

CHECK ONE:
 GRANT
 PERSONAL SERVICE AGREEMENT

- THE STATE BUSINESS UNIT AND THE CONTRACTOR AS LISTED BELOW HEREBY ENTER INTO AN AGREEMENT SUBJECT TO THE TERMS AND CONDITIONS STATED HEREIN AND/OR ATTACHED HERETO AND SUBJECT TO THE PROVISIONS OF SECTION 4-98 OF THE CONNECTICUT GENERAL STATUTES AS APPLICABLE.
- ACCEPTANCE OF THIS CONTRACT IMPLIES CONFORMANCE WITH TERMS AND CONDITIONS SET FORTH BY THE OFFICE OF POLICY AND MANAGEMENT PERSONAL SERVICE AGREEMENT STANDARDS AND PROCEDURES.

(1) <input checked="" type="checkbox"/> ORIGINAL <input type="checkbox"/> AMENDMENT	(2) IDENTIFICATION #s. P.S. 2010-10229 P.O. 29880
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CONTRACTOR	(3) CONTRACTOR NAME Milone & MacBroom, Inc.	(4) ARE YOU PRESENTLY A STATE EMPLOYEE? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO
	CONTRACTOR ADDRESS 99 Realty Drive, Cheshire, CT 06410	CONTRACTOR FEIN/SSN 06-1117358

STATE AGENCY	(5) AGENCY NAME AND ADDRESS DEP - WPLR, Inland Water Resources Division, 79 Elm Street, Hartford, CT 06106-5127	(6) Dept No. DEP43740
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CONTRACT PERIOD	(7) DATE (FROM) Execution	THROUGH (TO) 5/31/2011	(8) INDICATE <input type="checkbox"/> MASTER AGREEMENT <input type="checkbox"/> CONTRACT AWARD NO. _____ <input checked="" type="checkbox"/> NEITHER
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(9) CONTRACTOR AGREES TO: (Include special provisions - Attach additional blank sheets if necessary.)

1. Performance: Do, conduct, perform or cause to be performed in a satisfactory and proper manner as determined by the Commissioner of Environmental Protection, all work described in Schedule A, which is attached hereto and made a part hereof. Schedule A consists of four pages numbered A-1 through A-4 inclusive.

Page 1 of 6

Standard Terms and Conditions are contained in Pages 2 through 6 and are attached hereto and made a part hereof.

(10) PAYMENT TO BE MADE UNDER THE FOLLOWING SCHEDULE UPON RECEIPT OF PROPERLY EXECUTED AND APPROVED INVOICES.

The Contractor shall submit detailed invoices for periodic payments to the Commissioner on a monthly basis. Payment of invoices is subject to review and approval by the Commissioner. A 5% retainage will be withheld on all periodic and final payments and held for a period of time as determined by the Commissioner to be necessary to ensure that the work is satisfactory and that all conditions at the work site are acceptable. Cost and Schedule of Payments is attached hereto as Schedule B, and made a part hereof. (Schedule B consists of one page numbered B-1).
Total Payments Not to Exceed the Maximum Amount of \$326,000.00.

(11) OBLIGATED AMOUNT
\$326,000.00

(12) Amount	(13) Dept	(14) Fund	(15) SID	(16) Program	(17) Project	(18) Activity	(19) Bud Ref	(20) Agency CF 1	(21) Agency CF 2	(22) Account
\$163,000.00	DEP43740	12060	35169	61099	DEPA00003081002	155006	2010			51210
\$163,000.00	DEP43740	12060	29060	61099	DEPA00002090002	155001	2010			51210

An individual entering into a Personal Service Agreement with the State of Connecticut is contracting under a "work-for-hire" arrangement. As such, the individual is an independent contractor, and does not satisfy the characteristics of an employee under the common law rules for determining the employer/employee relationship of Internal Revenue Code Section 3121 (d) (2). Individuals performing services as independent contractors are not employees of the State of Connecticut and are responsible themselves for payment of all State and local income taxes, federal income taxes and Federal Insurance Contribution Act (FICA) taxes.

ACCEPTANCES AND APPROVALS	(23) STATUTORY AUTHORITY CGS Sec. 22a-6(a)(2) as amended
(24) CONTRACTOR (OWNER OR AUTHORIZED SIGNATURE) <i>[Signature]</i> JOHN M. MILONE, JR.	TITLE PRESIDENT
(25) AGENCY (AUTHORIZED OFFICIAL) <i>[Signature]</i>	TITLE Amey Marrella, Commissioner
(26) ATTORNEY GENERAL (APPROVED AS TO FORM) <i>[Signature]</i>	TITLE ASSOC. ATTY GENERAL

DISTRIBUTION: CONTRACTOR _____ AGENCY _____ FUNDS AVAILABLE: _____ DATE: _____

6/10/10
6/10/10
6/10/10

EXECUTIVE ORDERS

The Contract is subject to the provisions of Executive Order No. Three of Governor Thomas J. Meskill, promulgated June 16, 1971, concerning labor employment practices, Executive Order No. Seventeen of Governor Thomas J. Meskill, promulgated February 15, 1973, concerning the listing of employment openings and Executive Order No. Sixteen of Governor John G. Rowland promulgated August 4, 1999, concerning violence in the workplace, all of which are incorporated into and are made a part of the Contract as if they had been fully set forth in it. At the Contractor's request, the Client Agency shall provide a copy of these orders to the Contractor. The Contract may also be subject to Executive Order No. 7C of Governor M. Jodi Rell, promulgated July 13, 2006, concerning contracting reforms and Executive Order No. 14 of Governor M. Jodi Rell, promulgated April 17, 2006, concerning procurement of cleaning products and services, in accordance with their respective terms and conditions.

NON-DISCRIMINATION

References in this section to "contract" shall mean this Contract and references to "contractor" shall mean the Contractor.

(a) The following subsections are set forth here as required by section 4a-60 of the Connecticut General Statutes:

(1) The contractor agrees and warrants that in the performance of the contract such contractor will not discriminate or permit discrimination against any person or group of persons on the grounds of race, color, religious creed, age, marital status, national origin, ancestry, sex, mental retardation, mental disability or physical disability, including, but not limited to, blindness, unless it is shown by such contractor that such disability prevents performance of the work involved, in any manner prohibited by the laws of the United States or of the state of Connecticut. The contractor further agrees to take affirmative action to insure that applicants with job-related qualifications are employed and that employees are treated when employed without regard to their race, color, religious creed, age, marital status, national origin, ancestry, sex, mental retardation, mental disability or physical disability, including, but not limited to, blindness, unless it is shown by such contractor that such disability prevents performance of the work involved; (2) the contractor agrees, in all solicitations or advertisements for employees placed by or on behalf of the contractor, to state that it is an "affirmative action-equal opportunity employer" in accordance with regulations adopted by the commission; (3) the contractor agrees to provide each labor union or representative of workers with which such contractor has a collective bargaining agreement or other contract or understanding and each vendor with which such contractor has a contract or understanding, a notice to be provided by the commission advising the labor union or workers' representative of the contractor's commitments under this section, and to post copies of the notice in conspicuous places available to employees and applicants for employment; (4) the contractor agrees to comply with each provision of this section and sections 46a-68e and 46a-68f and with each regulation or relevant order issued by said commission pursuant to sections 46a-56, 46a-68e and 46a-68f; (5) the contractor agrees to provide the Commission on Human Rights and Opportunities with such information requested by the commission, and permit access to pertinent books, records and accounts, concerning the employment practices and procedures of the contractor as relate to the provisions of this section and section 46a-56.

(b) If the contract is a public works contract, the contractor agrees and warrants that he will make good faith efforts to employ minority business enterprises as subcontractors and suppliers of materials on such public works project.

(c) "Minority business enterprise" means any small contractor or supplier of materials fifty-one per cent or more of the capital stock, if any, or assets of which is owned by a person or persons: (1) Who are active in the daily affairs of the enterprise, (2) who have the power to direct the management and policies of the enterprise and (3) who are members of a minority, as such term is defined in subsection (a) of section 32-9n; and "good faith" means that degree of diligence which a reasonable person would exercise in the performance of legal duties and obligations. "Good faith efforts" shall include, but not be limited to, those reasonable initial efforts necessary to comply with statutory or regulatory requirements and additional or substituted efforts when it is determined that such initial efforts will not be sufficient to comply with such requirements.

