subcontract awarded directly by a prime contractor whose contract is funded by ARRA.

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

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

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

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

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

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

Section 1512, at a minimum, requires the following data from the Contractor/Grantee:

- (1) An evaluation of the completion status of the project or activity;
- (2) An estimate of the number of jobs created by the project or activity by job type;
- (3) An estimate of the number of jobs retained by the project or activity by job type;
- (4) Total hours of employees working on the project or activity (subtotal by jobs created and existing jobs);
- (5) Total wages for employees working on the project or activity (subtotal by jobs created and existing jobs);
- (6) For infrastructure investments made by State and local governments, the purpose, total cost, and rationale of the agency for funding the infrastructure investment with funds made available under this Act, and name of the person to contact at the agency if there are concerns with the infrastructure investment; and
- (7) Detailed information on any subcontracts or subgrants awarded by the recipient to include the data elements required to comply with the Federal Funding Accountability and Transparency Act of 2006 (Public Law 109-282),

EXHIBIT C TO P-37 (ARRA PROVISIONS)

allowing aggregate reporting on awards below \$25,000 or to individuals, as prescribed by the Director of the Office of Management and Budget.

The Contractor/Grantee agrees to provide the following data required by the Federal Funding Accountability and Transparency Act, 31 U.S.C. 6101, for both the contractor/grantee and any subcontractor(s)/subgrantee(s):

The name of the entity receiving the award (must match the name used for establishing the entity's DUNS number and Contractor Central Registry);

The amount of the award;

Information on the award including transaction type, funding agency, the North American Industry Classification System code or Catalog of Federal Domestic Assistance Number (where applicable), program source, and an award title descriptive of the purpose of each funding action;

The location of the entity receiving the award and the primary location of performance under the award, including the city State, congressional district, and county;

The DUNS number and Central Contractor Registry numbers of the entity receiving the award and of the parent entity of the recipient, should the entity be owned by another entity; and

Any other relevant information specified by the Office of Management and Budget ("OMB"). Currently no further information is being required by OMB.

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

Reports from contractors for all work funded, in whole or in part, by the Recovery Act, and for which an invoice is submitted prior to the last day of each month, are due no later than the fifth day of each month.

The Contractor/Grantee shall report the following additional information, to the contracting officer or grant manager identified in this contract/grant in an Excel spreadsheet or paper report in the form provided by the State. The State agrees to provide the Contractor/Grantee with a report form that has pre-filled the data elements known to the State:

- (1) The Government contract and order number, as applicable;
- (2) The amount of Recovery Act funds invoiced by the contractor for the reporting period. A cumulative amount from all the reports submitted for this action will be maintained by the state;
- (3) A list of all significant services performed or supplies delivered, including construction, for which the contractor invoiced in this calendar month;
- (4) Program or project title, if any;
- (5) A description of the overall purpose and expected outcomes or results of the contract, including significant deliverables and, if appropriate, associated units of measure;
- (6) An assessment of the contractor's/grantee's progress towards the completion of the overall purpose and expected outcomes or results of the contract/grant (i.e., not started, less than 50 percent completed, completed 50 percent or more, or fully completed). This covers the contract/grant (or portion thereof) funded by the Recovery Act;
- (7) A narrative description of the employment impact of work funded by the Recovery Act. This narrative should be cumulative for each calendar month and only address the impact on the contractor's workforce. At a minimum, the contractor shall provide:
 - (i) A brief description of the types of jobs created and jobs retained in the United States and outlying areas (see definition in FAR 2.101). This description may rely on job titles, broader labor categories, or the contractor's existing practice for describing jobs as long as the terms used are widely understood and describe the general nature of the work; and
 - (ii) An estimate of the number of jobs created by job type and a separate estimate of the number of jobs retained by job type, by the contractor/grantee and separately by any subcontractor(s)/subgrantee(s), in the United States and outlying areas. A job cannot be reported as both created and retained.

EXHIBIT C TO P-37 (ARRA PROVISIONS)

(8) If the Contractor/Grantee meets the criteria set forth below, the names and total compensation of each of the five most highly compensated officers of the Contractor for the calendar year in which the contract is awarded. This requirement applies only if:

(i) In the Contractor's/Grantee's preceding fiscal year, the Contractor/Grantee received—

(A) 80 percent or more of its annual gross revenues from Federal contracts (and subcontracts), loans, grants (and subgrants) and cooperative agreements; and

(B) \$25,000,000 or more in annual gross revenues from Federal contracts (and subcontracts), loans, grants (and subgrants) and cooperative agreements; and

(ii) The public does not have access to information about the compensation of the senior executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986.

