STATE OF GEORGIA
CITY OF DORAVILLE
COUNTY OF DEKALB

# AGREEMENT

Project Agreement and Specifications for Energy Efficiency Consultation.

This Agreement made and entered into this the 27th day of September, 2010, by and between Empower Energy Technology, LLC represented by their duly authorized representative CHUCK CLARKE (hereinafter referred to as "Contractor") of the County of Fulton, State of Georgia, and the CITY OF DORAVILLE, GEORGIA, a body politic and a political subdivision of the State of Georgia (hereinafter referred to as the "City").

W I T N E S S E T H:

WHEREAS the City desires to obtain and Contractor desires to provide consultation services associated with the Energy Efficiency Community Development Block Grant program located in DeKalb County, Georgia;

NOW THEREFORE, in consideration of the promises hereinafter contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Contractor and City hereby agree as follows:

## ARTICLE I
## PURPOSE OF AGREEMENT AND SPECIFICATIONS

The purpose of this Agreement is to provide:

A. Energy Audit Review

Purpose: to validate the data and conclusions provided by the City of Doraville's energy contractor in their Energy Audit.

Scope: review the contractor's energy audit report and supporting documentation; provide findings.

Deliverables: Written report accompanied by verbal presentation.

Total hours: 10

B. Auditor Training

Purpose: to help develop and equip a core set (quantity of three) of residential energy auditors leading to certification by the Residential Energy Network (RESNET) or similar program.

Scope: Recommend the correct training program and associated costs; identify required equipment and budget for auditors; assist with processes to screen applicants for the auditor role.

Deliverables: Written report accompanied by verbal presentation, assistance with program implementation within total allotted hours.

Total hours: 20

C. Lighting Retrofit Incentive Program

Purpose: Establish an incentives program to subsidize the cost of LED lighting retrofits for commercial buildings on a case-by-case basis. Critical components of the program include educating business owners about the benefits of LED lighting and the Federal and State incentives available for installing LED lighting. Energy and maintenance savings from the retrofits will be dedicated to the incentives program.

Scope: Research existing programs and identify suitable models. Assist with the development of a program plan describing its elements, deployment steps, schedule and budget.

Deliverables: written report, presentation, assistance with program implementation within total allotted hours.

Total hours: 130

Total allotted hours (Items I, II, III): 150

Total time to complete: 6 calendar weeks (per original RFP response)

D. The aforementioned list represents only a minimal standard of performance.

E. The City reserves the right to make additions or deletions to this list within thirty (30) days written notice to Contractor.

## ARTICLE II
## DURATION OF CONTRACT

This Contract shall terminate absolutely and without further obligation on the part of the City at the close of the calendar year in which it was executed.

## ARTICLE III
## CONSIDERATION FOR AGREEMENT

This Agreement is based on the following stated total consideration of the City for the calendar year in which this Agreement is executed. Contractor shall be paid $12,000.00 for all services rendered under this Agreement. The City's financial obligation to the Contractor and sub-contractors shall not exceed $12,000.00.

## ARTICLE IV
## REPRESENTATIONS AND WARRANTIES OF CONTRACTOR

A. Contractor represents that it has paid occupation tax to do business or is otherwise exempt.

B. Contractor represents that it has provided a copy of its Workman's Compensation Certificate to the City or is otherwise exempt.

C. Contractor will maintain or carry in-force professional liability insurance in the amount of at least one million ($1,000,000.00). This insurance is non-cancelable during the duration of this Contract except upon thirty (30) days prior written notice to the City. Cancellation of this insurance will be considered a breach of this Agreement.

D. The lead firm, sub-consultants and the services rendered must be pre-approved by Georgia Environmental Finance Authority.

## ARTICLE V
## MISCELLANEOUS

A. If applicable, title to any supplies, materials, equipment or other personal property shall remain in Contractor until fully paid by the City.

B. The City reserves the right to deal exclusively with Chuck Clarke identified as a representative of Empower Energy Technology, LLC in all matters concerning this Agreement.

C. It is mutually agreed by Empower Energy Technology, LLC and Chuck Clarke as their authorized representative that every service to be performed hereunder shall be subject to all conditions not prohibited by law which are printed herein and that these conditions are printed herein and that the conditions are hereby agreed to by the City of Doraville and Luke Howe as their authorized representative.

D. This Agreement will terminate immediately and absolutely at such time as appropriated and otherwise unobligated funds are no longer available to satisfy the obligation of the City.

E. The Agreement obligates the City only for sums payable during the calendar year of execution, or in the event of a renewal by the City, for the sums payable for the individual calendar year renewal.

F. This Contract in no way is deemed to create a debt incurred by the City for the payment of any sum beyond the calendar year of execution or, in the event of a renewal, beyond the calendar year of such renewal.

G. The City reserves the right to terminate this Contract for non-compliance by issuing thirty (30) days written notice to the Contractor.

H. Satisfactory performance of the terms of this Agreement rests in Luke Howe, the supervisory personnel and project manager designated by the City.

I. If any conflicts between this Contract and Contractor's Proposal arise, the terms of this Contract are deemed to absolutely prevail.