(d) Determination of the contractor's good faith efforts shall include but shall not be limited to the following factors: The contractor's employment and subcontracting policies, patterns and practices; affirmative advertising, recruitment and training; technical assistance activities and such other reasonable activities or efforts as the commission may prescribe that are designed to ensure the participation of minority business enterprises in public works projects.

(e) The contractor shall develop and maintain adequate documentation, in a manner prescribed by the commission, of its good faith efforts.

(f) The contractor shall include the provisions of sections (a) and (b) above in every subcontract or purchase order entered into in order to fulfill any obligation of a contract with the state and such provisions shall be binding on a subcontractor, vendor or manufacturer unless exempted by regulations or orders of the commission. The contractor shall take such action with respect to any such subcontract or purchase order as the commission may direct as a means of enforcing such provisions including sanctions for noncompliance in accordance with section 46a-56; provided, if such contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the commission, the contractor may request the state of Connecticut to enter into any such litigation or negotiation prior thereto to protect the interests of the state and the state may so enter.

(g) The following subsections are set forth here as required by section 4a-60a of the Connecticut General Statutes:

(1) The contractor agrees and warrants that in the performance of the contract such contractor will not discriminate or permit discrimination against any person or group of persons on the grounds of sexual orientation, in any manner prohibited by the laws of the United States or of the state of Connecticut, and that employees are treated when employed without regard to their sexual orientation; (2) the contractor agrees to provide each labor union or representative of workers with which such contractor has a collective bargaining agreement or other contract or understanding and each vendor with which such contractor has a contract or understanding, a notice to be provided by the Commission on Human Rights and Opportunities advising the labor union or workers' representative of the contractor's commitments under this section, and to post copies of the notice in conspicuous places available to employees and applicants for employment; (3) the contractor agrees to comply with each provision of this section and with each regulation or relevant order issued by said commission pursuant to section 46a-56; and (4) the contractor agrees to provide the Commission on Human Rights and Opportunities with such information requested by the commission, and permit access to pertinent books, records and accounts, concerning the employment practices and procedures of the contractor which relate to the provisions of this section and section 46a-56.

(h) The contractor shall include the provisions of section (g) above in every subcontract or purchase order entered into in order to fulfill any obligation of a contract with the state and such provisions shall be binding on a subcontractor, vendor or manufacturer unless exempted by regulations or orders of the commission. The contractor shall take such action with respect to any such subcontract or purchase order as the commission may direct as a means of enforcing such provisions including sanctions for noncompliance in accordance with section 46a-56; provided, if such contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the commission, the contractor may request the state of Connecticut to enter into any such litigation or negotiation prior thereto to protect the interests of the state and the state may so enter.

(i) For the purposes of this entire Non-Discrimination section, "contract" includes any extension or modification of the contract, "contractor" includes any successors or assigns of the contractor, "marital status" means being single, married as recognized by the state of Connecticut, widowed, separated or divorced, and "mental disability" means one or more mental disorders, as defined in the most recent edition of the American Psychiatric Association's "Diagnostic and Statistical Manual of Mental Disorders", or a record of or regarding a person as having one or more such disorders. For the purposes of this section, "contract" does not include a contract where each contractor is (1) a political subdivision of the state, including, but not limited to, a municipality, (2) a quasi-public agency, as defined in Conn. Gen. Stat. Section 1-120, (3) any other state, including but not limited to any federally recognized Indian tribal governments, as defined in Conn. Gen. Stat. Section 1-267, (4) the federal government, (5) a foreign government, or (6) an agency of a subdivision, agency, state or government described in the immediately preceding enumerated items (1), (2), (3), (4) or (5).

INDEMNIFICATION

(a) The Contractor shall indemnify, defend and hold harmless the State and its officers, representatives, agents, servants, employees, successors and assigns from and against any and all (1) Claims arising, directly or indirectly, in connection with the Contract, including the acts of commission or omission (collectively, the "Acts") of the Contractor or Contractor Parties; and (2) liabilities, damages, losses, costs and expenses, including but not limited to, attorneys' and other professionals' fees, arising, directly or indirectly, in connection with Claims, Acts or the Contract. The Contractor shall use counsel reasonably acceptable to the State in carrying out its obligations under this section. The Contractor's obligations under this section to indemnify, defend and hold harmless against Claims includes Claims concerning confidentiality of any part of or all of the Bid or any Records, any intellectual property rights, other proprietary rights of any person or entity, copyrighted or uncopyrighted compositions, secret processes, patented or unpatented inventions, articles or appliances furnished or used in the Performance of the Contract.

(b) The Contractor shall reimburse the State for any and all damages to the real or personal property of the State caused by the Acts of the Contractor or any Contractor Parties. The State shall give the Contractor reasonable notice of any such Claims.

(c) The Contractor's duties under this section shall remain fully in effect and binding in accordance with the terms and conditions of the Contract, without being lessened or compromised in any way, even where the Contractor is alleged or is found to have merely contributed in part to the Acts giving rise to the Claims and/or where the State is alleged or is found to have contributed to the Acts giving rise to the Claims.

(d) The Contractor shall carry and maintain at all times during the term of the Contract, and during the time that any provisions survive the term of the Contract, sufficient general liability insurance to satisfy its obligations under this Contract. The Contractor shall name the State as an additional insured on the policy and shall provide a copy of the policy to the Agency prior to the effective date of the Contract. The Contractor shall not begin Performance until the delivery of the policy to the Agency.

(e) The rights provided in this section for the benefit of the State shall encompass the recovery of attorneys' and other professionals' fees expended in pursuing a Claim against a third party.

(f) This section shall survive the Termination, Cancellation or Expiration of the Contract, and shall not be limited by reason of any insurance coverage.

STATE LIABILITY

The State of Connecticut shall assume no liability for payment for services under the terms of this agreement until the contractor is notified that this agreement has been accepted by the contracting agency and, if applicable, approved by the Office of Policy and Management (OPM) or the Department of Administrative Services (DAS) and by the Attorney General of the State of Connecticut.

