State of Rhode Island and Providence Plantations

DEPARTMENT OF ADMINISTRATION

STATEMENT OF NEED FOR EMERGENCY ACTION

In accordance with the provisions of subsection (b) of § 42-35-3 of the Rhode Island General Laws, as amended, I have approved a regulation entitled, ***Rules and Regulations for Non-Utility Scale Renewable Energy Projects***. This regulation has been promulgated pursuant to the authority contained in the Rhode Island General Laws § 42-140-9, as amended.

This regulation is to become effective immediately upon filing with the Secretary of State.

Such an effective date is necessary in view of a finding by the Executive Director of the Office of Energy Resources that any substantial delay might imperil the public health, safety, and welfare. This finding is based upon the following:

> The State of Rhode Island was awarded Eight Million Three Hundred and Ninety-Five Million Dollars ($3,395,000.00) under the American Recovery and Reinvestment Act of 2009-State Energy Program ("ARRA-SEP") to support development of non-utility scale renewable energy projects in Rhode Island. The projects are intended to create and retain jobs in Rhode Island; to realize energy cost savings; to reduce dependence on non-renewable forms of energy, especially fuels imported from other nations; to achieve environmental benefits, especially reductions in greenhouse gases; to leverage project funds and revenues; to facilitate market transformation, including especially for customer sited facilities; to provide opportunities for persons in all communities in the state to undertake non-utility scale renewable energy projects by assuring that projects from diverse renewable energy sources can be funded from program and to comply with the applicable requirements of the ARRA-SEP. These goals are essential to ensure the health, safety and welfare of the State of Rhode Island and for the benefit of the public.
>
> Pursuant to the ARRA-SEP, the use and disbursement of said funds by the State are subject to strict time constraints. On or before March 10, 2010, the Rhode Island Office of Energy Resources ("OER") must commence disbursement of funds for non-utility scale renewable energy projects. Prior to disbursing any awards for these projects, the OER will need to promulgate rules and regulations regarding the administration and utilization of the ARRA-SEP funds. After the

regulations are in effect, the OER must solicit applications for projects and review each submittal. The OER will then issue the awards and enter into contracts with each project applicant.

To complete this application and award process prior to the March 10, 2010 deadline, the first round of applications for non-utility scale renewable energy projects must be submitted on or before January 15, 2010. If the OER were to provide the notice and comment for these regulations as required by the Rhode Island Administrative Procedures Act, it would be impossible for the OER to disburse the funds by March 10, 2010. Therefore, the immediate filing of these regulations is critical to meet the ARRA deadlines.

These emergency rules and regulations are available for inspection at the Rhode Island Department of Administration, Purchasing Division, One Capitol Hill, Providence, Rhode Island and will be available on the Rhode Island Secretary of State's website: www.rules.state.ri.us/rules/

Pursuant to subsection (b) of § 42-35-3, the emergency regulation shall take effect upon filing with the Rhode Island Secretary of State and shall remain in effect as provided in said subsection. While the emergency regulation is in effect, amended regulations will be promulgated pursuant to subsection (a) of § 42-35-3.

This emergency regulation has been adopted by me on this 10 day of December, 2009.

Ronald N. Renaud, Executive Director
Office of Energy Resources, Interim Comm.
Rhode Island Department of Administration

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

DEPARTMENT OF ADMINISTRATION

OFFICE OF ENERGY RESOURCES

RULES AND REGULATIONS FOR NON-UTILITY SCALE RENEWABLE ENERGY PROJECTS

[Regulation DOA-OER-NUSP-1-2009]

DECEMBER 2009

1.0 Authority

These Rules and Regulations are promulgated pursuant to the requirements and provisions of Rhode Island General Laws Sections (hereinafter, "RIGL") 42-11-1 *et seq.*; 42-140-1 *et seq.* and 42-140.1-1 *et seq.* in accordance with the provisions of RIGL Chapter 42-35, "Administrative Procedures Act".

2.0 Purpose

The Office of Energy Resources, in order to develop an integrated system for effective renewable energy development from diverse sources in Rhode Island and to take advantage and meet the requirements of the Recovery Act-SEP for the benefit of Rhode Islanders, hereby adopts these rules and regulations.

The State of Rhode Island recognizes that there are job creation, energy cost savings, and environmental benefits from reducing energy consumption and developing diverse renewable resources in the state. Rhode Island has been awarded funding from Federal American Recovery and Reinvestment Act-State Energy Program, which can aid in realizing the above benefits. With regard to programs administered by the Office of Energy Resources, the Recovery Act has the following purposes:

(a) creation and retention of jobs,
(b) realizing energy cost savings,
(c) reducing dependence on imported fuels,
(d) leveraging funds,
(e) transforming markets, and
(f) building program sustainability.