(9) For subcontracts/subgrants valued at less than \$25,000 or any subcontracts/subgrants awarded to an individual, or subcontracts/subgrants awarded to a subcontractor/subgrantee that in the previous tax year had gross income under \$300,000, the Contractor shall only report the aggregate number of such first tier subcontracts/subgrants awarded in the month and their aggregate total dollar amount.

(10) For any first-tier subcontract/subgrant funded in whole or in part under the Recovery Act, that is over \$25,000 and not subject to reporting under paragraph 9, the contractor shall require the subcontractor/subgrantee to provide the information described in (i), (ix), (x), and (xi) below to the contractor for the purposes of the monthly report. The contractor shall advise the subcontractor that the information will be made available to the public as required by section 1512 of the Recovery Act. The contractor shall provide detailed information on these first-tier subcontracts as follows:

(i) Unique identifier (DUNS Number) for the subcontractor/subgrantee receiving the award and for the subcontractor's/subgrantee's parent company, if the subcontractor/subgrantee has a parent company;

(ii) Name of the subcontractor/subgrantee;

(iii) Amount of the subcontract/subgrant award;

(iv) Date of the subcontract/subgrant award;

(v) The applicable North American Industry Classification System (NAICS) code;

(vi) Funding agency;

(vii) A description of the products or services (including construction) being provided under the subcontract/subgrant, including the overall purpose and expected outcomes or results of the subcontract/subgrant;

(viii) Subcontract/subgrant number (the contract number assigned by the prime contractor);

(ix) Subcontractor's/subgrantee's physical address including street address, city, state, and country. Also include the nine-digit zip code and congressional district if applicable;

(x) Subcontract/subgrant primary performance location including street address, city, state, and country. Also include the nine-digit zip code and congressional district if applicable;

(xi) If the Contractor/Grantee meets the criteria set forth below, the names and total compensation of each of the subcontractor's five most highly compensated officers, for the calendar year in which the subcontract is awarded. This requirement applies only if;

(A) In the subcontractor's/subgrantee's preceding fiscal year, the subcontractor/subgrantee received:

(i) 80 percent or more of its annual gross revenues in Federal contracts (and subcontracts), loans, grants (and subgrants), and cooperative agreements; and

EXHIBIT C TO P-37 (ARRA PROVISIONS)

(2) \$25,000,000 or more in annual gross revenues from Federal contracts (and subcontracts), loans, grants (and subgrants), and cooperative agreements; and

(B) The public does not have access to information about the compensation of the senior executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986;

(11) The contractor/grantee shall require the subcontractor/sub-grantee to register with the federal government Central Contractor Registration (CCR) database at www.ccr.gov.

Inspection:

The Contractor/Grantee agrees that the Comptroller General of the United States, an appropriate Inspector General appointed under section 3 or 8G of the Inspector General Act of 1978 (5 U.S.C. App.), or an authorized representative of either of the foregoing officials, or of the State of New Hampshire shall have access to and the right to:

(1) Examine any of the Contractor's/Grantee's or any subcontractor's/subgrantee's records that pertain to and involve transactions relating to this contract/grant or a subcontract/subgrant hereunder; and

(2) Interview any officer or employee regarding such transactions. The Contractor/Grantee shall insert a clause containing all the terms of this section, including this paragraph, in all subcontracts under this contract. The clause may be altered only as necessary to identify properly the contracting parties and the Contracting Officer/Grant Manager under the Government prime contract.

Whistleblower Protection Notice:

ARRA Section 1553 establishes whistleblower protections that apply to the contractor/grantee, and any subcontractor/subgrantee pursuant to this agreement. The Contractor shall post notice of employees rights and remedies for whistleblower protections provided under section 1553 of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5). The Contractor shall include the substance of this clause including this paragraph in all subcontracts. The posted notice required by this clause shall include contact information to report fraud, waste, or abuse to the Inspector General of the federal department that is the source of the ARRA funds for this contract/grant, fraud to the New Hampshire Attorney General's Office Criminal Bureau, and waste or abuse to the Office of Economic Stimulus. A notice for this purpose is available at <http://www.nh.gov/recovery/>.

