



**STATE OF OREGON DEPARTMENT OF ENERGY**  
American Recovery and Reinvestment Act of 2009 State Energy Program Grant

183771

**INTERGOVERNMENTAL AGREEMENT  
HVAC Control Upgrades**

This agreement is between the State of Oregon, acting by and through its Department of Energy, hereafter referred to as "ODOE," and the City of Portland, acting by and through its elected officials, hereinafter referred to as "Recipient."

RECIPIENT		ODOE	
Administrator:	David Tooze	Administrator:	Paul Egbert
Title:	Senior Energy Specialist	Title:	ARRA Project Manager
Organization:	City of Portland	Organization:	State of Oregon: Dept of Energy
Address:	1900 SW 4th, Suite 7100 Portland, OR 97204-5380	Address:	625 Marion Street NE Salem, OR 97301-3737
Phone:	(503) 823-7582	Phone:	(503) 378-4032
Email:	<a href="mailto:dtooze@ci.portland.or.us">dtooze@ci.portland.or.us</a>	Fax:	(503) 373-7806
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DUNS #	054971197		

**RECITALS**

1. Oregon Revised Statutes (ORS) 190.110 authorizes state agencies to enter into agreements with counties, cities and other local government units to cooperate for any lawful purpose.
2. ORS 469.030 authorizes ODOE to accept and disburse federal funds for energy conservation projects and to contract with public and private agencies for energy activities consistent with ORS 469.010.
3. The American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, ("ARRA") was enacted to preserve and create jobs and promote economic recovery, assist those most impacted by the recession, provide investments needed to increase economic efficiency by spurring technological advances in science and health, invest in transportation, environmental protection, and other infrastructure that will provide long-term economic benefits, stabilize State and local government budgets, in order to minimize and avoid reductions in essential services and counterproductive State and local tax increases. Recipients shall use grant funds in a manner that maximizes job creation and economic benefit.
4. ARRA funds provided to the Oregon Department of Energy (ODOE) will be used to fund energy efficiency improvements, to develop renewable energy resources and to for environmental protection.

NOW THEREFORE, the ODOE and Recipient agree to the following:

**AGREEMENT**

1. **Effective Date.** This Agreement shall become effective on June 26, 2009 as duly executed and approved as required by applicable law. Unless otherwise terminated or extended, the Project shall be completed on February 15, 2012 ("Project Completion Date"). This Agreement shall expire on the earlier of March 31, 2012, or the date final payment is made by ODOE.
2. **Agreement Documents.** This agreement consists of this document and includes the following listed exhibits which are incorporated into this Agreement:

Exhibit A:	Project Requirements
Exhibit B:	Federal Assurances and Certifications
Exhibit C:	HVAC Controls Retrofit Equipment List

Exhibit D: ARRA Requirements  
Exhibit E: Insurance Requirements

In the event of a conflict between two or more of the documents comprising this Agreement, the language in the document with the highest precedence shall control. The precedence of each of the documents comprising this Agreement is as follows, listed from highest precedence to lowest precedence: Exhibit D, Exhibit B, this Agreement including the Recitals but without Exhibits; Exhibit A; Exhibit C.

**3. Grant.** In accordance with the terms and conditions of this Agreement, ODOE shall provide Recipient \$175,000 (Grant Funds or Grant moneys) for the purposes described in Section 4 (the "Project"). ODOE shall pay the Grant from monies available through DE-EE0000140 ARRA – State Energy Program Grant issued to ODOE under ARRA, the Energy Policy Act of 2005 and Public Law 109-58 by the U.S. Environment Protection Recipient (EPA).

Use of the Grant Funds are subject to the regulations and cost principles applicable to this Agreement, including but not limited to OMB Circular A133 Audits of States, Local Government and Non-Profit Organizations, Exhibit B (Federal Assurances and Certifications) and, for any ARRA funds, Exhibit D. The Grant Funds may be used only for eligible expenditures and for purposes set out in federal regulations governing the source of these funds.

Any Program Income deriving from the Grant Funds must be added to the Grant Funds. Program Income shall be considered Grant Funds for purposes of this Agreement and must be used or expended in accordance with the terms and conditions of this Agreement. Recipient must obtain written approval from ODOE prior to earning any Program Income. Program Income includes any interest or other income generated with or deriving from the Grant Funds.

**4. Project:** The Project is the HVAC control upgrade described in Exhibit A.

**5. Progress and Final Reports.** Recipient shall monthly provide to ODOE Project Status Reports by entering data as required by ODOE at <http://ARRA.wesd.org>. The Project Status Reports must be submitted during the last five business days of each month and no later than the last business day of each month.

The Recipient must submit a Final Report at the completion of the Project and no later than fifteen days after the Project Completion Date. The Final Reporting documentation shall be submitted to ODOE by both entering data as required at <http://ARRA.wesd.org> and by providing a final packet of information that includes; before/after digital pictures, weekly Department of Labor payroll, paid invoices, an itemized record of payments and other supporting documentation as may be required by ODOE to verify work performed. Recipient must submit the final packet of information to the ODOE Contracts Coordinator at the address identified in Section 13.h, unless ODOE notifies Recipient that the final packet of information may be submitted to ODOE electronically through the database.

All equipment and materials purchased with funds made available by this Agreement must be used only for purposes of the same general nature outlined in this Agreement. The Recipient will include in each Project Status Report and its Final Report notice to ODOE of any equipment purchased with funds made available under this Agreement.

## **6. Disbursement and Recovery of Grant.**

**a. Disbursement Generally.** ODOE shall disburse up to 75 percent of the Grant Funds to Recipient on a cost reimbursement basis upon approval of invoices submitted to ODOE. Recipient shall submit invoices monthly to ODOE. Invoices must be in the form provided at <http://ARRA.wesd.org> and provide detail indicating the nature of costs to be reimbursed. All such costs must be directly related to the Project and Project budget as shown in Exhibit A. Invoices must be submitted by an authorized representative of Recipient. Prior to approval of any invoice, all reports due under Section 5 hereof must be complete and provided to and approved by ODOE. ODOE will disburse the final 25 percent of the Grant Funds upon approval by ODOE of the Final Report and the completed Project. ODOE will not be obligated to make final payment to Recipient until all documentation and reports due under Section 5 hereof are complete and provided to ODOE, and in no event shall ODOE make any disbursement after March 31, 2012.

**b. Allowable Costs.** The Grant is for the Project and shall not be used for any other purpose. No Grant Funds will be disbursed for any changes to the Project unless such changes are approved by ODOE by Amendment pursuant to section 12.b hereof. Recipient shall not use any Grant Funds for administration, overhead or indirect costs, whether or not related to this Agreement.

c. **Conditions Precedent to Disbursement.** ODOE's obligation to disburse Grant moneys to Recipient under this Agreement is subject to satisfaction, with respect to each disbursement, of each of the following conditions precedent:

- i. ODOE has received sufficient expenditure authorizations to allow ODOE, in the exercise of its reasonable administrative discretion, to make the disbursement.
- ii. No default as described in section 10 has occurred.
- iii. Recipient's representations and warranties set forth in section 7 are true and correct on the date of disbursement with the same effect as though made on the date of disbursement.
- iv. Recipient shall provide ODOE a copy of all necessary federal, state and local permits required for the Project.
- v. ODOE has not found any deficiencies such as funds not disbursed, jobs not created, insufficient technical monitoring, failure to meet reporting requirements, or failure to make progress on the Project as described in Exhibit A.

d. **Recovery of Grant Moneys.** Any Grant moneys disbursed to Recipient under this Agreement that are expended in violation or contravention of one or more of the provisions of this Agreement ("Misexpended Funds") or that remain unexpended on the earlier of termination or expiration of this Agreement must be returned to ODOE. Recipient shall return all Misexpended Funds to ODOE promptly after ODOE's written demand and no later than 15 days after ODOE's written demand. Recipient shall return all Unexpended Funds to ODOE within 14 days after the earlier of expiration or termination of this Agreement.