1. Commissioner. For the purposes of this contract, "Commissioner" means the Commissioner of Environmental Protection or the Commissioner's designated agent.
2. Distribution of Materials. The Contractor shall obtain written approval from the Commissioner prior to the distribution or publication of any materials prepared under the terms of this contract. Such approval shall not be unreasonably withheld.
3. Change in Principal Project Staff.
Any changes in the principal project staff must be requested in writing and approved in writing by the Commissioner or the Commissioner's authorized representative at their sole discretion. In the event of any unapproved change in principal project staff, the Commissioner may, in the Commissioner's sole discretion, terminate or cancel this contract.
4. Recording and Documentation of Receipts and Expenditures. Accounting procedures must provide for accurate and timely recording of receipt of funds by source, expenditures made from such funds, and of unexpended balances. Controls must be established which are adequate to ensure that expenditures under this contract are for allowable purposes and that documentation is readily available to verify that such charges are accurate.
5. Assignability. The Contractor shall not assign any interest in this contract, and shall not transfer any interest in the same (whether by assignment or novation), without the prior written consent of the Commissioner thereto: provided, however, that claims for money due or to become due the Contractor from the Commissioner under this contract may be assigned to a bank, trust company, or other financial institution without such approval. Notice of any such assignment or transfer shall be furnished promptly to the Commissioner.
6. Third Party Participation. The Contractor may make sub-awards to conduct any of the tasks in the Scope of Work contained in Schedule A. The Contractor shall advise the Commissioner of the proposed sub-awardee and the amount allocated, at least two (2) weeks prior to the making of such awards. The Commissioner reserves the right to disapprove such awards if they appear to be inconsistent with the program activities to be conducted under this grant. As required by Sec. 46a-68j-23 of the Connecticut Regulations of State Agencies the Contractor must make a good faith effort, based upon the availability of minority business enterprises in the labor market area, to award a reasonable proportion of all subcontracts to such enterprises. When minority business enterprises are selected, the Contractor shall provide DEP with a copy of the Affidavit for Certification of Subcontractors as Minority Business Enterprises (MBE) along with a copy of the purchase order or contract engaging the Subcontractor
7. Competition and Codes of Conduct for Subawards. All subawards will be made in a manner to provide, to the maximum extent practicable, open and free competition. The Contractor must be alert to organizational conflicts of interest as well as other practices among subcontractors that may restrict or eliminate competition. In order to ensure objective subrecipient performance and eliminate unfair competitive advantage, subcontractors that develop or draft work requirements, statements of work, or requests for proposals shall be excluded from competing for such subawards. The Contractor shall maintain written standards of conduct governing the performance of its employees engaged in the award and administration of subawards. No employee, officer, or agent shall participate in the selection, award, or administration of a subaward supported by Federal funds if a real or apparent conflict of interest would be involved. Such a conflict would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization in which he/she serves as an officer or which employs or is about to employ any of the parties mentioned in this section, has a financial interest or other interest in the organization selected or to be selected for a subaward. The officers, employees, and agents of the Contractor shall neither solicit nor accept anything of monetary value from subcontractors. However, the Contractor may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct shall provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the Contractor. A financial interest may include employment, stock ownership, a creditor or debtor relationship, or prospective employment with the organization selected or to be selected for a subaward. An appearance of impairment of objectivity could result from an organizational conflict where, because of other activities or relationships with other persons or entities, a person is unable or potentially unable to render impartial assistance or advice. It could also result from non-financial gain to the individual, such as benefit to reputation or prestige in a professional field.
8. Procurement of Materials and Supplies. The Contractor may use its own procurement procedures which reflect applicable State and local law, rules and regulations provided that procurement of tangible personal property having a useful life of more than one year and an acquisition cost of one thousand dollars (\$1,000.00) or more per unit be approved by the Commissioner before acquisition.
9. Definition of "Execution". This contract shall be fully executed when it has been signed by authorized representatives of the parties, and if it is for an amount exceeding three thousand dollars (\$3,000.00), by the authorized representative of the state Attorney General's office.
10. Campaign Contributions. For all State contracts as defined in P.A. 07-1 having a value in a calendar year of \$50,000 or more or a combination or series of such agreements or contracts having a value of \$100,000 or more, the authorized signatory to this Agreement expressly acknowledges receipt of the State Elections Enforcement Commission's notice advising state contractors of state campaign contribution and solicitation prohibitions, and will inform its principals of the contents of the notice. See attached SEEC Form 11.
11. Sovereign Immunity: The parties acknowledge and agree that nothing in the Solicitation or the Contract shall be construed as a modification, compromise or waiver by the State of any rights or defenses of any immunities provided by Federal law or the laws of the State of Connecticut to the State or any of its officers and employees, which they may have had, now have or will have with respect to all matters arising out of the Contract. To the extent that this section conflicts with any other section, this section shall govern.

12. **Termination:** This contract shall remain in full force and effect for the entire term of the contract period stated unless cancelled by DEP giving the Contractor written notice of such intention at least 30 days in advance. DEP reserves the right to cancel the contract without prior notice when the funding for the contract is no longer available. Notwithstanding any provisions in this contract, DEP, through a duly authorized employee, may terminate the contract whenever the agency makes a written determination that such termination is in the best interests of the State. DEP shall notify the Contractor in writing of termination pursuant to this section, which notice shall specify the effective date of termination and the extent to which the Contractor must complete performance under the contract prior to such date. DEP has forty-five (45) days after the effective date of termination or cancellation to reimburse the Contractor for its performance rendered and accepted by the DEP, in addition to all actual and reasonable costs incurred in completing the portions of performance, which the contractor was required to complete, by the termination or cancellation notice. DEP reserves the right to recoup any deposits, prior payment, advance payment or down-payment made if the contract is cancelled or terminated prior to performance being rendered for which said deposits or payments were made.
13. **Severability.** If any term or provision of the Contract or its application to any person, entity or circumstance shall, to any extent, be held to be invalid or unenforceable, the remainder of the Contract or the application of such term or provision shall not be affected as to persons, entities or circumstances other than those as to whom or to which it is held to be invalid or unenforceable. Each remaining term and provision of the Contract shall be valid and enforced to the fullest extent possible by law.
14. **Forum and Choice of Law:** The Contract shall be deemed to have been made in the City of Hartford, State of Connecticut. Both Parties agree that it is fair and reasonable for the validity and construction of the Contract to be, and it shall be, governed by the laws and court decisions of the State of Connecticut, without giving effect to its principles of conflicts of laws. To the extent that any immunities provided by federal law or the laws of the State of Connecticut do not bar an action against the State, and to the extent that these courts are courts of competent jurisdiction, for the purpose of venue, the complaint shall be made returnable to the Judicial District of Hartford only or shall be brought in the United States District Court for the District of Connecticut only, and shall not be transferred to any other court, provided, however, that nothing here constitutes a waiver or compromise of the sovereign immunity of the State of Connecticut. The Contractor waives any objection which it may now have or will have to the laying of venue of any Claims in any forum and further irrevocably submits to such jurisdiction in any suit, action or proceeding.
15. **Governmentwide Debarment and Suspension:** The Contractor shall comply with the provisions of Subpart C of 2 CFR Part 1326, "Governmentwide Debarment and Suspension (Nonprocurement)" (published in the *Federal Register* on December 21, 2006, 71 FR 76573), which generally prohibit entities that have been debarred, suspended, or voluntarily excluded from participating in Federal nonprocurement transactions either through primary or lower tier covered transactions.
16. **Drug Free Workplace:** The Contractor shall comply with the provisions of the Drug-Free Workplace Act of 1988 (Public Law 100-690, title V, Sec. 5153, as amended by Public Law 105-85, Div. A, Title VIII, Sec. 809, as codified at 41 U.S.C. § 702) and DOC implementing regulations published at 15 CFR Part 29, "Governmentwide Requirements for Drug-Free Workplace (Financial Assistance)" (published in the *Federal Register* on November 26, 2003, 68 FR 66534), which require that the Contractor take steps to provide a drug-free workplace.
17. **Lobbying Restrictions: Statutory Provisions:** The Contractor shall comply with the provisions of 31 U.S.C. § 1352 and DOC implementing regulations published at 15 CFR Part 28, "New Restrictions on Lobbying." These provisions generally prohibit the use of Federal funds for lobbying the Executive or Legislative Branches of the Federal government in connection with the award, and require the disclosure of the use of non-Federal funds for lobbying. **Disclosure of Lobbying Activities:** The Contractor receiving in excess of \$100,000 in Federal funding shall submit a completed Form SF-LLL, "Disclosure of Lobbying Activities," regarding the use of non-Federal funds for lobbying. The Form SF-LLL shall be submitted within 30 days following the end of the calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously filed. The Contractor must submit the Forms SF-LLL, including those received from subcontractors, contractors, and subcontractors, to the Grants Officer.
18. **Applicability of Award Provisions to Subcontractors:** The Contractor shall require all subcontractors, including lower tier subcontractors, under the award to comply with the provisions of the award, including applicable cost principles, administrative, and audit requirements.
 - b. A Contractor is responsible for subrecipient monitoring, including the following:
 - Award Identification - At the time of the award, identifying to the subrecipient the Federal award information (e.g., CFDA title and number, award name, name of Federal agency) and applicable compliance requirements.
 - During-the-Award Monitoring - Monitoring the subrecipient's use of Federal awards through reporting, site visits, regular contact, or other means to provide reasonable assurance that the subrecipient administers Federal awards in compliance with laws, regulations, and the provisions of contracts or grant agreements and that performance goals are achieved.
 - Subrecipient Audits - Ensuring that subcontractors expending \$500,000 or more in Federal awards during the subrecipient's fiscal year have met the audit requirements of OMB Circular A-133, and that the required audits are completed within 9 months of the end of the subrecipient's audit period. In addition, the Contractor is required to issue a management decision on audit findings within 6 months after receipt of the subrecipient's audit report, and ensuring that the subrecipient takes timely and appropriate corrective action on all audit findings. In cases of continued inability or unwillingness of a subrecipient to have the required audits, the pass-through entity shall take appropriate action using sanctions.
19. **Subaward and/or Contract to a Federal Agency:** The Contractor, subrecipient, contractor, and/or subcontractor shall not sub-grant or sub-contract any part of the approved project to any agency or employee of DO C and/or other Federal department, agency or instrumentality, without the prior written approval of the Grants Officer. Requests for approval of such action must be submitted to the Federal Program Officer who shall review and make recommendation to the Grants Officer. The Grants Officer shall make the final determination and will notify the Contractor in writing of the final determination.