3.0 Definitions

For the purposes of these regulations, the following terms shall have the following meanings:

3.01. "Building Code" means the most recent version of any applicable code that has been adopted by the Building Code Standards Committee, pursuant to RIGL §§ 23-27.3-100.1.5; 23-27.3-100.1.5.4, or 23-27.3-100.1.5.3.

3.02. "Commissioner" means the Commissioner of the Office of Energy Resources.

3.03. "Contract" means an agreement made pursuant to a grant or loan subaward to a Sub-Recipient.

3.04. "Contractor" means the party or parties to a Contract other than the Prime Recipient and includes a subgrantee or borrower. For the purposes of ARRA reporting, Contractor is either a Sub-Recipient or a Sub-Recipient Vendor.

3.05. "Corporation " means the Rhode Island Economic Development Corporation as established, administered and governed by RIGL §§ 42-64-1 *et seq.*, as amended.

3.06. "Customer-sited facility" means a renewable energy facility of an end-user that primarily meets energy needs of the end-user and is located on property owned or controlled by the end-user, and, if the renewable energy facility generates electrical power, is interconnected on the end-use customer's side of the retail electricity meter in such a manner that it displaces all or part of the metered consumption of the end-use customer;

3.07. "Eligible biomass fuel" means fuel sources including brush, stumps, lumber ends and trimmings, wood pallets, bark, wood chips, shavings, slash and other clean wood that is not mixed with other solid wastes; agricultural waste, food and vegetative material; energy crops; algae; landfill methane; biogas; or neat bio-diesel and other neat liquid fuels that are derived from such fuel sources;

3.08. "Eligible facilities and eligible locations" means Renewable Energy Project facilities and real property owned or leased by the Sub-Recipient. If the facility or property is leased, the Sub-Recipient must be authorized by the property owner to implement the Project and the Project must pay for itself within the remaining term of the lease. New facilities, and those that have undergone substantial renovations, must be fully operational and have been occupied by the Sub-Recipient for more than one year prior to requesting funding.

3.09. "Fund" means the funding allocated from the Recovery Act SEP, in accordance with the award by the United States Department of Energy to the State of Rhode Island Office of Energy Resources, to support non-utility scale renewable energy projects.

3.10. "Individual" means a natural person.

3.11. "Large Commercial-Industrial" means a facility with an average demand usage of greater than 200 kilowatts per month.

3.12. "Municipality" means any city or town, or other political subdivision of the state.

3.13. "Non-utility scale renewable energy project" means a renewable energy project that is either a customer-sited facility or is designed for operating at a gross capacity of less than ten (10) megawatts, or less than 8.6 million kilocalories per hour, or both.

3.14. "OERR" means the Office of Economic Recovery and Reinvestment in the Executive Office of the Governor.

3.15. "Office" means the Office of Energy Resources in the Rhode Island Department of Administration.

3.16. "Person" means any individual, partnership, corporation, association, governmental subdivision, or public or private organization of any character.

3.17. "Prime Recipient" means a non-Federal entity that expends Federal awards received directly from a Federal awarding agency to carry out a Federal program; for the purposes of these Regulations, the Office of Energy Resources is the Prime Recipient.

3.18. "Program" means the non-utility scale renewable energy program supported by ARRA-SEP funds as administered by the Office.

3.19. "Project" means the acquisition, operation, construction, reconstruction, rehabilitation, improvement, development, of a renewable energy facility.

3.20. "Project cost" means the sum total of amounts paid or incurred to purchase a qualified renewable energy system and for the purchase and labor costs properly allocable to onsite preparation, assembly,

and original installation of the project or costs which are deemed reasonable and necessary for the development of a project including, but are not necessarily limited to, the costs of all necessary studies, surveys, plans, and specifications, architectural, engineering, or other special services.

3.21. "Real property" means lands, structures (new or used), franchises, and interests in land, including lands under water, and riparian rights, space rights, and air rights, and all other things and rights usually included within the term. "Real property" shall also mean and include any and all interests in that property less than fee simple, such as easements, incorporeal hereditaments, and every estate, interest or right, legal or equitable, including terms for years and liens thereon by way of judgments, mortgages or otherwise, and also all claims for damages to that real property.

3.22. "Recipient Vendor" means a Vendor that receives ARRA Funds from a Prime Recipient.

3.23. "Recovery Act" means the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5.