7. **Representations and Warranties of Recipient.** Recipient represents and warrants to ODOE as follows:

a. **Organization and Authority.** Recipient is a:

- ☐ Non-profit Corporation
- ☒ Municipal agency
- ☐ State Agency
- ☐ Federal Government Agency
- ☐ Other Governmental Entity (regional governments, port districts, special districts, etc)

duly organized and validly existing under the laws of the State of Oregon and is eligible to receive the Grant. Recipient has full power, authority and legal right to make this Agreement and to incur and perform its obligations hereunder, and the making and performance by Recipient of this Agreement (1) have been duly authorized by all necessary action of Recipient and (2) do not and will not violate any provision of any applicable law, rule, regulation, or order of any court, regulatory commission, board, or other administrative agency or any provision of Recipient's Articles of Incorporation or Bylaws (3) do not and will not result in the breach of, or constitute a default or require any consent under any other agreement or instrument to which Recipient is a party or by which Recipient or any of its properties may be bound or affected. No authorization, consent, license, approval of, filing or registration with or notification to any governmental body or regulatory or supervisory authority is required for the execution, delivery or performance by Recipient of this Agreement.

b. **Binding Obligation.** This Agreement has been duly executed and delivered by Recipient and constitutes a legal, valid and binding obligation of Recipient, enforceable in accordance with its terms subject to the laws of bankruptcy, insolvency, or other similar laws affecting the enforcement of creditors' rights generally.

The warranties set forth above are in addition to, and not in lieu of, any other warranties set forth in this Agreement or implied by law.

8. **Certain Covenants of Recipient.**

a. **Grant Funds.** Recipient shall vigilantly safeguard the Grant moneys received hereunder and maintain financial controls sufficient to protect such moneys and ensure that the Grant moneys are used solely for purposes of the Project;

b. **Completion.** Recipient shall complete the Project on or before the Project Completion Date and submit a final report for the Project to ODOE in accordance with Section 5 hereof.

c. **Publicity.** Recipient shall make every effort to acknowledge and publicize ODOE's participation and assistance with the project. Recipient agrees to place signs at the Project location acknowledging ODOE's grant program support. Recipient also agrees to maintain the signs for the life of the project. State may withhold final reimbursement payment until signage has been placed.

**9. Grant Contract Administration.** Recipient agrees and acknowledges that ODOE may contract with a Grant Administrator to administer this Agreement in all respects other than the disbursement and recovery of Grant moneys and notice of and remedies for default. Upon notification from ODOE that it has contracted with a Grant Administrator, Recipient shall respond promptly to questions from the Grant Administrator on implementation of the Project, use of the Grant Funds and compliance with the terms and conditions of this Agreement, give the Grant Administrator full access to Recipient's records and facilities as described in Section 10, and otherwise cooperate with the Grant Administrator in its oversight of Recipient's implementation of the Project and use of the Grant Funds. Recipient shall submit copies of its reports and invoices to the Grant Administrator as directed by ODOE. Recipient further agrees and acknowledges that the contracted Grant Administrator will periodically report to ODOE on Recipient's progress in implementing the Project, on Recipient's use of the Grant Funds and on Recipient's compliance with the terms and conditions of this Agreement. Finally, Recipient agrees and acknowledges that ODOE may designate a new grant administrator for this Agreement at any time by and effective upon written notice to Recipient and upon such designation, Recipient shall treat the new grant administrator as the Grant Administrator hereunder. The new Grant Administrator may be a third party or Department itself.

**10. Records Maintenance and Access.**

a. **Access to Records and Facilities.** ODOE, the Secretary of State of the State of Oregon (Secretary) and their duly authorized representatives shall have access to the books, documents, papers and records of Recipient that are directly related to this Agreement, the Grant moneys provided hereunder, or the Project for the purpose of making audits and examinations and to review Project accomplishments and management control systems and to provide technical assistance if required. In addition, ODOE, the Secretary and their duly authorized representatives may make and retain excerpts, copies, and transcriptions of the foregoing books, documents, papers, and records. Recipient shall permit authorized representatives of ODOE and the Secretary to perform site reviews of all services delivered as part of the Project.

b. **Retention of Records.** Recipient shall retain and keep accessible all books, documents, papers, and records, that are directly related to this Agreement, the Grant moneys or the Project for a minimum of three (3) years, or such longer period as may be required by applicable law, following the later of (1) termination or expiration of this agreement or (2) the date of the conclusion of any audit, controversy or litigation arising out of or related to this Agreement.

c. **Expenditure Records.** Recipient shall document the expenditure of all Grant moneys disbursed by ODOE under this Agreement. Recipient shall create and maintain all expenditure records in accordance with generally accepted accounting principles and in sufficient detail to permit ODOE to verify how the Grant moneys were expended.

**11. Default.** Recipient shall be in default under this Agreement upon the occurrence of any of the following events:

a. Recipient fails to perform, observe, or discharge any of its covenants, agreements, or obligations set forth herein.

b. Any representation, warranty or statement made by Recipient herein or in any documents or reports relied upon by ODOE to monitor implementation of the Project, the expenditure of Grant moneys or the performance by Recipient is untrue in any material respect when made;

c. Recipient (i) applies for or consents to the appointment of, or taking of possession by, a receiver, custodian, trustee, or liquidator of itself or all of its property, (ii) admits in writing its inability, or is generally unable, to pay its debts as they become due, (iii) makes a general assignment for the benefit of its creditors, (iv) is adjudicated a bankrupt or insolvent, (v) commences a voluntary case under the Federal Bankruptcy Code (as now or hereafter in effect), (vi) files a petition seeking to take advantage of any other law relating to bankruptcy,

insolvency, reorganization, winding-up, or composition or adjustment of debts, (vii) fails to controvert in a timely and appropriate manner, or acquiesces in writing to, any petition filed against it in an involuntary case under the Bankruptcy Code, or (viii) takes any action for the purpose of effecting any of the foregoing; or

d. A proceeding or case is commenced, without the application or consent of Recipient, in any court of competent jurisdiction, seeking (i) the liquidation, dissolution or winding-up, or the composition or readjustment of debts, of Recipient, (ii) the appointment of a trustee, receiver, custodian, liquidator, or the like of Recipient or of all or any substantial part of its assets, or (iii) similar relief in respect to Recipient under any law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or adjustment of debts, and such proceeding or case continues undismissed, or an order, judgment, or decree approving or ordering any of the foregoing is entered and continues unstayed and in effect for a period of sixty consecutive days, or an order for relief against Recipient is entered in an involuntary case under the Federal Bankruptcy Code (as now or hereafter in effect).

e. **Remedies upon Default.** If Recipient's default is not cured within 30 calendar days of written notice thereof to Recipient from ODOE or such longer period as ODOE may authorize in its sole discretion, ODOE may pursue any remedies available under this Agreement, at law or in equity. Such remedies include, but are not limited to, termination of this Agreement, return of all or a portion of the Grant moneys, payment of interest earned on the Grant moneys, and declaration of ineligibility for the receipt of future grant awards from ODOE. If, as a result of Recipient's default, ODOE demands return of all or a portion of the Grant moneys or payment of interest earned on the Grant moneys, Recipient shall pay the amount upon ODOE's demand.