20. The Coastal Barriers Resources Act (16 U.S.C. § 3501 et seq.): Restrictions are placed on Federal Funding for actions within the Coastal Barrier System.
21. Invasive Species Control. Pursuant to Executive Order # 13112, Contractors of NOAA funding cannot implement any actions that are likely to cause or promote the introduction or spread of invasive species, and should provide for restoration of native species and habitat conditions in ecosystems that have been invaded. NOAA grantees are expected to take positive steps to prevent the introduction of invasive species, provide for control of invasive species, and minimize the economic, ecological, and human health impacts that invasive species cause. Where possible and/or practicable, grantees should also respond rapidly to and control populations of invasive species in an environmentally sound manner, promote public education on invasive species, and conduct post-construction monitoring to ensure that impacts on native species did not occur (as applicable). NOAA can provide additional guidance on the detection, control and prevention of invasive species impacts upon request.
22. The Resource Conservation and Recovery Act of 1976, as amended, (42 U.S.C. §§6901 et seq.). This Act regulates the generation, transportation, treatment, and disposal of hazardous wastes, and also provides that Contractors of Federal funds give preference in their procurement programs to the purchase of recycled products pursuant to EPA guidelines.
23. The Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, and the Superfund Amendments and Reauthorization Act of 1986, and the Community Environmental Response Facilitation Act of 1992, as amended, (42 U.S.C. §§ 9601 et seq.). These requirements address responsibilities of hazardous substance releases, threatened releases and environmental cleanup. There is also a requirement to impose reporting and community involvement requirements to ensure disclosure of the release or disposal of regulated substances and cleanup of hazards.
24. Environmental Justice in Minority Populations and Low Income Populations, EO 12898, February 11, 1994. This order identified and addresses adverse human health or environmental effects of programs, policies and activities on low income and minority populations.
25. Criminal and Prohibited Activities. The Program Fraud Civil Remedies Act (31 U.S.C. §§ 3801-3812) provides for the imposition of civil penalties against persons who make false, fictitious, or fraudulent claims to the Federal government for money (including money representing grants, loans or other benefits). False statements (18 U.S.C. §§ 287 and 1001), provides that whoever makes or presents any false, fictitious, or fraudulent statements, representations, or claims against the United States shall be subject to imprisonment of not more than five years and shall be subject to a fine in the amount provided by 18 U.S.C. 8 287. False Claims Act (31 U.S.C. 3729 *et seq.*), provides that suits under this act can be brought by the government, or a person on behalf of the government, for false claims under Federal assistance programs.
26. Intellectual Property Rights. A) (Inventions) The rights to any invention made by a Contractor under a DOC financial assistance award are determined by the Bayh-Dole Act, Pub. L. 96-517, as amended, and codified in 35 U.S.C. § 200 et seq., except as otherwise required by law. The specific requirements governing the development, reporting, and disposition of rights to inventions and patents resulting from financial assistance awards are described in more detail in 37 CFR Part 401 and in particular, in the standard patent rights clause in 37 CFR § 401.14, which is hereby incorporated by reference into this award. 1) (Ownership) a) Recipient: The Contractor has the right to own any invention it makes (conceived or first actually reduced to practice) or made by its employees. The Contractor may not assign its rights to a third party without the permission of DOC unless it is to a patent management organization (i.e., a university's Research Foundation.) The Contractor's ownership rights are subject to the Government's nonexclusive paid-up license and other rights. b) Department: If the Contractor elects not to own or does not elect rights or file a patent application within the time limits set forth in the standard patent rights clause, DOC may request an assignment of all rights, which is normally subject to a limited royalty free nonexclusive revocable license for the Contractor. DOC owns any invention made solely by its employees but may license the Contractor in accordance with the procedures in 37 CFR Part 404. c. Inventor/Employee: If neither the Contractor nor the Department is interested in owning an invention by a Contractor employee, the Contractor, with the written concurrence of DOC, may allow the inventor/employee to own the invention subject to certain restrictions as described in 37 CFR § 401.9. d) Joint inventions: Inventions made jointly by a Contractor and a DOC employee will be owned jointly by the Contractor and DOC. However, DOC may transfer its rights to the Contractor as authorized by 35 U.S.C. § 202(e) and 37 CFR § 401.10 if the Contractor is willing to patent and license the invention usually in exchange for a share of "net" royalties based on the number of inventors (e.g., 50-50 if there is one Contractor and DOC employee). The agreement will be prepared by DOC and may include other provisions, such as a royalty free license to the Government and certain other entities. 35 U.S.C. § 202(e) also authorizes the Contractor to transfer its rights to the Government which can agree to share royalties similarly as described above. 2) Responsibilities: - iEdison. The Contractor has responsibilities and duties set forth in the standard patent rights clause, which are not described below. The Contractor is expected to comply with all the requirements of the standard patent rights clause and 37 CFR Part 401. Contractors of DOC financial assistance awards are required to submit their disclosures and elections electronically using the Interagency Edison extramural invention reporting system (iEdison) at www.iEdison.gov. Contractors may obtain a waiver of this electronic submission requirement by providing to DOC compelling reasons for allowing the submission of paper copies of reports related to inventions. B) Patent Notification Procedures: Pursuant to E.O. 12889, DOC is required to notify the owner of any valid patent covering technology whenever the DOC or its financial assistance Contractors, without making a patent search, knows (or has demonstrable reasonable grounds to know) that technology covered by a valid United States patent has been or will be used without a license from the owner. To ensure proper notification, if the Contractor uses or has used patented technology under this award without a license or permission from the owner, the Contractor must notify the Grants Officer. However, this notice does not necessarily mean that the Government authorizes and consents to any copyright or patent infringement occurring under the financial assistance. C) Data, Databases, and Software: The rights to any work produced or purchased under a DOC Federal financial assistance award are determined by 15 CFR § 24.34 and 15 CFR § 14.36. Such works may include data, databases or software. The Contractor owns any work produced or purchased under a DOC Federal financial assistance award subject to DOC's right to obtain, reproduce, publish or otherwise use the work or authorize others to receive, reproduce, publish or otherwise use the data for Government purposes. D) Copyright: The Contractor may

copyright any work produced under a DOC Federal financial assistance award subject to DOC's royalty-free nonexclusive and irrevocable right to reproduce, publish or otherwise use the work or authorize others to do so for Government purposes. Works jointly authored by DOC and Contractor employees may be copyrighted but only the part authored by the Contractor is protected because, under 17 U.S.C. § 105, works produced by Government employees are not copyrightable in the United States. On occasion, DOC may ask the Contractor to transfer to DOC its copyright in a particular work when DOC is undertaking the primary dissemination of the work. Ownership of copyright by the Government through assignment is permitted by 17 U.S.C. § 105.

27. U.S. Department of Commerce ARRA Award Terms: The contractor agrees to comply with the U.S. Department of Commerce America Recovery and Reinvestment Act Award Terms included in Schedule E.
28. Assurances: The Contractor agrees to abide by the Assurances for Non-Construction Programs attached as Schedule D.

SEEC FORM 11

NOTICE TO EXECUTIVE BRANCH STATE CONTRACTORS AND PROSPECTIVE STATE CONTRACTORS OF CAMPAIGN CONTRIBUTION AND SOLICITATION BAN

This notice is provided under the authority of Connecticut General Statutes 9-612(g)(2), as amended by P.A. 07-1, and is for the purpose of informing state contractors and prospective state contractors of the following law (italicized words are defined below):

Campaign Contribution and Solicitation Ban

No state contractor, prospective state contractor, principal of a state contractor or principal of a prospective state contractor, with regard to a state contract or state contract solicitation with or from a state agency in the executive branch or a quasi-public agency or a holder, or principal of a holder of a valid prequalification certificate, shall make a contribution to, or solicit contributions on behalf of (i) an exploratory committee or candidate committee established by a candidate for nomination or election to the office of Governor, Lieutenant Governor, Attorney General, State Comptroller, Secretary of the State or State Treasurer, (ii) a political committee authorized to make contributions or expenditures to or for the benefit of such candidates, or (iii) a party committee; In addition, no holder or principal of a holder of a valid prequalification certificate, shall make a contribution to, or solicit contributions on behalf of (i) an exploratory committee or candidate committee established by a candidate for nomination or election to the office of State senator or State representative, (ii) a political committee authorized to make contributions or expenditures to or for the benefit of such candidates, or (iii) a party committee.