4. The Contractor/Grantee agrees to comply with the Emergency Economic Stabilization Act of 2008 requirements (as amended in Section 1608 of the Recovery Act), 12 U.S.C. 5217(b), which provide for the inclusion and utilization, to the maximum extent practicable, of minorities (as such term is defined in section 1204(c) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 1811 note)) and women, and minority- and women-owned businesses (as such terms are defined in 12 U.S.C.1441a(r)(4) of this title), and individuals with disabilities and businesses owned by individuals with disabilities;

5. The Contractor/Grantee agrees to comply with the National Environmental Policy Act of 1969 (P.L. 91-190) requirements in Section 1609, including requirements for plans and projects to be reviewed and documented in accordance with those processes; and Executive Order 11514; notification of violating facilities pursuant to Executive Order 11738; protection of wetlands pursuant to Executive Order 11990 and State law; evaluation of flood hazards in floodplains in accordance with Executive Order 11988; assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§1451 et seq.); conformity of Federal Actions to State (Clean Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. §§7401 et seq.); protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93-523); and protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93-205);

6. The Contractor/Grantee agrees to comply with all anti-discrimination and equal opportunity statutes, regulations, and Executive Orders that apply to the expenditure of funds under Federal contracts, grants, cooperative agreements, loans, and other forms of Federal assistance, and all State and federal anti-discrimination statutes including but not limited to: Title VI of the Civil Rights Act of 1964, which prohibits discrimination on the basis of race, color, or national origin; Title IX of the Education Amendments of 1972, (20 U.S.C. §§ 1681-1683 and 1685-1686),

EXHIBIT C TO P-37 (ARRA PROVISIONS)

which prohibits discrimination on the basis of sex; Section 504 of the Rehabilitation Act of 1973 as amended (29 U.S.C. §794), which prohibits discrimination on the basis of handicaps; the Age Discrimination Act of 1975 as amended (42 U.S.C. §§6101-6107), which prohibits discrimination on the basis of age; the Drug Abuse Office and Treatment Act of 1972 (P.L.92-255), as amended, relating to nondiscrimination on the basis of drug abuse; the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; §§523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§ 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§3601 et. seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; Executive Order 11246; any other nondiscrimination provisions in ARRA, and any program-specific statutes with anti-discrimination requirements; as well as generally applicable civil rights laws including, but not limited to, the Fair Credit Reporting Act, 15 U.S.C. § 1681 et seq.; the Americans With Disabilities Act, 42 U.S.C. §§ 12101 et seq.; Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e et seq., relating to employment rights and preventing employment discrimination; the Equal Educational Opportunities Act, 20 U.S.C. § 1703, prohibiting denial of an equal educational opportunity to an individual on account of his or her race, color, sex, or national origin; the Age Discrimination in Employment Act, 29 U.S.C. § 634, prohibiting age discrimination against persons 40 years of age or older; the Uniform Relocation Act, 42 U.S.C.A. § 4601 et seq., establishing uniform policies to compensate people displaced from their homes or businesses by state and local government programs; and New Hampshire Revised Statutes Annotated Chapter 354-A, prohibiting certain discrimination in employment, in places of public accommodation and in housing accommodations.

7. The Contractor/Grantee agrees to comply with 40 U.S.C. §§ 3701, et seq., Contract Work Hours and Safety Standards Act; 41 U.S.C. §§ 51–58, Anti-Kickback Act of 1986; 41 U.S.C. § 265 and 10 U.S.C. § 2409 relating to whistleblower protections; the Hatch Act, 5 U.S.C. §§1501-1508 and 7324-7328, which limits the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds; and the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§401 et seq.), which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.

8. The Contractor/Grantee agrees to comply with 31 U.S.C. § 1352, relating to limitations on the use of appropriated funds to influence certain Federal contracts and New Hampshire Revised Statute Annotated 15:5 which prohibits to use of funds appropriated or granted by the State for lobbying or electioneering.

Limitations on the use of federal Grant or Contract Funds for Lobbying:

a. The law prohibits Federal funds from being expended by the recipient or any lower tier sub-recipients of a Federal contract, grant, loan, or cooperative agreement to pay any person for influencing or attempting to influence a Federal agency or Congress in connection with the awarding of any Federal contract, the making of any Federal grant or loan, or the entering into of any cooperative agreement. The extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan, or cooperative agreement is also covered.

b. Federal-aid contractors, consultants, and grant recipients as well as lower tier subcontractors, subconsultants, and grant sub-recipients are also subject to the lobbying prohibition.

c. To assure compliance, for any contract or grant, including any sub-contract or grant exceeding \$100,000 the contractor/grantee and sub-contractor/sub-grantee must submit and update as required a “Disclosure of Lobbying Activities” form, (OMB Standard Form LLL), available at <http://www.nh.gov/recovery/library/index.htm>.