3.24. "Renewable Energy" shall mean energy made useful for residential, commercial, industrial, institutional, or transportation purposes as an alternative to non-renewable energy and is from one or more of the following sources:

(1) Direct solar radiation by an active system;
(2) The wind;
(3) Movement or the latent heat of the ocean;
(4) The heat of the earth;
(5) Small hydro facilities;
(6) Biomass facilities using eligible biomass fuels and maintaining compliance with current air permits; eligible biomass fuels may be co-fired with fossil fuels, provided that only the renewable energy fraction of production from multi-fuel facilities shall be considered eligible;
(7) Fuel cells using the renewable resources referenced above in this section;
(8) Waste-to-energy conversion of any sort or manner shall in no instance be considered eligible except for fuels identified in subsection 3.07.

3.25. "Renewable Energy Development Fund" shall mean those funds administered by the Rhode Island Economic Development Corporation pursuant to RIGL § 42-64-13.2, RIGL § 39-2-1.2 and RIGL §39-26-7.

3.26. "Revenues" means with respect to any project, the rents, fees, tolls, charges, awards, payments, installment payments, repayments, grants, aid, appropriations and other assistance from the state, the United States or any corporation, department or instrumentality of either or of a political subdivision thereof, bond proceeds, investment earnings, insurance proceeds, and other income or profit derived from a project.

3.27. "SEP" means the State Energy Program administered by the Office in accordance with the program requirements of the U.S. Department of Energy.

3.28. "Small Commercial-Industrial" means a facility with an average demand usage of 200 kilowatts per month or less, which does not qualify for residential electric rates.

3.29. "Small hydro facility" means a facility employing one or more hydroelectric turbine generators and with an aggregate capacity not exceeding thirty (30) megawatts. For purposes of this definition,

"facility" shall be defined in a manner consistent with Title 18 of the Code of Federal Regulations, section 92.201 *et seq.*; provided, however, that the size of the facility is limited to thirty (30) megawatts, rather than eighty (80) megawatts.

3.30. "State agency" means any office, department, board, commission, bureau, division, authority, or public corporation, agency or instrumentality of the state.

3.31. "Subcontractor" means any entity engaged by a Contractor to provide goods or perform services in connection with a project.

3.32. "Sub-Recipient" means a non-Federal entity receiving ARRA Funds through a prime Recipient to carry out an ARRA funded program or project, but does not include an individual that is a beneficiary of such a program.

3.33. "Sub-Recipient Vendor" means a Vendor that receives ARRA Funds from a Sub-Recipient

3.34. "Vendor" means a dealer, distributor, merchant, or other seller providing goods or services.

4.0 Program Description.

4.01. Purposes. The purposes of the Program are the following and the fund shall be administered in a manner that accomplishes these purposes:

(a) to create and retain jobs in Rhode Island,
(b) to realize energy cost savings,
(c) to reduce dependence on non-renewable forms of energy, especially fuels imported from other nations,
(d) to achieve environmental benefits, especially reductions in greenhouse gases,
(e) to leverage project funds and revenues,
(f) to facilitate market transformation, including especially for customer sited facilities,
(g) to provide opportunities for persons in all communities in the state to undertake non-utility scale renewable energy projects by assuring that projects from diverse renewable energy sources can be funded from program, and
(h) to comply with the applicable requirements of the Recovery Act.

4.02. Project types and sizes. A project shall have the following characteristics in order to be eligible for funding from this Program:

(a) The project shall have as its primary purpose the development and/or implementation of a Renewable Energy resource in Rhode Island.
(b) Projects shall be categorized by size as follows:

(1) Residential projects to supply dwelling units with renewable energy.
(2) Small Commercial-Industrial projects to supply facilities of all types of entities, including facilities of non-profit corporations, as defined in RIGL § 7-6-2, and charitable, educational and religious organizations and state and political subdivisions as described in RIGL § 44-18-30, that qualify for electrical rates for Small Commercial -Industrial

electrical rates and premises with more than twelve dwelling units with renewable energy.
(3) Large Commercial-Industrial projects to supply facilities of all types of entities, including facilities of non-profit corporations, as defined in RIGL § 7-6-2, and charitable, educational and religious organizations and state and political subdivisions as described in RIGL § 44-18-30, that qualify for Large Commercial-Industrial electrical rates.
(4) Community and institutional projects are projects that would supply renewable energy to one or more municipalities or to hospital or educational institutions or state agency institutional complexes that serve or house one thousand or more persons.

(c) Funding for each project shall not be greater than:

(i) $10,000 from the Fund per dwelling unit for residential projects, up to a total of $500,000 for projects containing multiple dwelling units,
(ii) $500,000 from the Fund for commercial-industrial projects, or
(iii) $750,000 from the Fund for community and institutional projects.