Duty to Inform

State contractors and prospective state contractors are required to inform their principals of the above prohibitions, as applicable, and the possible penalties and other consequences of any violation thereof.

Penalties for Violations

Contributions or solicitations of contributions made in violation of the above prohibitions may result in the following civil and criminal penalties:

Civil penalties--\$2000 or twice the amount of the prohibited contribution, whichever is greater, against a principal or a contractor. Any state contractor or prospective state contractor which fails to make reasonable efforts to comply with the provisions requiring notice to its principals of these prohibitions and the possible consequences of their violations may also be subject to civil penalties of \$2000 or twice the amount of the prohibited contributions made by their principals.

Criminal penalties—Any knowing and willful violation of the prohibition is a Class D felony, which may subject the violator to imprisonment of not more than 5 years, or \$5000 in fines, or both.

Contract Consequences

Contributions made or solicited in violation of the above prohibitions may result, in the case of a state contractor, in the contract being voided.

Contributions made or solicited in violation of the above prohibitions, in the case of a prospective state contractor, shall result in the contract described in the state contract solicitation not being awarded to the prospective state contractor, unless the State Elections Enforcement Commission determines that mitigating circumstances exist concerning such violation.

The State will not award any other state contract to anyone found in violation of the above prohibitions for a period of one year after the election for which such contribution is made or solicited, unless the State Elections Enforcement Commission determines that mitigating circumstances exist concerning such violation.

Additional information and the entire text of P.A 07-1 may be found on the website of the State Elections Enforcement Commission, www.ct.gov/seec. Click on the link to "State Contractor Contribution Ban."

Definitions:

"State contractor" means a person, business entity or nonprofit organization that enters into a state contract. Such person, business entity or nonprofit organization shall be deemed to be a state contractor until December thirty-first of the year in which such contract terminates. "State contractor" does not include a municipality or any other political subdivision of the state, including any entities or associations duly created by the municipality or political subdivision exclusively amongst themselves to further any purpose authorized by statute or charter, or an employee in the executive or legislative branch of state government or a quasi-public agency, whether in the classified or unclassified service and full or part-time, and only in such person's capacity as a state or quasi-public agency employee.

"Prospective state contractor" means a person, business entity or nonprofit organization that (i) submits a response to a state contract solicitation by the state, a state agency or a quasi-public agency, or a proposal in response to a request for proposals by the state, a state agency or a quasi-public agency, until the contract has been entered into, or (ii) holds a valid prequalification certificate issued by the Commissioner of Administrative Services under section 4a-100. "Prospective state contractor" does not include a municipality or any other political subdivision of the state, including any entities or associations duly created by the municipality or political subdivision exclusively amongst themselves to further any purpose authorized by statute or charter, or an employee in the executive or legislative branch of state government or a quasi-public agency, whether in the classified or unclassified service and full or part-time, and only in such person's capacity as a state or quasi-public agency employee.

"Principal of a state contractor or prospective state contractor" means (i) any individual who is a member of the board of directors of, or has an ownership interest of five per cent or more in, a state contractor or prospective state contractor, which is a business entity, except for an individual who is a member of the board of directors of a nonprofit organization, (ii) an individual who is employed by a state contractor or prospective state contractor, which is a business entity, as president, treasurer or executive vice president, (iii) an individual who is the chief executive officer of a state contractor or prospective state contractor, which is not a business entity, or if a state contractor or prospective state contractor has no such officer, then the officer who duly possesses comparable powers and duties, (iv) an officer or an employee of any state contractor or prospective state contractor who has *managerial or discretionary responsibilities with respect to a state contract*, (v) the spouse or a *dependent child* who is eighteen years of age or older of an individual described in this subparagraph, or (vi) a political committee established or controlled by an individual described in this subparagraph or the business entity or nonprofit organization that is the state contractor or prospective state contractor.

"State contract" means an agreement or contract with the state or any state agency or any quasi-public agency, let through a procurement process or otherwise, having a value of fifty thousand dollars or more, or a combination or series of such agreements or contracts having a value of one hundred thousand dollars or more in a calendar year, for (i) the rendition of services, (ii) the furnishing of any goods, material, supplies, equipment or any items of any kind, (iii) the construction, alteration or repair of any public building or public work, (iv) the acquisition, sale or lease of any land or building, (v) a licensing arrangement, or (vi) a grant, loan or loan guarantee. "State contract" does not include any agreement or contract with the state, any state agency or any quasi-public agency that is exclusively federally funded, an education loan or a loan to an individual for other than commercial purposes.

"State contract solicitation" means a request by a state agency or quasi-public agency, in whatever form issued, including, but not limited to, an invitation to bid, request for proposals, request for information or request for quotes, inviting bids, quotes or other types of submittals, through a competitive procurement process or another process authorized by law waiving competitive procurement.

"Managerial or discretionary responsibilities with respect to a state contract" means having direct, extensive and substantive responsibilities with respect to the negotiation of the state contract and not peripheral, clerical or ministerial responsibilities.

"Dependent child" means a child residing in an individual's household who may legally be claimed as a dependent on the federal income tax of such individual.

"Solicit" means (A) requesting that a contribution be made, (B) participating in any fund-raising activities for a candidate committee, exploratory committee, political committee or party committee, including, but not limited to, forwarding tickets to potential contributors, receiving contributions for transmission to any such committee or bundling contributions, (C) serving as chairperson, treasurer or deputy treasurer of any such committee, or (D) establishing a political committee for the sole purpose of soliciting or receiving contributions for any committee. Solicit does not include: (i) making a contribution that is otherwise permitted by Chapter 155 of the Connecticut General Statutes; (ii) informing any person of a position taken by a candidate for public office or a public official, (iii) notifying the person of any activities of, or contact information for, any candidate for public office; or (iv) serving as a member in any party committee or as an officer of such committee that is not otherwise prohibited in this section.

SCOPE OF WORK
SCHEDULE A

Purpose: Milone & MacBroom, Inc. (“MMI”) shall coordinate, schedule, and perform construction management and inspection services for the Connecticut Department of Environmental Protection (CTDEP) for the duration of construction of the Tingue Bypass Channel project according to the following scope of work.

1. Description: The Contractor agrees to conduct a project entitled: Tingue Dam Bypass Project Construction Administration and Supervision Services.

MMI shall ensure that employees from MMI (Inspection Team) shall be present at the site on a full-time basis during active construction to verify that work is proceeding according to the CTDEP’s contract with the selected Construction Contractor (Contract Documents); to determine whether there appears to be any defects or deficiencies in the construction work or materials; to measure quantities for Construction Contractor payment; and to document work. In order to facilitate proper construction management services, MMI shall ensure that the Inspection Team is supplemented by specialists in the areas of fish passage, wetland and wildlife biology, structures, geotechnical engineering, landscape architecture, civil engineering, and/or hydraulic engineering as needed to observe and review specific phases of the project.

MMI shall prepare documentation and recordation required for compliance with the American Recovery and Reinvestment Act (ARRA) funding being administered through National Oceanic and Atmospheric Administration (NOAA) for the Tingue Bypass Channel as well as compliance with CTDEP funding through the Supplemental Environmental Projects (SEP) fund.