1. During the grant or contract period, contractors/grantees and sub-contractors/sub-grantees must file disclosure form (Standard Form LLL) at the end of each calendar year in which there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any previously filed disclosure form.

2. Lower tier certifications should be maintained by the next tier above (i.e. prime contractors/grantees will keep the subcontractors/subgrantee’s certification on file, etc.)

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

Funds appropriated under the ARRA can, under certain circumstances, be used for grants to nonprofit organizations. However, grants cannot be awarded to a nonprofit organization classified by the Internal Revenue Service as a 501(c)(4) organization unless that organization certifies that it will not engage in lobbying activities, even with their own funds (see Section 18 of the Lobbying Disclosure Act, 2 U.S.C.A § 1611).

EXHIBIT C TO P-37 (ARRA PROVISIONS)

9. The Contractor/Grantee agrees to comply with The National Historic Preservation Act of 1966, as amended (16 U.S.C. §470), Executive Order 11593 (identification and protection of historic properties) and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. §§469a-1 et. seq.); and related statutes, including requirements for plans and projects to be reviewed and documented in accordance with those processes.

10. The Contractor/Grantee, and any subcontractor/subgrantee, shall immediately refer to an appropriate inspector general within the U.S. Department of (fill in name of federal agency providing ARRA funds) _____, Office of the Inspector General, and to the Public Integrity Unit of the New Hampshire Attorney General's Office (603) 271-3671, any credible evidence that a principal, employee, agent, contractor, sub-grantee, subcontractor or subgrantee, 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.

The Contractor/Grantee, and any subcontractor/subgrantee agree to maintain at each worksite and location of work funded by this Agreement a poster describing how to report fraud, waste, or abuse of ARRA funds. A model poster for this purpose, which also incorporates the whistleblower notice requirements, is available at <http://www.nh.gov/recovery/>.

11 Any funding provided to the Contractor/Grantee pursuant to the Recovery Act that is supplemental to an existing grant is one-time funding.

12. The Recovery Act funds are not eligible for costs incurred prior to the date of obligation.

13. The Contractor/Grantee agrees that in compliance with ARRA section 1604 none of the funds appropriated or otherwise made available in this Act 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.

14. The Contractor/Grantee agrees to establish and maintain a proper accounting system in accordance with generally accepted accounting standards.

To maximize the transparency and accountability of funds authorized under ARRA as required by Congress and in accordance with 2 CFR 215, subpart ____ 21 "Uniform Administrative Requirements for Grants and Agreements" and OMB A-102 Common Rules provisions, the Contractor/Grantee agree to maintain records that identify adequately the source and application of Recovery Act funds.

For recipients covered by the Single Audit Act Amendments of 1996 and OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations," recipients agree to separately identify the expenditures for Federal awards under the Recovery Act on the Schedule of Expenditures of Federal Awards (SEFA) and the Data Collection Form (SF-SAC) required by OMB Circular A-133. This shall be accomplished by identifying expenditures for Federal awards made under 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.

Recipients agree to separately identify to each sub-recipient, and document at the time of sub-award and at the time of disbursement of funds, the Federal award number, CFDA number, and amount of Recovery Act funds. When a recipient awards Recovery Act funds for an existing program, the information furnished to sub-recipients shall distinguish the sub-awards of incremental Recovery Act funds from regular sub-awards under the existing program.

Recipients agree to require their sub-recipients to include on their SEFA information to specifically identify Recovery Act funding similar to the requirements for the recipient SEFA described above. This information is needed to allow the recipient to properly monitor sub-recipient expenditure of ARRA funds as well as oversight by the Federal awarding agencies, Offices of Inspector General, the Government Accountability Office, and the State of New Hampshire.

Where applicable, Recipients will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996 and OMB Circular No. A-133, "Audits of States, Local Governments, and Non-Profit Organizations."

EXHIBIT C TO P-37 (ARRA PROVISIONS)

15. Debarment. The Contractor/Grantee by signing this Agreement certifies that the Contractor/Grantee, including all principals, is not currently under debarment or suspension and has not been under debarment or suspension within the past three years, as required by 49 CFR 29.510. The Contractor/Grantee agrees to notify the Contracting Officer/Grant Manager within 30 days of being debarred or suspended from federal government contracts.