## 12. TERMINATION

a. **Termination for Convenience.** Either party may terminate this Agreement in whole or in part, at any time prior to the expiration date of this Agreement upon 15 days notice to the other party. Neither party shall incur any new obligations for the terminated portion of this Agreement and shall cancel as many obligations as possible immediately upon receipt of notification from the other party. Payment in full shall be allowed for the non-cancelable obligations properly incurred up to the effective date of the termination. All Unexpended Funds shall be returned to ODOE within 14 days of termination.

b. **ODOE Termination.** ODOE may terminate this Agreement:

i. Immediately upon written notice to Recipient, if ODOE does not obtain sufficient funding and expenditure authorizations to allow ODOE to meet its payment obligations under this Agreement.

ii. Immediately upon written notice to Recipient if state or federal laws, regulations, or guidelines are modified, changed or interpreted in such a way that ODOE does not have the authority to provide Grant moneys for the Project or no longer has the authority to provide the Grant moneys from the funding source it had planned to use.

iii. Upon 30 calendar days advance written notice to Recipient, if Recipient is in default under this Agreement and such default remains uncured at the end of said 30 day period or such longer period, if any, as ODOE may specify in the notice.

## 13. GENERAL PROVISIONS

a. **Indemnification.** To the extent permitted by the Oregon Constitution and the Oregon Tort Claims Act, Recipient shall indemnify, defend (subject to ORS chapter 180), and hold harmless the State of Oregon and ODOE and their officers, employees, and agents from all claims, suits, actions, losses, damages, liabilities, costs and expenses of any nature, resulting from, arising out of or relating to the activities of the Recipient or Recipient's officers, employees, sub-contractors, or agents under this Agreement.

Recipient assumes sole liability for Recipient's breach of the conditions of the grant, and shall, upon Recipient's breach of grant conditions that requires the State of Oregon to return funds to the grantor, hold harmless and indemnify the state for an amount equal to the funds which the State of Oregon is required to pay to grantor.

b. **Insurance.** Recipient shall maintain insurance as set forth in Exhibit E or a program of self insurance acceptable to ODOE, which is attached hereto. Recipient shall furnish to ODOE a Certificate of Insurance or self

insurance for the coverage and limits as set forth in Exhibit E which is to be in force and applicable to the Project for the duration of the Agreement.

**c. Amendments.** This Agreement may be amended or extended only by a written instrument signed by both parties. Any such amendment or extension is effective only when fully executed and approved as required by applicable law.

**d. Participation in Similar Activities.** This Agreement in no way restricts Recipient or ODOE from participating in similar activities with other public or private agencies, organizations, or individuals.

**e. Duplicate Payment.** Recipient shall not be compensated for or receive any other form of duplicate, overlapping or multiple payments for the same work performed under this Agreement from any agency of the State of Oregon or the United States of America or any other party, organization or individual. All Recipient matching contributions must be used and expended for this project only and within the Project period.

**f. No Third Party Beneficiaries.** ODOE and Recipient are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly or indirectly, to a third person unless such a third person is individually identified by name herein and expressly described as intended beneficiary of the terms of this Agreement.

**g. Notices.** Except as otherwise expressly provided in this Agreement, any communications between the parties hereto or notices to be given hereunder shall be given in writing by personal delivery, facsimile, email, or mailing the same, postage prepaid to Recipient or ODOE to the applicable Principal Contact at the address or number set forth below, or to such other addresses or numbers as either party may indicate pursuant to this section. Any communication or notice so addressed and mailed shall be effective five (5) days after mailing. Any communication or notice delivered by facsimile shall be effective on the day the transmitting machine generates a receipt of the successful transmission, if transmission was during normal business hours of the Recipient, or on the next business day, if transmission was outside normal business hours of the Recipient. Any communication or notice given by email shall be effective upon the sender's receipt of confirmation generated by the recipient's email system that the notice has been received by the recipient's email system. Any communication or notice given by personal delivery shall be effective when actually delivered.

**ODOE:**

Rhea Rodriguez, Contracts Coordinator  
Oregon Department of Energy  
625 Marion Street NE  
Salem, OR 97301  
Phone: (503) 373-2296  
Fax: (503) 373-7386  
Email: [rhea.r.rodriguez@state.or.us](mailto:rhea.r.rodriguez@state.or.us)

Paul Egbert  
ARRA Project Manager  
Oregon Department of Energy  
625 Marion Street NE  
Salem, OR 97301  
Phone: (503) 378-4032  
Fax: (503) 373-7806  
Email: [paul.egbert@state.or.us](mailto:paul.egbert@state.or.us)

**Recipient:**

David Tooze, Senior Energy Specialist  
City of Portland  
1900 SW 4th, Suite 7100  
Portland, OR 97204-5380  
Phone: (503) 823-7582  
Fax:  
Email: [dtooze@ci.portland.or.us](mailto:dtooze@ci.portland.or.us)

Either party may designate a different person or change the contact information given in this section by providing notice in the manner provided in this section and such change shall be effective without need for amendment under Section 13.c.

**h. Governing Law, Consent to Jurisdiction.** This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively, "Claim") between ODOE (and/or any other agency or department of the State of Oregon) and Recipient that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Marion County in the State of Oregon. In no event shall this section be construed as a waiver by the State

of Oregon of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the eleventh amendment to the Constitution of the United States or otherwise, from any Claim or from the jurisdiction of any court. RECIPIENT, BY EXECUTION OF THIS AGREEMENT, HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF THE CIRCUIT COURT OF MARION COUNTY.

i. **Compliance with Law.** Recipient shall comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to the Agreement or to the implementation of the Project. Without limiting the generality of the foregoing, Recipient expressly agrees to comply with the following laws, regulations and executive orders to the extent they are applicable to the Agreement or the implementation of the Project: (a) all applicable requirements of state civil rights and rehabilitation statutes, rules and regulations, (b) Titles VI and VII of the Civil Rights Act of 1964, as amended, (c) Sections 503 and 504 of the Rehabilitation Act of 1973, as amended, (d) the Americans with Disabilities Act of 1990, as amended, and ORS 659A.142, (e) Executive Order 11246, as amended, (f) the Health Insurance Portability and Accountability Act of 1996, (g) the Age Discrimination in Employment Act of 1967, as amended, and the Age Discrimination Act of 1975, as amended, (h) the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, (i) ARRA, (j) all regulations and administrative rules established pursuant to the foregoing laws, and (k) all other applicable requirements of federal civil rights and rehabilitation statutes, rules and regulations. These laws, regulations and executive orders are incorporated by reference herein to the extent that they are applicable to the Agreement or the Project and required by law to be so incorporated. Recipient shall not discriminate against any individual, who receives or applies for services as part of the Project, on the basis of actual or perceived age, race, creed, religion, color, national origin, gender, disability, marital status, sexual orientation, alienage or citizenship. All employers, including Recipient, that employ subject workers who provide services in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage, unless such employers are exempt under ORS 656.126.