(d) The maximum level of support from the Fund shall be the funding level set forth in subsection (c) above or twenty-five percent (25%) of the total project cost, whichever amount is less. A project may involve the use of more than one renewable energy resources, provided that the aggregate level of support from the Fund does not exceed the limitation set forth in this subsection.

(e) The Office may administer a program for residential projects at the residence of individuals, including premises of four dwelling units or less, where the project shall not be greater than $25,000 of support from the Fund.

4.03. Ineligible Projects and Costs. Projects and costs that ineligible under Recovery Act-SEP shall be ineligible for support from the Program and will include but not be limited to:

(1) Projects that are wholly funded from Federal, State, Corporation sources or by utility administered programs and projects that have, as of the effective date of these Regulations, a contract to be funded or partially funded by Corporation programs, or any utility funded program;
(2) Projects to be completed for casinos or other gambling establishments, aquariums, zoos, golf courses or for swimming pools;
(3) Outdoor and low-efficiency wood boilers. Low- efficiency wood boilers shall be defined as any boiler that does not meet or exceed a minimum thermal efficiency of 83 as measured by testing thermal efficiency using either the EN 303-5 or ASHRAE 155P methods, and using the lower heating value of wood. Wood boilers that use a fuel source other than wood pellets, wood chips or firewood are not eligible under these Regulation.
(4) Projects that are part of construction of new facilities and new construction commissioning;
(5) Power quality, power factor, and power conditioning improvements;
(6) Personal computers and vehicles are not eligible costs;
(7) The Sub-Recipient's staff time for developing, designing, or implementing the project and in-kind services are not to be considered as cost-sharing;
(8) Passive solar projects;

(9) Projects that require the preparation of a Federal Environmental Impact Statement; only projects that are eligible for categorical exclusions or environmental assessments/finding of no significant impact shall be eligible; and
(10) Projects that lack assurances that they will be installed correctly and safely.

4.04 Compliance with Recovery Act. All persons receiving funding from the Program shall comply with applicable Recovery Act requirements and guidance. No person shall receive funding for a project that is ineligible under the Recovery Act-State Energy Program.

4.05. Duration. The Program shall commence upon the filing of these rules and shall conclude for the purposes of developing and supporting projects on March 31, 2012, however, project performance monitoring and reporting requirements shall continue as required by the Recovery Act. With the exception of performance monitoring and reporting requirements, all projects funded by this Program must be completed on or before March 31, 2012.

4.06. Funding Rounds. There shall be a minimum of two funding rounds from the Program:

(a) The first funding round shall total $3.395 million with applications filed in the Office by the end of business on January 15, 2010.
(b) The second funding round shall total $5.0 million with applications filed in the Office by the end of business on March 1, 2010.
(c) The first funding round may, in order to support one or more meritorious projects that would not be funded within the allocation set forth in sub-paragraph (a) above, be increased by an amount not to exceed ten percent (10%) of the Recovery Act total funds allocated to the Program; in the event that the first finding is so increased, the second funding round shall be decreased by a corresponding amount.
(d) If funds from these two funding rounds, (a) and (b) above, are not fully obligated, the Office may establish one or more supplementary funding rounds to commit the un-obligated balance of the Fund available.

4.07. Coordination with Other Programs. This Program shall be coordinated with other renewable energy programs in Rhode Island, including but not limited to the Renewable Energy Development Fund, in order to optimize the benefits of renewable energy development in the state to accomplish the purposes set forth in Regulation 4.01 and consistent with the applicable Recovery Act requirements.

5.0 Applications for Utilization of Funds from Program.

5.01. Applications for utilization of funds from the Program shall use the procedures set forth in Regulation 5.0 and shall be made on forms issued by the Office.

5.02. Applications for Funding. At a minimum, applications shall contain the following:

(a) A project description of one page or less, in a font no smaller than 11 point, with at least single spacing, and with at least one inch margins, which description shall (1) set forth the nature of the proposed project, (2) the location of the project, (3) the type or types of renewable energy that are the subject of the proposed project, (4) how the proposed project addresses the program purposes set forth in Regulation 4.01 and (5) the extent to which it is coordinated with other renewable energy programs in Rhode Island.

(b) Qualification statement for the person or persons who will perform the proposed project, including, but not limited to:

(i) the applicant's experience in renewable energy projects of the kind of the proposed project. If the proposed project involves a team of persons, provide the experience of key team members and an organization chart for the project team indicating the name of each team member, the team reporting structure and a narrative describing the responsibility of each team member.