16. The Contractor/Grantee certifies by entering into this contract that it has the institutional, managerial, and financial capability to ensure proper planning, management, and completion of the project described in this Agreement.

17. The Contractor/Grantee agrees to comply with the prohibitions on the giving of gifts to public officials established by RSA chapter 15-B.

18. The Contractor/Grantee agrees to post any job openings resulting from this contract/grant on the Department of Employment Security NHWorks Job Match System, available at <https://nhworksjobmatch.nhes.nh.gov/>.

19. The Contractor/Grantee shall cause the provisions of this Exhibit C of the General Provisions to be inserted in all subcontracts for any work or project activities covered by this Agreement so that the provisions will be binding on each subcontractor or subgrantee. The Contractor/Grantee shall take such action with respect to any subcontract as the State, or, the United States, may direct as a means of enforcing such provisions, including without limitation, sanctions for noncompliance.

TERMS APPLYING ONLY TO SPECIFIC CONTRACTS/GRANTS

The following Use It or Lose It – Report It or Lose It provision should be used where the State has authority to withdraw funds if the contractor/grantee fails to perform on time or fails to file required reports. Where the State is obligated by federal or State law to provide the funds being awarded or granted, omit this provision. Contracting Officers may exercise discretion and omit the provision where the nature of the goods or services being acquired and the nature of the contractor/grantee makes the provision inappropriate or unnecessary. Questions regarding use or omission of the provision should be discussed with the Assistant Attorney General Assigned to your Department and/or the Business Supervisor from the Department of Administrative Services assigned to your Department.

Use It or Lose It and Report It or Lose It Requirement. This contract/grant is being funded by funds received by the State of New Hampshire pursuant to ARRA. Federal law provides in part that in using funds made available under ARRA for infrastructure investment, recipients shall give preference to activities that can be started and completed expeditiously, including a goal of using at least 50 percent of the funds for activities that can be initiated not later than 120 days after the date of the enactment of ARRA. Federal guidance also directs that all ARRA funds be put to work in the community promptly. Recipients shall also use grant funds in a manner that maximizes job creation and economic benefit. ARRA imposes enhanced levels of accountability and transparency.

Therefore, prompt and accountable performance of this contract/grant is OF THE ESSENCE. Thus, for all obligations of the contractor/grantee, time is of the essence. In addition to the clauses set forth in the standard form P-37, the State reserves the right to terminate this contract/grant and to award a new contract/grant to a new contractor/grantee for any unearned portion of the contract price if the contractor/grantee fails to perform according to the timeline promised, fails to comply with accountability requirements in this Agreement and ARRA, or fails to file monthly reports on time.

The following Buy American contract term shall be included in any contract or grant where the ARRA funds being awarded by contract or grant that will or may be used for a project for the construction, alteration, maintenance, or repair of a public building or public work. Contracting Officers and Grant Managers must determine if the project/grant is subject to any other federal “Buy American” or “Buy America” laws. The Contract Manager or Grant Manager shall substitute the federally-mandated contract term for this term where the federal agency providing ARRA funds has provided specific language regarding that federal program’s “Buy America” or “Buy American” requirements. To the extent the responsible federal Secretary has waived the application of “Buy American” or “Buy America” requirements for specified iron, steel, or manufactured goods, a list of pertinent waived items should be incorporated into the contract. Consult with the Assistant Attorney General assigned to your Department and/or the Business Supervisor from the Department of Administrative Services assigned to your Department for assistance if needed.

Buy American:

EXHIBIT C TO P-37 (ARRA PROVISIONS)

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

As used in this “Buy American” term and condition:

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

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

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

(2) Public building and public work means a public building of, and a public work of, a governmental entity (the United States; the District of Columbia; commonwealths, territories, and minor outlying islands of the United States; State and local governments; and multi-State, regional, or interstate entities which have governmental functions). These buildings and works may include, without limitation, bridges, 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.