The following specific tasks are proposed:

Task 1 – Pre-Construction Phase Services

MMI shall provide the following pre-construction phase services:

- 1.1 Coordinate and prepare additional materials to assist in the acquisition of temporary and permanent land agreements.
- 1.2 Make revisions to final design drawings and bid documents as required by the final acquisition and easement mapping agreements.
- 1.3 Prepare up to six easement maps. The following easements are anticipated at this time: (1) transfer of control from the CT, DOT to CTDEP; (2) temporary construction easement from the Town of Seymour to CTDEP; (3) permanent access easement in favor of CTDEP from the Town of Seymour; (4) permanent construction easement from the Town of Seymour to CTDEP and (5) temporary construction easement to CTDEP from Oakridge Management and Construction. One additional easement map shall be provided upon request of CTDEP. Submit five paper copies of each sheet for review.
- 1.4 Revise easement maps per the request of the CTDEP and submit five paper copies of each sheet and two mylars of each sheet.

Task 2 – Construction Phase Management Services

MMI shall provide the following construction phase services.

- 2.1 Attend a pre-construction meeting with the selected Construction Contractor and CTDEP staff to review the Construction Contractor's construction sequences. Prepare and distribute minutes of the meeting to all parties.
- 2.2 Review and comment on shop drawings, construction schedules, material submittals, change orders, and payment requisitions, and report same to CTDEP.
- 2.3 Attend weekly job meetings in Seymour and prepare and distribute minutes of the meetings.
- 2.4 Coordinate with CTDEP and respond to any questions or concerns.
- 2.5 Respond to the Construction Contractor's questions concerning clarification of the contract drawings and specifications.
- 2.6 Review special inspection and test results for conformance with the Contract Documents.
- 2.7 Review Construction Contractor's application for payment for conformity to work actually completed and determine if the quality of work is in accordance with the Contract Documents.
- 2.8 Provide required documentation to satisfy project funding requirements, including ARRA funding administered through NOAA and SEP funding administered by the CTDEP.
- 2.9 At the completion of construction, revise the original contract drawings pursuant to changes made during the period of construction as furnished and recorded by the Construction Contractor and provide the CTDEP with one set of black and white 24-inch by 36-inch prints, a mylar set, and an electronic (pdf) of the as-built condition.

Task 3 – Resident Project Representation Services

MMI shall provide a full time Inspection Team that includes a Chief Inspector and part time Inspector/Specialist. The Chief Inspector shall be present at the project site on a full-time basis while active construction is in progress in order to determine whether there appears to be any defects or deficiencies in the construction work or materials and assure compliance with Contract Documents. Additionally, MMI shall provide inspectors and various project specialists on an as needed basis.

The MMI's Inspection Team shall provide the following services:

- 3.1 Observe progress and review construction work for general compliance with the Contract Documents.
- 3.2 Record on Daily Inspector Reports, work performed, equipment used, personnel, test results, visitors, etc.

- 3.3 Record quantities of items used during construction, to be used as the basis for payment to the Construction Contractor.
- 3.4 Report any health or safety concerns or observed violations of OSHA regulations and notify Construction Contractor and CTDEP immediately if violations are observed.
- 3.5 Accompany inspectors of regulatory agencies having jurisdiction and report results to CTDEP.
- 3.6 Verbally report observations to CTDEP at weekly progress meetings.
- 3.7 Prepare special reports and recommendations to the CTDEP during construction whenever the project inspection team believes that the Construction Contractor's work is unsatisfactory, faulty, defective, or does not conform to the Contract Documents. The MMI Inspection Team shall not warrant or guarantee the construction contractor's work.
- 3.8 Conduct a final review of the project and prepare a punch list of items to be corrected and/or completed by the Construction Contractor prior to acceptance by the CTDEP. The Inspection Team will verify that all items on the punch list are completed.

Task 4 – Additional Requested Work

Upon written request from CTDEP, MMI, Inc. shall provide additional project related services including but not limited to attendance at meetings, requested plan revisions, design of new or modified project elements, response to questions or concerns raised by funding agencies, and furnishing additional copies of plans and specifications. Work tasks will be invoiced based on a time and materials basis.

2. Budget: Total payments shall not exceed **\$326,000.00**. See Schedule B.

3. Publications, Videos and Acknowledgement of Sponsorship: Publication of the results or findings of a research project in appropriate professional journals and production of video or other media is encouraged as an important method of recording and reporting scientific information. It is also a constructive means to expand access to federally funded research. The Contractor is required to submit a copy to the funding agency and when releasing information related to a funded project include a statement that the project or effort undertaken was or is sponsored by DOC. The Contractor is also responsible for assuring that every publication of material (including Internet sites and videos) based on or developed under an award, except scientific articles or papers appearing in scientific, technical or professional journals, contains the following disclaimer: "This [report/video] was prepared by [Contractor name] under award #NA09NMF4630283 from [name of operating unit], U.S. Department of Commerce. The statements, findings, conclusions, and recommendations are those of the author(s) and do not necessarily reflect the views of the [name of operating unit] or the U.S. Department of Commerce." This also applies to videos produced under DOC financial assistance awards.

4. Use of the American Recovery and Reinvestment Act Logo on Construction Signs: All projects which are funded by the Recovery Act shall display signage throughout the construction phase that features the Recovery Act Primary Emblem and that acknowledges funding from NOAA and other contributing partners. The signage should be displayed in a

prominent location on site. The Primary Emblem should not be displayed at a size less than 6 inches in diameter. The Contractor should also display, where appropriate and practical, a publicly visible permanent sign or plaque at the project site after construction is complete, acknowledging the contributing partners as described above.

- 5. Publication of Materials:** The Contractor must obtain written approval from DEP's Bureau of Water Protection and Land Reuse prior to distribution or publication of any printed material prepared under the terms of this contract.
- 6. Submission of Materials:** For the purposes of this contract, all correspondence, summaries, reports, products and extension requests shall be submitted to:

Charles Lee, Project Manager
Department of Environmental Protection
Bureau of Water Management and Land Reuse
79 Elm Street
Hartford, CT 06106-5127

- 7. Project Summaries and Financial Reports:** Following execution of this contract, the Contractor shall provide summaries of project status to the Project Manager once every six months, ending March 31 and September 30, or portion thereof, during the time in which this contract is in effect. Reports are due no later than 15 days following the end of each reporting period. Such summaries shall include a brief description (1 or more pages) indicating the work completed to date and the anticipated project completion date if different from the current contract expiration date.
- 8. Extensions/Amendments:** Formal written amendment of the contract is required for extensions to the final date of the contract period and changes to terms and conditions specifically stated in the original contract and any prior amendments, including but not limited to:
 - a. revisions to the maximum contract payment,
 - b. the total unit cost of service,
 - c. the contract's objectives, services, or plan,
 - d. due dates for reports,
 - e. completion of objectives or services, and
 - f. any other contract revisions determined material by DEP.

If it is anticipated that the project can not be completed as scheduled, a no-cost extension must be requested in writing no later than 60 days prior to the expiration date of the contract. Said extension request shall include a description of what work has been completed to date, shall document the reason for the extension request, and shall include a revised work schedule and project completion date. If deemed acceptable, approval will be received in the form of a contract amendment.

- 9. Final Financial Report:** Within 30 days of the expiration date of this contract, the Contractor shall submit a Final Financial Report to the Project Manager, with supporting documentation sufficient to demonstrate expenditures identified in the project proposal. Amounts spent on specific items must be included. A sample format is attached as Schedule C.

SCHEDULE B
SCHEDULE OF PAYMENTS

The maximum amount payable under this contract is three hundred and twenty-six thousand dollars (\$326,000.00)

The payments by the Commissioner shall allow for use of funds to meet allowable financial obligations incurred in conjunction with this project, prior to expiration of this contract, and shall be scheduled as follows provided that the total sum of all payments shall not exceed the maximum contract amount noted above.

- a. Construction will actively be in progress 12 months based upon an eight hour day five days per week.
- b. Upon approval by the DEP Commissioner, in her sole discretion, payments will be made monthly for work performed according to itemized invoices submitted to DEP Bureau of Water Management by MMI and based on the percentage of total work DEP determines has been completed upon review of the invoice, less 5% for retainage.
- c. Remainder following completion of project to the Commissioner's satisfaction, review and approval of a Final Report and associated documentation demonstrating that all the elements of Schedule A have been met. Payment shall be processed contingent upon receipt of detailed invoices with any required supportive documentation, subject to review and approval by DEP. Total sum of all payments shall not exceed total project costs.