(ii) financial information demonstrating the capability of the person or team to complete the project successfully. Audited financial statements are not required for this application but will be prior to the final award for projects other than residential projects involving four dwelling units or less.

(iii) other information, at the discretion of the proposer, that demonstrates the person's or team's ability to achieve the purposes of the program as set forth in Regulation 4.01 for this project.

(iv) a project schedule including all major activities from notice to proceed to project operation.

(v) project assurances, including: assurances that the project will comply with applicable requirements and guidance of the Recovery Act, including: assurances that the project will comply with applicable provisions of municipal comprehensive plans, zoning ordinances, the Building Code, and state agency rules and regulations; assurance that the project will comply with applicable requirements for protection of historic resources as administered by the Rhode Island Historical Preservation and Heritage Commission pursuant to section 106 of the National Historic Preservation Act; assurance that there will be an independent inspection of the project after its completion to determine its consistency with the project application and design and its operational capability to meet energy production levels; assurance that the project will be completed, verified and inspected on or before March 31, 2012; and assurance that the project meets the definition of a non-utility scale project.

5.03 Application submission. (a) In addition to the hard copies of applications required, applicants, other than for residential projects involving four dwelling units or less, shall provide their application in electronic format (CD Rom or Diskette). Microsoft Word/Excel or PDF format is preferable. Only one electronic copy is required. This CD or diskette should be included in the application marked "original".

5.04. Evaluation Criteria.

(a) Threshold Criteria. All applications, in order to be considered for funding, shall (i) be complete and include all necessary assurances and (ii) demonstrate feasibility including: technical feasibility – applications must include documented evidence of technical feasibility for the proposed renewable energy technology, and financial viability – applications must include evidence of commitments or expressions of interest from all funding sources.

(b) Competitive Criteria. Applications that meet all threshold criteria set forth in subsection (a) shall be evaluated and ranked as follows, using the appropriate benefits calculator issued by the United States Department of Energy, if applicable:

1. Job creation/retention (40%):

   a) Number of full-time jobs created and/or retained
   b) Number of part-time jobs created and/or retained

2. Annual Energy Savings (kwh equivalents) (30%):

   a) reduction in natural gas consumption (mmcf),
   b) reduction in electricity consumption (MWh),
   c) reduction in electricity demand (MW),
   d) reduction in fuel oil consumption (gallons),
   e) reduction in propane consumption (gallons), and/or
   f) reduction in gasoline and diesel fuel consumption (gallons).

3. Cost-Effectiveness Savings (10%)

   Estimated energy produced over the life of the project/project costs and project operation and maintenance costs.

4. Funds Leveraged (20%)

   a) Funds leveraged from the owner of the project.
   b) Funds leveraged from public sources other than the Program.
   c) Funds leveraged from private sources, including charitable and philanthropic sources.

(c) Bonus Criteria. To the competitive criteria set forth in subsection (b) above, there shall be added the following:

1. Direct benefits to low and moderate income households (up to 5%) and
2. Integration with other renewable or energy efficiency/energy conservation programs (up to 5%).

5.05. Selection Process.

The project selection and award process shall be conducted in accordance with the applicable provisions of RIGL §§ 37-2-1 *et seq.* and the State of Rhode Island Procurement Regulations as last adopted in January of 2009.

5.06. Method of Disbursement of Funds.

The total amounts and type of disbursements from the Fund shall be at the sole discretion of the Office subject only to the Office's application of the competitive and bonus criteria as set forth in these Regulations. The Office may disburse from the Fund in the form of grants, rebates, loans, recoverable grants and other financial mechanisms, with or without security, for repayment, if any, and at rates, terms and other conditions as shall be deemed necessary, appropriate and in the best interest of the Fund

as determined by the Office. The disbursement of funds may be in installments based on the level of completion of the project.

5.07. Repeat Funding and Maximum Funding Amount. Sub-Recipients, affiliates of Sub-Recipients and individuals are ineligible for repeat funding for a project. No project shall receive more than Seven Hundred Fifty Thousand Dollars ($750,000) from the Fund.

6.0 Special Terms and Provisions Applicable to Receipt of Recovery Act Funds.

The Recovery Act was enacted to preserve and create jobs and promote economic recovery, assist those most impacted by the recession, provide investments needed to increase economic efficiency by spurring technological advances in science and health, invest in transportation, environmental protection, energy efficiency and renewable energy and other infrastructure that will provide long-term economic benefits, and stabilize State and local government budgets, in order to minimize and avoid reductions in essential services and counterproductive State and local tax increases. Contractors shall use funds in a manner that maximizes job creation and economic benefit.