j. **Public Records.** All information and records submitted to ODOE are subject to disclosure under the Public Records Law, ORS 192.410 to 192.505. If Recipient believes that any information or records it submits to ODOE may be a trade secret under ORS 192.501(2), or otherwise is exempt from disclosure under the Public Records Law, Recipient must identify such information with particularity and include the following statement:

"This data is exempt from disclosure under the Oregon Public Records Law pursuant to ORS 192, and is not to be disclosed except in accordance with the Oregon Public Records Law, ORS 192.410 through 192.505."

If Recipient fails to identify with particularity the portions of such information that Recipient believes are exempt from disclosure, Recipient is deemed to waive any future claim of non-disclosure of that information.

k. **False Claim Act.** Recipient will refer to the ODOE Grant Administrator any credible evidence that a principal, employee, agent, sub-grantee contractor, contractor 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 funds provided under this Grant Agreement.

l. **Sensitive Information.** Except for information that is already a matter of public record, Recipient shall not publish or otherwise disclose, except to ODOE or as otherwise required by law, any information or data obtained hereunder from private individuals, organizations, or public agencies in a publication wherein the information or data furnished by or about any particular person or establishment can be identified, except with the written consent of such person or establishment. Unless otherwise required by law, information concerning the business of the ODOE, its financial affairs, and its relations with its clients and employees, as well as any other information that may be specifically classified as confidential by the ODOE, shall be kept confidential. Recipient shall instruct its employees and subcontractors to keep such information confidential by using the same care and discretion that they use with similar information that the Recipient designates as confidential.

m. **Severability.** If any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if this Agreement did not contain the particular term or provision held to be invalid.

n. **Assignment of Agreement, Successors in Interest.** Recipient shall not assign or transfer any interest in this Agreement, enter into any subcontracts, or subgrant any Grant moneys, without the prior written approval of ODOE. Any such assignment, transfer, subcontract, or subgrant, if approved, is subject to such conditions and provisions, as ODOE may deem necessary, including without limitation that ODOE shall have reasonable access to the

facilities of the assignee, transferee, subcontractor, or subgrantee to the same extent as to the facilities of ODOE as described in Section 9 hereof and that all ARRA requirements apply. No approval by ODOE of any assignment, transfer, subcontract or subgrant shall be deemed to create any obligation of ODOE in addition to those set forth in this Agreement nor will ODOE's approval of an assignment, transfer, subcontract or subgrant relieve Recipient of any of its duties or obligations under this Agreement.

**o. Headings.** The headings and captions to sections of this Agreement have been inserted for identification and reference purposes only and shall not be used to construe the meaning or to interpret this Agreement.

**p. Construction.** The parties agree and acknowledge that the rule of construction that ambiguities in a written agreement are to be construed against the party preparing or drafting the agreement shall not be applicable to the interpretation of this Agreement.

**q. Independent Contractors.** The parties agree and acknowledge that their relationship is that of independent contracting parties and that Recipient is not an officer, employee, or agent of the State of Oregon as those terms are used in ORS 30.265 or otherwise.

**r. Force Majeure.** Neither Department nor Recipient shall be held responsible for delay or default caused by fire, civil unrest, natural causes and war which is beyond, respectively, the Department's or Recipient's reasonable control. Each party shall, however, make all reasonable efforts to remove or eliminate such cause of delay or default and shall, upon the cessation of the cause, diligently pursue performance of its obligations under this Agreement.

**s. Survival.** All rights and obligations shall cease upon termination or expiration of this Agreement, except for the rights and obligations set forth in Sections 5, 6.d, 7, 10, 13.a, 13.b, 13.f, 13.h, 13.s, 13.t., and Exhibit A, Section 4.

**t. Integration and Waiver.** This Agreement, including all Exhibits, constitutes the entire agreement between the parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. The delay or failure of either party to enforce any provision of this Agreement shall not constitute a waiver by that party of that or any other provision. Recipient, by the signature below of its authorized representative, hereby acknowledges that it has read this Agreement, understands it, and agrees to be bound by its terms and conditions.

**IN WITNESS THEREOF:** the parties hereto have caused this agreement to be properly executed by their authorized representatives as of the day and year hereinafter written.

#### CITY OF PORTLAND

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

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

#### OREGON DEPARTMENT OF ENERGY

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

Joan M. Fraser  
Deputy Director

\_\_\_\_\_  
Date

\_\_\_\_\_  
Shelli Honeywell  
ARRA Manager

\_\_\_\_\_  
Date

\_\_\_\_\_  
Lorena Wise  
Designated Procurement Officer

\_\_\_\_\_  
Date

**EXHIBIT A**  
**Project**

**PROJECT** Recipient agrees to implement the following energy efficiency or renewable energy capital improvements in accordance with the Project Budget, Disposal Plan and Project Schedule attached to this Exhibit A:

1. Project Location: The Portland Building  
1120 SW 5<sup>th</sup>  
Portland, OR 97204
2. Project Description: HVAC Measures
  - a. Install a BACnet-based digital building automation system
  - b. Replace pneumatic controls on all perimeter Fan Powered Terminal Units (FPTUs) with digital controls connected to the BACnet system at approximately 195 locations.
  - c. Replace pneumatic controls on all interior Variable Air Volume (VAV) Terminal Units with digital control connected to the BACnet system at approximately 259 locations.
  - d. Connect the control of all Electric Heating Coils on FPTUs and VAVs to the BACnet system.
  - e. Install flow measuring devices on all VAV and FPTU units, at approximately 454 locations
  - f. Replace pneumatic control of Floor Isolation Dampers with electric actuators, digital control, and feedback to the BACnet system, at approximately 60 locations.
  - g. Install necessary equipment to permit the BACnet system to integrate with other building systems.
  - h. Provide ODOE with a list of digital controls, flow measurement devices, actuators, and electric control devices needed to accomplish items a through g above prior to installation.
3. Obtain ODOE's review on any value-engineering by the Recipient's Engineer and substitutions and change orders by the Recipient. The purpose of the ODOE review is to prevent any compromise in energy efficiency that may result in the Project no longer meeting minimum energy efficiency criteria established by the Department of Energy.
4. Commission the project to verify the systems are operating as intended, in an integrated manner, and as efficiently as possible. Recipient will work with ODOE to determine when, and if, commissioning should be integrated into the process, define the scope of work, and provide input during the selection process.
5. Make available to ODOE, in a manner specified by ODOE, all energy use data and records for the most recent 12 month period preceding any energy conservation work, and shall report monthly energy use (for electricity, natural gas, and any other fuel sources) for 24 months after completion of any facility Energy Efficiency Improvements.
6. If applicable, apply for a Business Energy Tax Credit (BETC) before your project starts (order equipment, execute construction contracts, etc.). If funds from the BETC are received after ODOE has paid the Recipient for the entire project cost, then the Recipient will refund the amount of the BETC to ODOE. Recipient shall report to the ODOE contacts designated in Section 13.h of the Agreement any applications for, or receipt of, any BETC by Recipient or any contractor or subcontractor of Recipient in addition to any such reports that may be included in the Recipient's reports under Section 5 of the Agreement.
7. Identify and remedy any problems that cause monitored Project energy to exceed expected energy performance.
8. Notify ODOE when the Recipient is unable to remedy any problem that causes a facility to exceed energy performance expectations.
9. No work on the portions of the Project funded by ARRA dollars shall begin until NEPA and SHPO approval have been received by ODOE.
10. Include in reports required under Section 5 of the Agreement the amount and source of all other funding sources used for the Project, including without limitation BETC.
11. Take before and after pictures as referenced by Section 5 of this Agreement.