Should total projects costs be less than the amount of payments made, any remaining funds must be refunded to the Connecticut Department of Environmental Protection through a check made payable to "DEP" within 90 days of the contract expiration date.

SCHEDULE C

SAMPLE FINAL FINANCIAL REPORT

Contractor Name: _____

PSA #: _____

DESCRIPTION	Award Costs	Other (Matching) Costs (if applicable)	Total Costs
Salaries			
Fringe @ _____ %			
Travel			
Contractual (specify)			
Equipment			
Printing			
Materials & Supplies			
Other (specify)			
Totals			

Assurances – Non-Construction Programs

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0042), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

NOTE: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the Awarding Agency. Further, certain Federal assistance awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant, I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application. 1970 (42 U.S.C. §§4728-4763) relating to prescribed standards for merit systems for programs funded under one of the 19 statutes or regulations specified in Schedule A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
2. Will give the awarding agency, the Comptroller General of the United States and, if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the assistance; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will not dispose of, modify the use of, or change the terms of the real property title, or other interest in the site and facilities without permission and instructions from the awarding agency. Will record the Federal interest in the title of real property in accordance with awarding agency directives and will include a covenant in the title of real property acquired in whole or in part with Federal assistance funds to assure nondiscrimination during the useful life of the project.
4. Will comply with the requirements of the assistance awarding agency with regard to the drafting, review and approval of construction plans and specifications.
5. Will provide and maintain competent and adequate engineering supervision at the construction site to ensure that the complete work conforms with the approved plans and specifications and will furnish progress reports and such other information as may be required by the assistance awarding agency or State.
6. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
7. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
8. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§4728-4763) relating to prescribed standards for merit systems for programs funded under one of the 19 statutes or regulations specified in Schedule A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
9. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§4801 et seq.) which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.
10. Will comply with all Federal statutes relating to non-discrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§16811683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§290 dd-3 and 290 ee 3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and, (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

11. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal and federally-assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
12. Will comply with the provisions of the Hatch Act (5 U.S.C. §§1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.
13. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§276a to 276a-7), the Copeland Act (40 U.S.C. §276c and 18 U.S.C. §874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§327333) regarding labor standards for federally-assisted construction subagreements.
14. Will comply with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is \$10,000 or more.
15. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§1451 et seq.); (f) conformity of Federal actions to State (Clean Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. §§7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93-523); and, (h) protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93-205).
16. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.
17. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. §470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. §§469a-1 et seq.).
18. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996 and OMB Circular No. A-133, "Audits of States, Local Governments, and Non-Profit Organizations."
19. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations, and policies governing this program.

Schedule E

U.S. Department of Commerce
American Recovery and Reinvestment Act Award Terms

NOTE: This award is subject to the terms and conditions of the award, the requirements of federal law and the provisions of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, 123 STAT. 115, including section 1553 of the Recovery Act, *Protecting State and Local Government and Contractor Whistleblowers* (123 STAT. 297).

A. Award Terms Required Pursuant to 2 CFR Part 176

1. Reporting and Registration Requirements under Section 1512 of the American Recovery and Reinvestment Act of 2009, Public Law 111-5.

(a) This award requires the Recipient to complete projects or activities which are funded under the American Recovery and Reinvestment Act of 2009 ("Recovery Act") and to report on use of Recovery Act funds provided through this award. Information from these reports will be made available to the public.

(b) The reports are due no later than ten calendar days after each calendar quarter in which the Recipient receives the assistance award funded in whole or in part by the Recovery Act.

(c) Recipients and their first-tier Recipients must maintain current registrations in the Central Contractor Registration (www.ccr.gov) at all times during which they have active federal awards funded with Recovery Act funds. A Dun and Bradstreet Data Universal Numbering System (DUNS) Number (www.dnb.com) is one of the requirements for registration in the Central Contractor Registration.

(d) The Recipient shall report the information described in section 1512(c) using the reporting instructions and data elements that will be provided online at www.FederalReporting.gov and ensure that any information that is pre-filled is corrected or updated as needed.

2. Use of American Iron, Steel, and Manufactured Goods under Section 1605 of the Recovery Act.

(a) None of the funds appropriated or otherwise made available by the Recovery Act may be used for a project for the construction, alteration, maintenance, or repair of a public building or public work unless all of the iron, steel, and manufactured goods used in the project are produced in the United States.

(b) Subsection (a) shall not apply in any case or category of cases in which the head of the Federal department or agency involved finds that--

- (1) applying subsection (a) would be inconsistent with the public interest;
- (2) iron, steel, and the relevant manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or
- (3) inclusion of iron, steel, and manufactured goods produced in the United States will increase the cost of the overall project by more than 25 percent.

(c) If the head of a Federal department or agency determines that it is necessary to waive the application of subsection (a) based on a finding under subsection (b), the head of the department or agency shall publish in the *Federal Register* a detailed written justification as to why the provision is being waived.

(d) This award term shall be applied in a manner consistent with United States obligations under international agreements.

(e) AWARD TERM.-- The award term required by 2 CFR Part 176, Subpart B is set out in full as *Recovery Act Award Terms – Addendum to Award Term A.2* below.

3. Wage Rate Requirements under Section 1606 of the Recovery Act.

(a) Section 1606 of the Recovery Act requires that all laborers and mechanics employed by contractors and subcontractors on projects funded directly by or assisted in whole or in part by and through the Federal Government pursuant to the Recovery Act shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code. Pursuant to Reorganization Plan No. 14 and the Copeland Act, 40 U.S.C. 3145, the Department of Labor has issued regulations at 29 CFR Parts 1, 3, and 5 to implement the Davis-Bacon and related Acts. Regulations in 29 CFR 5.5 instruct agencies concerning application of the standard Davis-Bacon contract clauses set forth in that section. Federal agencies providing grants, cooperative agreements, and loans under the Recovery Act shall ensure that the standard Davis-Bacon contract clauses found in 29 CFR 5.5(a) are incorporated in any resultant covered contracts that are in excess of \$2,000 for construction, alteration or repair (including painting and decorating).

(b) For additional guidance on the wage rate requirements of section 1606, contact your awarding agency. Recipients of grants, cooperative agreements and loans should direct their initial inquiries concerning the application of Davis-Bacon requirements to a particular federally assisted project to the Federal agency funding the project. The Secretary of Labor retains final coverage authority under Reorganization Plan Number 14.

4. Single Audit Requirements: Recovery Act Transactions listed in Schedule of Expenditures of Federal Awards; Recipient Responsibilities for Informing Sub-Recipients.

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

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

under Recovery Act separately on the SEFA, and as separate rows under Item 9 of Part III on the SF-SAC by CFDA number, and inclusion of the prefix "ARRA-" in identifying the name of the Federal program on the SEFA and as the first characters in Item 9d of Part III on the SF-SAC.

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

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

B. Additional Recovery Act Award Terms

1. Limitation on Expenditures Relating to Certain Activities.

Pursuant to section 1604 of the Recovery Act, expenses related to any casino or other gambling establishment, aquarium, zoo, golf course, or swimming pool are not eligible expenses under this award and will not be reimbursed.

2. Use of the American Recovery and Reinvestment Act Logo on Construction Signs.

All projects which are funded by the Recovery Act shall display signage that features the Primary Emblem throughout the construction phase. The signage should be displayed in a prominent location on site. Some exclusions may apply. The Primary Emblem should not be displayed at a size less than 6 inches in diameter. The agency awarding funds will provide additional instructions regarding specifications.

3. SEC. 1511 Certification.

Pursuant to section 1511 of the Recovery Act, with respect to funds made available to State or local governments for infrastructure investments, the Governor, mayor, or other chief executive, as appropriate, shall certify that the infrastructure investment has received the full review and vetting required by law and that the chief executive accepts responsibility that the infrastructure investment is an appropriate use of taxpayer dollars. Such certification shall include a description of the investment, the estimated total cost, and the amount of covered funds to be used, and shall be posted on a website and linked to the website established by section 1526. A State or local agency may not receive a disbursement of infrastructure investment funding from funds made available in this Act unless this certification is made and posted.