Contractors shall comply with all terms and conditions in the Recovery Act relating generally to governance, accountability, transparency, data collection and resources as specified in the Act itself and as set forth in **Appendix A** ("Supplemental Terms and Conditions for Contracts and Subawards") which is attached hereto and is hereby incorporated by reference. Contractors shall require its subcontractors to comply, as appropriate.

The Contractor and the Office understand that the Recovery Act provisions may be changed and additional requirements may be added and that each agrees to be bound by such changes, additions, and guidance as may be issued with respect to, and as required under, the Recovery Act or by the State.

Section 7.0 Severability

If any provision of these Rules and Regulations, or the application thereof to any person or circumstance, is held invalid by a court of competent jurisdiction, the validity of the remainder of the Rules and Regulations shall not be affected thereby.

Section 8.0 Superseded Rules and Regulations

On the effective date of these Rules and Regulations, all previous Rules and Regulations for Non-Utility Scale Renewable Energy Projects, and any policies regarding the administration and enforcement of RIGL §§ 42-140-1 *et seq.*, as amended, shall be superseded. However, any enforcement action taken by, or application submitted to, the Department prior to the effective date of these Rules and Regulations shall be governed by the Rules and Regulations in effect at the time the enforcement action was taken, or the application filed.

Section 9.0 Application

The terms and provisions of these Rules and Regulations shall be liberally construed to permit the Department to effectuate the purposes of state law, goals, and policies.

Section 10.0 Effective Date

The foregoing Rules and Regulations, after due notice and hearing, are hereby adopted and filed with the Secretary of State this 10 day of December, 2009, to become effective immediately upon filing in accordance with the provisions of the RIGL §§ 42-35, specifically § 42-35-4(b); and § 42-140-9.

Ronald N. Renaud, Executive Director
Office of Energy Resources, Interim Comm

Filing Date: 12/11/09

Effective Date: 12/11/09

APPENDIX A

TO

RULES AND REGULATIONS FOR NON-UTILITY SCALE PROJECTS

SUPPLEMENTAL TERMS AND CONDITIONS FOR CONTRACTS AND SUBAWARDS FUNDED IN WHOLE OR IN PART BY THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009, PUB. L. NO. 111-5

Definitions

"ARRA" or "Recovery Act" means the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, 123 Stat.115.

"ARRA Funds" means any funds that are expended or obligated from appropriations made under ARRA.

"ARRA Requirements" means these Supplemental Terms and Conditions, as well as any terms and conditions required by: ARRA; federal law, regulation, policy or guidance; the federal Office of Management and Budget (OMB); the awarding federal agency; or, the Rhode Island Office of Economic Recovery and Reinvestment (OERR).

"Contract" means the contract to which these Supplemental Terms and Conditions are attached, and includes an agreement made pursuant to a grant or loan subaward to a Sub-Recipient.

"Contractor" means the party or parties to the Contract other than the Prime Recipient and includes a subgrantee or a borrower. For the purposes of ARRA reporting, Contractor is either a Sub-Recipient or a Recipient Vendor under this Contract.

"Prime Recipient" means a non-Federal entity that expends Federal awards received directly from a Federal awarding agency to carry out a Federal program. For the purposes of these Regulations, the Office of Energy Resources is the Prime Recipient.

"Recipient Vendor" means a Vendor that receives ARRA Funds from a Prime Recipient.

"Subcontractor" means any entity engaged by Contractor to provide goods or perform services in connection with this contract.

"Sub-Recipient Vendor" means a Vendor that receives ARRA Funds from a Sub-Recipient.

"Sub-Recipient" means a non-Federal entity receiving ARRA Funds through a Prime Recipient to carry out an ARRA funded program or project, but does not include an individual that is a beneficiary of such a program. The term " Sub-Recipient" is intended to be consistent with the definition in OMB Circular A-133 and section 2.2 of the June

22, 2009 OMB Reporting Guidance.[1] A Sub-Recipient is sometimes referred to as a subgrantee.

"Supplemental Terms and Conditions" means these Supplemental Terms And Conditions For Contracts And Subawards Funded In Whole Or In Part By The American Reinvestment Recovery Act Of 2009, Pub. L. No. 111-5, as may be subsequently revised pursuant to ongoing guidance from the relevant federal or State authorities.

"Vendor" means a dealer, distributor, merchant, or other seller providing goods or services that are required for the project or program funded by ARRA. The term "Vendor" is intended to be consistent with the definition in OMB Circular A-133 and section 2.2 of the June 22, 2009 OMB Reporting Guidance.