## EXHIBIT A - Attachment

## Portland Building HVAC Controls Upgrade

## Project Schedule

Submit for Permit	April, 2010
Complete Design Plans and Specification	May, 2010
Issue Project For Bids	June, 2010
Pre-Bid Conference	June, 2010
Bids Due	July, 2010
Start Construction	September, 2010
Complete Construction	September, 2011
Closeout Project	December, 2011

## Project Budget

Table 1. Portland Building VAV DDC Upgrade

Cost Component		Estimated Cost (\$)	Estimated Basis
<b>Project Design &amp; Construction Management Costs</b>			
	Project Design	\$30,000	
	Project Administration	\$50,000	
		<b>Sub \$80,000</b>	
<b>Project Equipment Costs</b>			
	VAV Unit conversion to DDC	\$227,000	454 units @ \$500 ea
	DDC Global controllers	\$60,000	
	Electrical	\$15,000	
	Misc. Controls	25,000	
		<b>Sub \$327,000</b>	
<b>Project Labor</b>			
	Installation	\$430,000	
	Controls Engineering	\$10,000	
	Construction PM	\$30,000	
	Demolition	\$5,000	
	Balancing	\$45,000	
		<b>Sub \$520,000</b>	
<b>Other Costs</b>			
	Permits	\$10,000	
	Contractor O&P	\$169,400	20% of labor and equipment
	Project Contingency	\$165,960	15% of total cost
		<b>Sub \$345,360</b>	
<b>Grand Total \$1,272,360</b>			
	ARRA EEC Block Grant	\$294,250	
	ARRA ODoE	\$175,000	
	Energy Trust of Oregon	\$20,000	
		<b>Sub \$489,250</b>	
<b>Net City Investment \$783,110</b>			

**EXHIBIT A – Attachment Continued**

City of Portland Waste Disposal Plan for  
State Energy Program - ARRA Funded Projects  
DRAFT December 4, 2009

**1. General Background**

State Energy Program (SEP) project activities may generate construction and demolition (C&D) waste and possibly some hazardous waste (e.g., PCB ballasts, fluorescent lamps and refrigerants). This Plan addresses the City's approach to construction waste management and hazardous waste collection and disposal.

**2. Regulations that Apply**

Solid and hazardous waste removal and disposal are regulated by the state Department of Environmental Quality under Oregon Revised Statutes 459.

Locally, the City of Portland's Green Building Policy requires City construction projects to recycle at least 85% of all construction, remodeling and demolition waste, and practice waste management strategies to minimize waste generation through prevention, preservation, restoration, salvage and reuse. In addition, all building projects in Portland with a permit value of \$50,000 or more (including construction and demolition phases) are required to separate and recycle certain materials (rubble, including concrete and asphalt, land clearing debris, corrugated cardboard, metals and wood) from the job site. City of Portland staff provides technical assistance to contractors to comply with the City's C&D waste recycling recovery requirements.

**3. Non-Toxic Materials**

All non-toxic materials that have the potential to be either salvaged for reuse or recycled shall be considered for recovery. Specific materials to be recycled will be evaluated based on the type waste materials anticipated during the course of construction, in order to achieve an 85% recycling goal. In addition, if the construction exceeds \$50,000, all of the following materials will be recycled: rubble (concrete and asphalt), land clearing debris, corrugated cardboard, metals and wood. These materials will be collected by the local commercial hauler and taken to a facility capable of recycling the waste.

**4. Hazardous Waste**

The following hazardous materials will be recovered and disposed of according to Oregon Revised Statutes: HVAC refrigerants; PCB lighting ballasts; mercury containing light bulbs. No other hazardous wastes are expected, however, if other hazardous wastes are identified, they will be recovered and treated according to Oregon Revised Statutes as well.

HVAC refrigerants will be recovered and recycled or disposed of by a certified recovery company. PCB containing ballasts will be collected and disposed of by a regulated waste company. Mercury containing light bulbs will be collected and sent to a lamp recycler who separates and recycles the mercury, recycles aluminum and either recycles or disposes the glass in a licensed landfill. At present the city uses Environmental Protection Services, Inc.

**EXHIBIT B****Federal Assurances and Certifications**

ODOE, as a recipient of federal funds, is subject to Federal Assurances and Certifications. Recipient must comply with terms of this Exhibit B to support ODOE's compliance with the Federal Assurances and Certifications.

**I. STATEMENT OF FEDERAL STEWARDSHIP**

U.S. DOE will exercise normal Federal stewardship in overseeing the project activities performed under this award. Stewardship activities include, but are not limited to, conducting site visits; reviewing performance and financial reports; providing technical assistance and/or temporary intervention in unusual circumstances to correct deficiencies which develop during the project; assuring compliance with terms and conditions; and reviewing technical performance after project completion to ensure that the award objectives have been accomplished. Recipient acknowledges and agrees that such site visits may occur, and that a provision authorizing such site visits will be included in any subcontracts or other sub-agreements entered into by Recipient.

**II. REPORTING REQUIREMENTS****A. Requirements.**

Failure by ODOE to comply with the reporting requirements contained in this the federal grant is considered a material noncompliance with the terms of the award. Noncompliance may result in withholding of future payments, suspension, or termination of the current award, and withholding of future awards. A willful failure to perform, a history of failure to perform, or unsatisfactory performance of this and/or other financial assistance awards, may also result in a debarment action to preclude future awards by Federal agencies. Recipient's failure to comply with the reporting requirements contained in this Agreement may result in termination of the Agreement repayment of Grant Funds to ODOE.

**B. Dissemination of scientific/technical reports.** Scientific/technical reports submitted under the federal grant will be disseminated on the Internet via the DOE Information Bridge ([www.osti.gov/bridge](http://www.osti.gov/bridge)), unless the report contains patentable material, protected data, or SBIR/STTR data. Citations for journal articles produced under the award will appear on the DOE Energy Citations Database ([www.osti.gov/energycitations](http://www.osti.gov/energycitations)).

**C. Restrictions.** Reports submitted to the DOE Information Bridge must not contain any Protected Personal Identifiable Information (PII), limited rights data (proprietary data), classified information, information subject to export control classification, or other information not subject to release.