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

The Contractor/Grantee acknowledges to and for the benefit of the State of New Hampshire that it understands the goods and services under this Agreement are being funded with monies made available by ARRA and such law contains provisions commonly known as “Buy American;” that requires all of the iron, steel, and manufactured goods used in the project be produced in the United States (“Buy American Requirements”) including iron, steel, and manufactured goods provided by the Contractor pursuant to this Agreement. The Contractor/Grantee hereby represents and warrants to and for the benefit of the State that (a) the Contractor/Grantee has reviewed and understands the Buy American Requirements, (b) all of the iron, steel, and manufactured goods used in the project funded by this agreement will be and/or have been produced in the United States in a manner that complies with the Buy American Requirements, unless a waiver of the requirements has been approved by federal authorities, and (c) the Contractor/Grantee will provide any further verified information, certification or assurance of compliance with this paragraph, or information necessary to support a waiver of the Buy American Requirements, as may be requested by the State. Notwithstanding any other provision of the Agreement, any failure to comply with this paragraph by the Contractor/Grantee shall permit the State to recover as damages against the Contractor/Grantee any loss, expense or cost (including without limitation attorney’s fees) incurred by the State resulting from any such failure (including without limitation any impairment or loss of funding, whether in whole or in part, from the State or any damages owed to the State).

EXHIBIT C TO P-37 (ARRA PROVISIONS)

The Contractor (or the Grantee with any contract issued pursuant to the grant agrees to require a certification from the Contractor) agrees to certify compliance with a certification in the following form:

Identification of American-made Iron, Steel, and Manufactured Goods: Consistent with the terms of the bid solicitation and the provisions of ARRA Section 1605, the Contractor certifies that the bid on which this contract is based reflects the Contractor's best, good faith effort to identify domestic sources of iron, steel, and manufactured goods for every component contained in the bid solicitation where such American-made components are available on the schedule and consistent with the deadlines prescribed in or required by the bid solicitation.

Verification of U.S. Production: The Contractor certifies that all components contained in the bid solicitation that are American-made have been so identified, and the Contractor agrees that it will provide reasonable, sufficient, and timely verification to the State of the U.S. production of each component so identified.

The following Prevailing Wage Provision is applicable to wages for labors and mechanics for any contract in excess of \$2,000 which is entered into for the actual construction, alteration and/or repair, including painting and decorating, of a public building or public work, or building or work financed in whole or in part from ARRA funds. Section 1606 of ARRA in effect applies the Davis-Bacon prevailing wage law and related federal laws to projects funded directly by or assisted in whole or in part by and through the Federal Government pursuant to ARRA. If there is any uncertainty regarding the applicability of this term, the Contracting Officer or Grant Manager shall consult with the Assistant Attorney General assigned to his/her department.

This law and the guidance on its implementation issued by OMB contemplate that the government agency will identify the pertinent wage determinations made by the federal department of labor and incorporate them into the contract. Determinations are county specific, and job specific. It may be necessary to obtain wage determinations if one has not been published for jobs to be created by the contract. For further information see: <http://www.gpo.gov/davisbacon/referencemat.html>

Prevailing Wage Requirements:

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

29 CFR §5.5(a):

§ 5.5 Contract provisions and related matters.

(a) The Agency head shall cause or require the contracting officer to insert in full in any contract in excess of \$2,000 which is entered into for the actual construction, alteration and/or repair, including painting and decorating, of a public building or public work, or building or work financed in whole or in part from Federal funds or in accordance with guarantees of a Federal agency or financed from funds obtained by pledge of any contract of a Federal agency to make a loan, grant or annual contribution (except where a different meaning is expressly indicated), and which is subject to the labor standards provisions of any of the acts listed in [§ 5.1](#), the following clauses (or any modifications thereof to meet the particular needs of the agency, Provided, that such modifications are first approved by the Department of Labor):

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.

EXHIBIT C TO P-37 (ARRA PROVISIONS)

(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

EXHIBIT C TO P-37 (ARRA PROVISIONS)

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

EXHIBIT C TO P-37 (ARRA PROVISIONS)

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/esa/whd/forms/wh347instr.htm> or its successor site. The prime Contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the Department of Energy if the agency is a party to the Contract, but if the agency is not such a party, the Contractor will submit them to the Recipient or 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

EXHIBIT C TO P-37 (ARRA PROVISIONS)

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

EXHIBIT C TO P-37 (ARRA PROVISIONS)

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.

EXHIBIT C TO P-37 (ARRA PROVISIONS)

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

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

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

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

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

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

(3) Withholding for unpaid wages and liquidated damages. The Department of Energy or the Recipient or 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.

EXHIBIT C TO P-37 (ARRA PROVISIONS)

The following term shall be included only for contracts involving the construction, reconstruction, alternation, remodeling, installation, demolition, maintenance, or repair of any public work or building with a total project cost of \$100,000 or more. It is required by RSA 277:5-a for such projects paid for in whole or in part by State funds and is a required contract term where only state managed federal funds will pay for the project.

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