General

To the extent this Contract involves the use of ARRA Funds, Contractor shall comply with both the ARRA Requirements and these Supplemental Terms and Conditions, except where such compliance is exempted or prohibited by law.

The Contractor acknowledges these Supplemental Terms and Conditions may require changes due to future revisions of or additions to the ARRA Requirements, and agrees that any revisions of or additions to the ARRA Requirements shall automatically become a part of the Supplemental Terms and Conditions without the necessity of either party executing or issuing any further instrument and shall become a part of Contractor's obligations under the Contract.. The State of Rhode Island may provide written notification to Contractor of such revisions, but such notice shall not be a condition precedent to the effectiveness of such revisions.

Conflicting Terms

Contractor agrees that, to the extent that any term or condition herein conflicts with one or more ARRA Requirements, the ARRA Requirements shall control.

Enforceability

Contractor agrees that if it or one of its subcontractors or sub-recipients fails to comply with all applicable federal and State requirements governing the use of ARRA funds, including any one of the terms and conditions specified herein, the State may withhold or suspend, in whole or in part, funds awarded under the program, recover misspent funds, or both. This provision is in addition to all other civil and criminal remedies available to the State under applicable state and federal laws and regulations.

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[1] Implementing Guidance for the Reports on Use of Funds Pursuant to the American Recovery and Reinvestment Act of 2009, M-09-21 (June 22, 2009), available at http://www.whitehouse.gov/omb/assets/memoranda_fy2009/m09-21.pdf.

Applicability to Subcontracts and Subawards

Contractor agrees that it shall include the Supplemental Terms and Conditions set forth herein, including this provision, in all subcontracts or subawards made in connection with projects funded in whole or in part by ARRA, and also agrees that it will not include provisions in any such subcontracts or subawards that conflict with either ARRA or the terms and conditions herein.

Availability of Funding

Contractor understands that federal funds made available by ARRA are temporary in nature and agrees that the State is under no obligation to provide additional State-financed appropriations once the temporary federal funds are expended.

Inspection and Audit of Records

Contractor agrees that it shall permit the State and its representatives, the United States Comptroller General or his representative or the appropriate inspector general appointed under section 3 or 8G of the Inspector General Act of 1978 or his representative to:

i. Examine, inspect, copy, review or audit any records relevant to, and/or involve transactions relating to, this agreement, including documents and electronically stored information in its or any of its subcontractors' or sub-recipients' possession, custody or control unless subject to a valid claim of privilege or otherwise legally protected from disclosure; and

ii. Interview any officer or employee of the Contractor regarding the activities and programs funded by ARRA.

Registration Requirements

DUNS Number Registration. Contractor agrees: (i) if it does not have a Dun and Bradstreet Data Universal Numbering System (DUNS) Number, to register for a DUNS Number within 10 business days of receiving this Contract; (ii) to provide the State with its DUNS number prior to accepting funds under this agreement; and (iii) to inform the State of any material changes concerning its DUNS number.

Central Contractor Registration. To the extent that Contractor is a Sub-Recipient, it agrees: (i) to maintain a current registration in the Central Contractor Registration (CCR) at all times this agreement is in force, (ii) to provide the State with documentation sufficient to demonstrate that it has a current CCR registration, and (iii) to inform the State of any material changes concerning this registration.

FederalReporting.gov Registration. To the extent that Contractor is a Sub-Recipient, it agrees: (i) to register on FederalReporting.gov within 10 business days of receiving this subaward; (ii) to maintain a current registration on FederalReporting.gov at all times this agreement is in force; (iii) to provide the State with documentation sufficient to demonstrate that it has a current

registration on FederalReporting.gov, and (iv) to inform the State of any material changes concerning this registration.

Reporting Requirements under § 1512 of ARRA

Contractor agrees to provide the State with data sufficient to fulfill the State's ARRA reporting requirements within the timeframes established by State or federal law, regulation or policy, including but not limited to section 1512 reporting requirements.

To the extent that Contractor is a Sub-Recipient with a Subaward having a total value of greater than $25,000, it agrees to report directly to the Federal government the information described in section 1512(c) of ARRA using the reporting instructions and data elements available online at FederalReporting.gov, and ensure that any information that is prefilled is corrected or updated as needed. Information from these reports will be made available to the public.

To the extent that Contractor is a Sub-Recipient with a Subaward having a total value of greater than $25,000, it accepts delegation of reporting responsibility of FFATA data elements required under section 1512 of ARRA for payments from the State. Sub-Recipient shall utilize the federal government's online reporting solution at www.FederalReporting.gov. Reports are due no later than ten calendar days after each calendar quarter in which the recipient receives the assistance award funded in whole or in part by ARRA.