**III. PUBLICATIONS**

**A.** ODOE is encouraged to publish or otherwise make publicly available the results of the work conducted under the award. Recipient may publish or make publicly available the results of work conducted under this Agreement in accordance with this section III.

**B.** An acknowledgment of Federal support and a disclaimer must appear in the publication of any material, whether copyrighted or not, based on or developed under this project, as follows:

Acknowledgment: "This material is based upon work supported by the Department of Energy under Award Number DE-EE0000140."

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

#### IV. INTELLECTUAL PROPERTY PROVISIONS AND CONTACT INFORMATION FOR INTELLECTUAL PROPERTY MATTERS

A. This award is subject to Intellectual Property Provisions (NRD-1003), Nonresearch and Development. Nonprofit organizations are subject to 10 CFR 600.136(a), (c) and (d). All other organizations are subject to 10 CFR 600.136 (a) and (c). A list of all intellectual property provisions may be found at [http://www.gc.doe.gov/financial\\_assistance\\_awards.htm](http://www.gc.doe.gov/financial_assistance_awards.htm).

10 CFR 600.136 provides, in pertinent part:

(a) Recipients may copyright any work that is subject to copyright and was developed, or for which ownership was purchased, under an award. U. S DOE reserves a royalty-free, nonexclusive and irrevocable right to reproduce, publish or otherwise use the work for Federal purposes, and to authorize others to do so.

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(c) U.S. DOE has the right to:

1. Obtain, reproduce, publish or otherwise use the data first produced under an award; and
2. Authorize others to receive, reproduce, publish, or otherwise use such data for Federal purposes.

(d)(1) In addition, in response to a Freedom of Information Act (FOIA) request for research data relating to published research findings produced under an award that were used by the Federal Government in developing an agency action that has the force and effect of law, the U. S. DOE shall request, and the recipient shall provide, within a reasonable time, the research data so that they can be made available to the public through the procedures established under the FOIA. If the DOE obtains the research data solely in response to a FOIA request, the agency may charge the requester a reasonable fee equaling the full incremental cost of obtaining the research data. This fee should reflect costs incurred by the agency, the recipient, and applicable sub recipients. This fee is in addition to any fees the agency may assess under the FOIA (5 U.S.C. 552(a)(4)(A)).

B. Questions regarding intellectual property matters should be referred to the DOE Award Administrator and the Patent Counsel designated as the service provider for the DOE office that issued the award. The IP Service Providers List is found at [http://www.gc.doe.gov/documents/Intellectual\\_Property\\_\(IP\)\\_Service\\_Providers\\_for\\_Acquisition.pdf](http://www.gc.doe.gov/documents/Intellectual_Property_(IP)_Service_Providers_for_Acquisition.pdf). Recipient shall direct any questions regarding intellectual property matters to ODOE for reference to the DOE Award Administrator.

#### V. LOBBYING RESTRICTIONS

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

Recipient agrees that no portion of the federal grant funds will be used to engage in lobbying of the Federal Government or in litigation against the United States unless authorized under existing law. Recipient shall abide by its respective OMB Circular (A-21, A-87, or A-122), which prohibits the use of federal grant funds for litigation against the United States.

Pursuant to Section 18 of the Lobbying Disclosure Act, the Recipient affirms that it is not a nonprofit organization described in Section 501(c) (4) of the Internal Revenue Code of 1986; or that it is a nonprofit organization described in Section 501(c) (4) of the Code but does not and will not engage in lobbying activities as defined in Section 3 of the Lobbying Disclosure Act.

Recipient shall execute the Lobbying and Litigation Certificate, attached hereto as Attachment 1 to this Exhibit B, and submits it to ODOE on or before the Project Completion Deadline.

#### RESTRICTION ON DISPOSAL ACTIVITIES

Prior to the expenditure of Federal funds to dispose of sanitary or hazardous waste, the Recipient shall provide documentation to the DOE Project Officer demonstrating that it has prepared a disposal plan for sanitary or hazardous waste generated by the approved activities. Sanitary or hazardous waste includes, but is not limited to, old light bulbs,

lead ballasts, piping, roofing material, discarded equipment, debris, asbestos, etc. Upon DOE Project Officer review and written approval of the disposal plan, the Recipient may proceed with all activities associated with the disposal of sanitary or hazardous waste. The Recipient shall ensure the safety and structural integrity of any repair, replacement, construction, and/or alteration performed under this project.

**VII. PRESERVATION OF OPEN COMPETITION AND FEDERAL GOVERNMENT NEUTRALITY TOWARDS CONTRACTORS' LABOR RELATIONS ON FEDERALLY FUNDED CONSTRUCTION PROJECTS**

**A.** Unless in conflict with State or local laws, Recipient must ensure that bid specifications, project agreement, or other controlling documents in construction contracts awarded pursuant to this agreement, or pursuant to a sub award to this agreement, do not:

1. Require or prohibit bidders, offerors, contractors, or subcontractors to enter into or adhere to agreements with one or more labor organizations, on the same or other related construction project(s); or
2. Otherwise discriminate against bidders, offerors, contractors, or subcontractors for becoming or refusing to become or remain signatories or otherwise to adhere to agreements with one or more labor organizations, on the same or other related construction project(s).

**B.** The term "construction contract" as used in this provision means any contract for the construction, rehabilitation, alteration, conversion, extension, or repair of buildings, highways, or other improvements to real property.

**C.** Nothing in this provision prohibits bidders, offerors, contractors, or subcontractors from voluntarily entering into agreements with labor organizations.

**VIII. DECONTAMINATION AND/OR DECOMMISSIONING (D &D) COSTS**

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

## EXHIBIT B – Attachment 1

STATE OF OREGON – DEPARTMENT OF ENERGY  
LOBBYING AND LITIGATION CERTIFICATE

The Recipient certifies, to the best of the Recipient's knowledge and belief, that:

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

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

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

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

ODOE Grant Agreement #: DE-EE0000140 ARRA

Federal Grant: State Energy Program

Recipient Name: City of Portland

Recipient Address: 1900 SW 4th, Suite 7100  
Portland, OR 97204-5380

Project Name: HVAC Control Upgrades

I hereby certify that none of the funds awarded under the State of Oregon Department of Energy American Recovery and Reinvestment Act of 2009 \_\_\_\_\_ Grant have been used to engage in the lobbying of the Federal Government or in litigation against the United States unless authorized under existing law.

Authorized Signer:

Signature

Date

Printed Name / Title:

At Project completion, complete this form and submit to:

Oregon Department of Energy  
625 Marion St. NE  
Salem OR 97301-3737

## EXHIBIT C

## RETROFIT HVAC CONTROL EQUIPMENT LIST

<b>Recipient:</b> City of Portland	<b>ODOE Agreement #:</b> SEP 10-1056
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**List of Vehicles and Equipment**

195 Fan powered terminal units with electric heat and VAV damper controls.

259 variable air volume (VAV) interior cooling only units.

All pneumatic controls on these units will be replaced with native BACnet DDC controls

**EXHIBIT D**  
**ARRA Requirements**

The requirements contained in this Exhibit D apply to all funding under this Agreement that is provided from ARRA funds.