4. Quick Start Activities.

Pursuant to section 1602 of the Recovery Act, in using funds made available in this Act for infrastructure investment, Recipient shall give preference to activities that can be started and completed expeditiously, including a goal of using at least 50 percent of the funds for activities that can be initiated not later than 120 days after the date of the award of funds.¹ Recipients

¹ In lieu of "within 120 days of enactment of this Act" as provided in section 1602.

shall also use grant funds in a manner that maximizes job creation and economic benefit.

5. SEC. 1515 Access of Offices of Inspector General to Certain Records and Employees.

(a) Access- With respect to each contract or grant awarded using covered funds, any representative of an appropriate inspector general appointed under section 3 or 8G of the Inspector General Act of 1978 (5 U.S.C. App.), is authorized--

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

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

6. First Tier Subrecipients' Planning Activities.

Recipients shall require first tier subrecipients to obtain a DUNS number (or update an existing DUNS record), and to register with the Central Contractor Registration (CCR) no later than the first time Recovery Act data requirements are due (October 10, 2009).

7. Referral of False Claims to Department of Commerce Inspector General.

Recipients and subrecipients awarded funds made available under the Recovery Act shall promptly refer to the Department of Commerce Inspector General any credible evidence that a principal, employee, agent, contractor, subrecipient, subcontractor, or other person has submitted a false claim under the False Claims Act or has committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving those funds. Referrals can be made online at <http://www.oig.doc.gov/oig/hotline/000016.html> or by calling 1-800-424-5197.

8. Recovery Act One-Time Funding.

This award is made with funds available under the Recovery Act and is intended to provide a one-time injection of funds for purposes of stimulating the American economy.

Recovery Act Award Terms – Addendum to Award Term A.2

2.01. Buy American: Projects Not Implicating International Agreements -- Funds Used for Construction, Alteration, Maintenance, or Repair of a Public Building or Public Work that Does NOT Involve Iron, Steel, or Manufactured Goods Covered under International Agreement

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

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

“Manufactured good” means a good brought to the construction site for incorporation into the building or work that has been--

- (1) Processed into a specific form and shape; or
- (2) Combined with other raw material to create a material that has different properties than the properties of the individual raw materials.

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

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

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

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

[Award official to list applicable excepted materials or indicate “none”]

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

- (i) The cost of the domestic iron, steel, and/or manufactured goods would be unreasonable. The cost of domestic iron, steel, or manufactured goods used in the project is unreasonable when the cumulative cost of such material will increase the cost of the overall project by more than 25 percent;
- (ii) The iron, steel, and/or manufactured good is not produced, or manufactured in the United States in sufficient and reasonably available quantities

and of a satisfactory quality; or

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

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

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

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

(B) Unit of measure;

(C) Quantity;

(D) Cost;

(E) Time of delivery or availability;

(F) Location of the project;

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

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

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

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

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

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

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

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

FOREIGN AND DOMESTIC ITEMS COMPARISON

Description	Unit of Measure	Quantity	Price (Dollars)*
<i>Item 1:</i>			
Foreign steel, iron, or manufactured good	_____	_____	_____
Domestic steel, iron, or manufactured good	_____	_____	_____
<i>Item 2:</i>			
Foreign steel, iron, or manufactured good	_____	_____	_____
Domestic steel, iron, or manufactured good	_____	_____	_____

[List name, address, telephone number, email address, and contact for suppliers surveyed.

Attach copy of response; if oral, attach summary.]

[Include other applicable supporting information.]

[Include all delivery costs to the construction site.]*

2.02. Buy American: Projects Implicating International Agreements -- Funds Used for Construction, Alteration, Maintenance, or Repair of a Public Building or Public Work that DO Involve Iron, Steel, or Manufactured Goods Covered under International Agreement

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

“Designated country” --

(1) A World Trade Organization Government Procurement Agreement country (Aruba, Austria, Belgium, Bulgaria, Canada, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea (Republic of), Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, and United Kingdom);

(2) A Free Trade Agreement (FTA) country (Australia, Bahrain, Canada, Chile, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Israel, Mexico, Morocco, Nicaragua, Oman, Peru, or Singapore); or

(3) A United States-European Communities Exchange of Letters (May 15, 1995) country (Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovak Republic, Slovenia, Spain, Sweden, and United Kingdom).

“Designated country iron, steel, and/or manufactured goods” --

(1) Is wholly the growth, product, or manufacture of a designated country; or

(2) In the case of a manufactured good that consist in whole or in part of materials from another country, has been substantially transformed in a designated country into a new and different manufactured good distinct from the materials from which it was transformed.

“Domestic iron, steel, and/or manufactured good” --

(1) Is wholly the growth, product, or manufacture of the United States; or

(2) In the case of a manufactured good that consists in whole or in part of materials from another country, has been substantially transformed in the United States into a new and different manufactured good distinct from the materials from which it was transformed. There is no requirement with regard to the origin of components or subcomponents in manufactured goods or products, as long as the manufacture of the goods occurs in the United States.

“Foreign iron, steel, and/or manufactured good” means iron, steel and/or manufactured good that is not domestic or designated country iron, steel, and/or manufactured good.

“Manufactured good” means a good brought to the construction site for incorporation into the building or work that has been--

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

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

“Public building” and “public work” means a public building of, and a public work of, a governmental entity (the United States; the District of Columbia; commonwealths, territories, and minor outlying islands of the United States; State and local governments; and multi-State, regional,

or interstate entities which have governmental functions). These buildings and works may include, without limitation, bridges, dams, plants, highways, parkways, streets, subways, tunnels, sewers, mains, power lines, pumping stations, heavy generators, railways, airports, terminals, docks, piers, wharves, ways, lighthouses, buoys, jetties, breakwaters, levees, and canals, and the construction, alteration, maintenance, or repair of such buildings and works.

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

(b) *Iron, steel, and manufactured goods.*

(1) This award term and condition implements --

(i) Section 1605(a) of the Recovery, by requiring that all iron, steel, and manufactured goods used in the project are produced in the United States; and

(ii) Section 1605(d), which requires application of the Buy American requirement in a manner consistent with U.S. obligations under international agreements. The restrictions of section 1605 of the Recovery Act do not apply to designated country iron, steel, and/or manufactured goods. The Buy American requirement in section 1605 shall not be applied where the iron, steel or manufactured goods used in the project are from a Party to an international agreement that obligates the Recipient to treat the goods and services of that Party the same as domestic goods and services. This obligation shall only apply to projects with an estimated value of \$7,443,000 or more.

(2) The Recipient shall use only domestic or designated country iron, steel, and manufactured goods in performing the work funded in whole or part with this award, except as provided in paragraphs (b)(3) and (b)(4) of this term and condition.

(3) The requirement in paragraph (b)(2) of this term and condition does not apply to the iron, steel, and manufactured goods listed by the Federal Government as follows:

[Award official to list applicable excepted materials or indicate "none"]

(4) The award official may add other iron, steel, and manufactured goods to the list in paragraph (b)(3) of this award term and condition if the Federal government determines that—

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

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

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

(c) *Request for determination of inapplicability of section 1605 of the Recovery Act or the Buy American Act.*

(1)(i) Any Recipient request to use foreign iron, steel, and/or manufactured goods in accordance with paragraph(b)(4) of this term and condition shall include adequate information for Federal Government evaluation of the request, including—

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

(B) Unit of measure;

(C) Quantity;

(D) Cost;

(E) Time of delivery or availability;

(F) Location of the project;

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

(H) A detailed justification of the reason for use of foreign iron, steel, and/or manufactured goods cited in accordance with paragraph (b)(4) of this term and condition.

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

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

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

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

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

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

FOREIGN AND DOMESTIC ITEMS COMPARISON

Description	Unit of Measure	Quantity	Price (Dollars)*
<i>Item 1:</i>			
Foreign steel, iron, or manufactured good	_____	_____	_____
Domestic steel, iron, or manufactured good	_____	_____	_____
 <i>Item 2:</i>			
Foreign steel, iron, or manufactured good	_____	_____	_____
Domestic steel, iron, or manufactured good	_____	_____	_____

[List name, address, telephone number, email address, and contact for suppliers surveyed.

Attach copy of response; if oral, attach summary.]

[Include other applicable supporting information.]

[Include all delivery costs to the construction site.]*