To the extent that Contractor is a Sub-Recipient with a Subaward having an initial total value of less than $25,000, but is subsequently modified to exceed $25,000, Contractor agrees that subsections (b) and (c) above apply after the modification.

Buy American Requirements under § 1605 of ARRA

Contractor agrees that, in accordance with section 1605 of ARRA, it will not use ARRA funds for a project for the construction, alternation, 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 in a manner consistent with United States obligations under international agreements. In addition to the foregoing Contractor agrees to abide by all regulations issued pursuant to section 1605 of ARRA.

Contractor understands that this requirement may only be waived by the applicable federal agency in limited situations as set out in section 1605 of ARRA and federal regulations issued pursuant thereto.

Wage Rate Requirements under § 1606 of ARRA

Contractor agrees that it will comply with the wage rate requirements contained in section 1606 of ARRA, which requires that, notwithstanding any other provision of law, all laborers and mechanics employed by contractors and subcontractors on projects funded directly by or assisted in whole or in part by and through the Federal Government pursuant to ARRA shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40,

United States Code. The Secretary of Labor's determination regarding the prevailing wages applicable in Rhode Island is available at http://www.gpo.gov/davisbacon/ri.html.

Contractor agrees that it will comply with all federal regulations issued pursuant to section 1606 of ARRA, and that it will require any subcontractors or sub-recipients to comply with the above provision.

Required Jobs Data Reporting under § 1512(c)(3)(D) of ARRA

Contractor agrees, in accordance with section 1512(c)(3)(D) of ARRA and section 5 of the June 22, 2009 OMB Reporting Guidance (entitled "Reporting on Jobs Creation Estimates and by Recipients"), to provide an estimate of the number of jobs created and the number of jobs retained by ARRA-funded projects and activities. In order to perform the calculation, the Contractor will provide the data elements listed in sub-section (b) below.

Contractor agrees that, no later than two business days after the end of each calendar quarter, it will provide to the State the following data elements using a form specified by the State:

i. The total number of ARRA-funded hours worked on this award.

ii. The number of hours in a full-time schedule for a quarter.

iii. A narrative description of the employment impact of the ARRA funded work. This narrative is cumulative for each calendar quarter and at a minimum, shall address the impact on the Contractor's workforce and the impact on the workforces of its subcontractors or sub-recipients.

Contractor agrees that, in the event that the federal government permits direct reporting of section 1512(c)(3)(D) jobs data by sub-recipients or vendors, it will directly report jobs data to the federal government, consistent with any applicable federal law, regulations and guidance.

Segregation of Funds

Contractor agrees that it shall segregate obligations and expenditures of ARRA funds from other funding it receives from the State and other sources, including other Federal awards or grants.

Contractor agrees that 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 in support of projects and activities expressly authorized by ARRA.

Disclosure pursuant to the False Claims Act

Contractor agrees that it 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 or has committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving ARRA funds.

Disclosure of Fraud, Waste and Mismanagement to State Authorities

Contractor shall also refer promptly to the Rhode Island Department of Administration, Department of Purchases, any credible evidence that a principal, employee, agent, contractor, subgrantee, subcontractor, or other person has committed a criminal or civil violation of State or Federal laws and regulations in connection with funds appropriated under ARRA.

Prohibited Uses of ARRA Funds

Contractor agrees that neither it nor any subcontractors or sub-recipients will use the funds made available under this agreement for any casinos or other gambling establishments, aquariums, zoos, golf courses, swimming pools, or similar projects.

Contractor agrees that neither it nor any subcontractors or sub-recipients will use the funds made available under this agreement in a manner inconsistent with any certification made by the Governor or any other State official pursuant to the certification requirements of ARRA, which are published online at http://www.recovery.ri.gov/certification/.

Whistleblower Protection under §1553 of ARRA

Contractor agrees that it shall not discharge, demote, or otherwise discriminate against an employee as a reprisal for disclosures by the employee of information that he or she reasonably believes is evidence of (1) gross mismanagement of an agency contract or grant relating to covered funds; (2) a gross waste of covered funds; (3) a substantial and specific danger to public health or safety related to the implementation or use of covered funds; (4) an abuse of authority related to the implementation or use of covered funds; or (5) 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 covered funds.

Contractor agrees to post notice of the rights and remedies available to employees under section 1553 of ARRA.

Please note that the State will strictly enforce compliance with all ARRA Requirements and these Supplemental Terms and Conditions. Accordingly, all Contractors should familiarize themselves with these Supplemental Terms and Conditions as well as all ARRA Requirements as they relate to this Contract.