**1. COMPLIANCE WITH ARRA REQUIREMENTS**

Recipient specifically agrees to comply with all requirements of the American Recovery and Reinvestment Act of 2009, Pub.L. 111-5 ("ARRA" or "the Act") and the ARRA-related terms and conditions of this Agreement. Recipient understands and acknowledges that the federal stimulus process is still evolving and that new requirements relating to ARRA compliance may still be forthcoming from the federal government and the State of Oregon. Accordingly, Recipient specifically agrees that both it and its subcontractors will comply with all current requirements and all future requirements of the federal government and the State of Oregon while this Agreement is in force.

**2. REGISTRATION**

Under Section 1512 of the Act, Recipient shall obtain a Dun and Bradstreet Data Universal Numbering System ("DUNS") number, and have registered with the Central Contractor Registration ("CCR"), on or before full execution of this Agreement. Recipient shall keep its DUNS and CCR information current, while this Agreement is in force.

**3. REPORTING**

Under Section 1512 of ARRA, state agencies receiving ARRA funds must submit a report to the federal government no later than ten (10) calendar days after the end of each calendar quarter. This report must contain at least the information outlined below. Accordingly, Recipient agrees to provide the State with the following information on or before the third day following the end of the calendar quarter, in order for the State to timely provide the required information to the federal government, as well as any additional information requested by ODOE that is required by the federal agency that is the source of the ARRA funds.

Standard data elements and federal instructions for use in complying with reporting requirements under Section 1512 of ARRA are pending review by the federal government, and were published in the Federal Register on April 1, 2009 [74 FR 14824 (to become part of 2 CFR 176)] See also OMB guidance memo M-09-21, Implementing Guidance for the Reports on Use of Funds Pursuant to the American Recovery and Reinvestment Act of 2009 (June 22, 2009), as supplemented, and any additional guidance that OMB may later issue. Final reporting rules and an online recipient reporting tool will be provided at [www.FederalReporting.gov](http://www.FederalReporting.gov).

**4. WHISTLEBLOWER PROTECTION**

Recipient shall, and in its subcontracts shall require its subcontractor to, comply with Section 1553 of ARRA, which prohibits all non-federal contractors of ARRA funds, including the State of Oregon, and all contractors of the State, from discharging, demoting or otherwise discriminating against an employee as a reprisal for the employee's disclosure of information that the employee reasonably believes is evidence of: (a) gross mismanagement of a contract or grant relating to ARRA funds; (b) a gross waste of ARRA funds; (c) a substantial and specific danger to public health or safety related to the implementation or use of ARRA funds; (d) an abuse of authority related to implementation or use of ARRA funds; or (e) a violation of law, rule, or regulation related to an agency contract (including the competition for or negotiation of a contract) or grant, awarded or issued relating to ARRA funds. Recipient shall, and in its subcontracts shall require its subcontractors to, post notice of the rights and remedies available to employees under Section 1553 of ARRA.

**5. PROHIBITION ON USE OF ARRA FUNDS**

Under Section 1604 of ARRA, Recipient agrees that none of the funds made available under this Agreement may be used for any casino or other gambling establishment, aquarium, zoo, golf course, swimming pools or similar projects.

**6. INSPECTION OF RECORDS**

Recipient shall comply with Section 902 of ARRA, which grants the U.S. Comptroller or its designated representatives the authority "to examine any records of the Contractor or any of its subcontractors, or any state or local agency administering such contract, that directly pertain to, and involve transactions relating to, the contract or subcontract;" and "to interview

any officer or employee of the Contractor or any of its subcontractors, or of any state or local government agency administering the contract, regarding such transactions."

Recipient shall comply with Section 1515 of ARRA, which grants the Inspector General or its designated representatives the authority "to examine any records of the Contractor or grantee, any of its subcontractors or sub grantees, or any state or local agency administering such contract, that pertain to, and involve transactions relating to, the contract, subcontract, grant, or sub grant;" and "to interview any officer or employee of the contractor, grantee, sub grantee, or agency regarding such transactions."

#### **7. BUY AMERICAN**

Recipient agrees that under Section 1605 of ARRA, neither Recipient nor its subcontractors will use ARRA funds 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. Recipient understands that this requirement may be waived only by the applicable federal agency in limited situations as set out in Section 1605 of ARRA. Application of this requirement will be consistent with United States obligations under international agreements.

#### **8. PREVAILING WAGES**

Under Section 1606 of ARRA, Recipient shall comply and shall require its subcontractors to fully comply with this section in that, notwithstanding any other provision of law and in a manner consistent with the other provisions of ARRA, all laborers and mechanics employed by contractors and subcontractors on projects funded in whole or in part with funds available under ARRA must be paid wages at rates not less than those prevailing on projects of a similar character in the locality, as determined by the United States Secretary of Labor under subchapter IV of chapter 31 of title 40 of the United States Code. The United States Secretary of Labor's determination, regarding the prevailing wages applicable in the State of Oregon, are located at: <http://www.gpo.gov/davisbacon/or.html>.

#### **9. SIGNAGE**

In addition to any other signage requirements that the State may require, Recipient shall post ARRA signage to designate the project as a federal stimulus recovery project. The following website contains the ARRA logo: <http://www.recovery.gov/?q=node/203> or from ODOE.

#### **10. FALSE CLAIMS ACT**

Recipient shall promptly refer to an appropriate federal inspector general any credible evidence that a principal, employee, agent, subcontractor or other person has committed a false claim under the False Claims Act (31 U.S.C. §§ 3729-3733) or has committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity or similar misconduct involving those funds.

#### **11. ENFORCEABILITY**

Recipient agrees that if Recipient or one of its subcontractors fails to comply with all applicable federal and state requirements governing the use of ARRA funds, the federal agency or the State may withhold or suspend, in whole or in part, funds awarded under the program, or recover misspent funds following an audit. This provision is in addition to all other remedies available to the State under all applicable State and federal laws.

#### **12. SEGREGATION OF FUNDS**

Recipient shall segregate obligations and expenditures of ARRA funds from other funding. No part of funds made available under ARRA may be commingled with any other funds or used for a purpose other than that of making payments for costs allowable under ARRA. Recipients covered by the Single Audit Act Amendments of 1996 and OMB Circular A-133 shall separately identify the expenditures provided through ARRA grants on the Schedule of Expenditures of Federal Awards (SEFA) and the Data Collection Form (SF-SAC) required by OMB Circular A-133.

#### **13. SUB-RECIPIENT AGREEMENTS**

Recipient shall include these standard terms and conditions, including this requirement, in any of its subcontracts in connection with projects funded in whole or in part with funds available under ARRA.

**14. CONFLICTING PROVISIONS**

Recipient agrees that, to the extent ARRA requirements conflict with State requirements, the ARRA requirements control.

**15. STATE OF OREGON WORKSOURCE POSTING REQUIREMENTS**

Recipient shall list any job openings at Recipient's firm/business through WorkSource Oregon. Recipient shall also require its subcontractors and sub-consultants to list any job openings at the subcontractor's/sub-consultant's firms/businesses through WorkSource Oregon. Recipient is not required to list job openings (or require listing by Recipient's subcontractors or sub-consultants), where an employer, contractor, or subcontractor of an ARRA-funded State contract intends to fill the job opening created by ARRA funding with a present employee, a laid-off former employee, or a job candidate from a previous recruitment.

## EXHIBIT E

## REQUIRED INSURANCE

Recipient shall obtain the insurance specified in this section prior to performing under this Agreement and shall maintain it in full force and at its own expense throughout the duration of this Agreement and all warranty periods. Recipient shall obtain the following insurance from insurance companies or entities that are authorized to transact the business of insurance and issue coverage in the State of Oregon and that are acceptable to ODOE ("Agency"), or with approval of Agency, provide this insurance coverage through a program of self insurance.

(Agency must check boxes #2, #3, & #4 as to whether insurance is required or not.)

1. ☒ **Required by Agency of contractors with one or more workers, as defined by ORS 656.027**

**Workers' Compensation.** All employers, including Recipient, that employ subject workers who work under this Agreement in State shall comply with ORS 656.017 and provide the required workers' compensation coverage, unless the employers are exempt under ORS 656.126(2). Recipient shall require each of its subcontractors, if any, to comply with, and shall ensure that each of its subcontractors, if any, complies with, these requirements.

☐ **Required by Agency** ☒ **Not required by Agency.**

2. **Professional Liability** This is to cover damages caused by error, omission or negligent acts related to the professional services to be provided under this Agreement. Recipient shall provide proof of insurance of not less than the following amounts:

Amounts not less than the amounts listed in the following schedule:

Combined single limit per occurrence:

From commencement of the Agreement term to June 30, 2010:	\$1,500,000
July 1, 2010 to June 30, 2011	\$1,600,000
July 1, 2011 to June 30, 2012	\$1,700,000

Aggregate limit for all claims per occurrence:

From commencement of the Agreement term to June 30, 2010:	\$3,000,000
July 1, 2010 to June 30, 2011	\$3,200,000
July 1, 2011 to June 30, 2012	\$3,400,000

☒ **Required by Agency** ☐ **Not required by Agency.**

3. **Commercial General Liability.** This to cover Bodily Injury, Death and Property Damage.

This insurance shall include contractual liability coverage for the indemnity provided under this Agreement, personal and advertising injury liability, products liability and completed operations liability. Coverage may be written in combination with Automobile Liability Insurance (with separate limits). Recipient shall provide proof of insurance of not less than the following amounts:

Amounts not less than the amounts listed in the following schedule:

Combined single limit per occurrence:

From commencement of the Agreement term to June 30, 2010	\$1,500,000
July 1, 2010 to June 30, 2011	\$1,600,000
July 1, 2011 to June 30, 2012	\$1,700,000

Aggregate limit for all claims per occurrence:

From commencement of the Agreement term to June 30, 2010:	\$3,000,000
July 1, 2010 to June 30, 2011	\$3,200,000
July 1, 2011 to June 30, 2012	\$3,400,000

Amounts not less than the amounts listed in the following schedule:

Combined single limit per occurrence shall not be less than the following schedule:

From commencement of the Agreement term to January 1, 2010:	\$100,000.
From January 1, 2010, and every year thereafter the adjusted limitation as determined by the State Court Administrator pursuant to Oregon Laws 2009, chapter 67, section 5 (Senate Bill 311).	

Aggregate limits for all claims per occurrence shall not be less than the amounts listed in the following schedule:

From commencement of the Agreement term to January 1, 2010:	\$500,000
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From January 1, 2010, and every year thereafter the adjusted limitation as determined by the State Court Administrator pursuant to Oregon Laws 2009, chapter 67, section 5 (Senate Bill 311).

☒ Required by Agency ☐ Not required by Agency.

**4. Automobile Liability.** This is to cover each accident for bodily Injury and Property Damage, including coverage for owned, hired or non-owned vehicles, as applicable. This coverage may be written in combination with the Commercial General Liability Insurance. Recipient shall provide proof of insurance of not less than the following amounts:

Amounts not less than the amounts listed in the following schedule:

Combined single limit per occurrence:

From commencement of the Agreement term to June 30, 2010	\$1,500,000
July 1, 2010 to June 30, 2011	\$1,600,000
July 1, 2011 to June 30, 2012	\$1,700,000

Aggregate limit for all claims per occurrence:

From commencement of the Agreement term to June 30, 2010:	\$3,000,000
July 1, 2010 to June 30, 2011	\$3,200,000
July 1, 2011 to June 30, 2012	\$3,400,000

Amounts not less than the amounts listed in the following schedule:

Combined single limit per occurrence shall not be less than the following schedule:

From commencement of the Agreement term to January 1, 2010:	\$100,000.
From January 1, 2010, and every year thereafter the adjusted limitation as determined by the State Court Administrator pursuant to Oregon Laws 2009, chapter 67, section 5 (Senate Bill 311).	

Aggregate limits for all claims per occurrence shall not be less than the amounts listed in the following schedule:

From commencement of the Agreement term to January 1, 2010:	\$500,000
From January 1, 2010, and every year thereafter the adjusted limitation as determined by the State Court Administrator pursuant to Oregon Laws 2009, chapter 67, section 5 (Senate Bill 311).	

**Additional Insured.**

The Commercial General Liability insurance and Automobile Liability insurance required under this Agreement shall include State, and its agencies, departments, divisions, commissions, branches, officers employees and agents as Additional Insureds but only with respect to Recipient's performance obligations under this Agreement. Recipient shall ensure that coverage is primary and non-contributory with any other insurance and self-insurance.

**6. "Tail" Coverage**

If any of the required liability insurance is on a "claims made" basis, Recipient shall maintain either "tail" coverage or continuous "claims made" liability coverage, provided the effective date of the continuous "claims made" coverage is on or before the effective date of this Agreement, for a minimum of 24 months following the later of

(i) Recipient's completion of all Services and Agency's acceptance of all Services required under this Agreement, or

(ii) the expiration of all warranty periods provided under this Agreement. Notwithstanding the foregoing 24-month requirement, if Recipient elects to maintain "tail" coverage and if the maximum time period "tail" coverage reasonably available in the marketplace is less than the 24-month period described above, then Recipient shall maintain "tail" coverage for the maximum time period that "tail" coverage is reasonably available in the marketplace for the coverage required under this Agreement. Recipient shall provide to Agency, upon Agency's request, certification of the coverage required under this section 4.C.

**7. Notice of Cancellation or Change**

There shall be no cancellation, material change, potential exhaustion of aggregate limits or non-renewal of insurance coverage(s) without sixty (60) days' written notice from this Recipient or its insurer(s) to Agency. Any failure to comply with the reporting provisions of this clause shall constitute a material breach of Agreement and shall be grounds for immediate termination of this Agreement by Agency.

**8. Certificate(s) of Insurance.**

As evidence of the insurance coverage's required by the Agreement, the Recipient shall provide to Agency Certificate(s) of Insurance for all required insurance before delivering any Goods and performing any Services required under this Agreement. The Certificate(s) must specify all entities and individuals who are endorsed on the policy as Additional Insured (or Loss Payees). Recipient shall pay for all deductibles, self-insured retention and self-insurance, if any.