J. Employees, aides, staff, helpers, or any person who receives any form of consideration for services or who performs any services towards the execution of this Contract are deemed to be the sole responsibility of the Contractor for the purposes of all Worker's Compensation and insurance claims. The City reserves the right to superintend the performance of this Agreement only to the extent that the desired results are obtained. No recommendation or requirement in this Contract and list of specifications should be deemed to obligate City employees, aides, staff, helpers or any person who receives any form of consideration for services or who performs any services towards the execution of this Contract.

K. This Agreement and the exhibits attached hereto constitute the entire Agreement and understanding between the parties hereto and supersede and revoke any prior agreement or understanding relating to the subject matter of this Agreement. No change, amendment, termination or attempted waiver of any of the provisions hereof shall be binding upon the other parties unless reduced to writing and signed by all parties hereto. The sole exception to this is that the Contractor's Proposal dated August 2, 2010 is incorporated into this Agreement under Article V (I) above.

L. Nothing contained in the Agreement shall create a contractual relationship with or a cause of action in favor of a third party against the City.

M. Contractor agrees to indemnify, save and hold harmless, and defend the City, its officers, boards, and employees from and against any liability for damages and for any liability or claims resulting from property damage or bodily injuries (including accidental death) which arise out of Contractor's operation and provision of services, including but not limited to, reasonable attorney's fees and costs if such fees and costs are deemed necessary by the City.

N. This Agreement may not be assigned by either Party unless approved by each Party in writing.

O. Any notices or communications required or permitted hereunder shall be sufficiently given if sent by registered or certified mail, return receipt requested, postage pre-paid, addressed as follows:

<u>As to Contractor</u>:
Empower Energy Technology, LLC
245 North Highland Avenue, Suite 230-162
Atlanta, Georgia 30307
Attn: Chuck Clarke, Vice President

As to City:
City of Doraville
3725 Park Avenue
Doraville, GA 30340-1111
Attn: Luke Howe, Assistant to the Mayor

or such address as shall be furnished by notice to the other parties.

P. The captions used in this Agreement are inserted for convenience only and shall not constitute a part hereof.

Q. This Agreement shall be governed and construed in accordance with the laws of the State of Georgia.

R. Contractor has the following number of employees:

( ) 500 or more employees
( ) 100 or more employees
( ) Fewer than 100 employees

Contractor agrees that, in the event Contractor employs or contracts with any Subcontractor(s) in connection with the covered Contract, Contract will secure from the Subcontractor(s) such Subcontractor(s') indication of the employee-number category applicable to the Subcontractor.

Contractor attests compliance with the requirements of O.C.G.A. § 13-10-91 and Rule 300-10-1-.02 by the execution of the Contractor certifications and affidavits attached as Exhibit Q as shown in Rule 300-10-1-.07, or a substantially similar Contractor certifications and affidavits, which documents are attached to and made a part of this Agreement as Exhibit "Q."

S. Contractor agrees that, in the event Contractor employs or contracts with any Subcontractor(s) in connection with the covered Contract, Contractor will secure from such Subcontractor(s) attestation of the Subcontractor's compliance with O.C.G.A. § 13-10-91 and Rule 300-10-1-.02 by the Subcontractor's execution of the Subcontractor affidavit shown in Rule 300-10-1-.08 or a substantially similar Subcontractor affidavit, and maintain records of such attestation for inspection by the City at any time. Such Subcontractor affidavit included with this Agreement as Exhibit "R" shall be made a part of the Contractor/Subcontractor agreement.

T. Contractor agrees to comply with all other Exhibits herein as required by the Energy Efficiency Community Development Block Grant, a program established by the American Recovery and Reinvestment Act of 2009.

IN WITNESS WHEREOF, the parties hereto have each executed and delivered this Agreement as of the day and year first above written.

**EMPOWER ENERGY TECHNOLOGY, LLC**

(SEAL)

By:_____

Name:_____

By:_____

Name: _____
Corporate Secretary

**CITY OF DORAVILLE, GEORGIA**

(SEAL)

_____
Mayor Ray Jenkins

ATTEST:

_____
Rhonda Blackmon, City Clerk

APPROVED AS TO FORM:

_____
Murray J. Weed, City Attorney

# **EXHIBIT A**

FEDERAL ACQUISITION REGULATION (FAR) CLAUSES, AND FAR CONTRACT ADDENDUM TO THE AMERICAN RECOVERY AND REINVESTMENT ACT TERMS AND CONDITIONS

FAR CLAUSES IN MODIFIED TEXT

1) Definitions:

   a. **Central Contractor Registration (CCR)** – The primary Government database for Contractor information required for the conduct of business with the Government.

   b. **Data Universal Numbering System (DUNS#)** – The 9-digit number assigned by Dun and Bradstreet, Inc. (D&B) to identify unique business entities.

   c. **Data Universal Numbering System+4 (DUNS+4#)** – The DUNS number assigned by D&B plus a 4-character suffix that may be assigned by a business concern. (D&B has no affiliation with this 4-character suffix.) This 4-character suffix may be assigned at the discretion of the business concern to establish additional CCR records for identifying alternative Electronic Funds Transfer (EFT) accounts (see the FAR at Subpart 32.11) for the same concern.

   d. **CCR Registered** – The Contractor has entered all mandatory information, including the DUNS number or the DUNS+4 number, into the CCR database; and

      The Government has validated all mandatory data fields, to include validation of the Taxpayer Identification Number (TIN) with the Internal Revenue Service (IRS), and has marked the record "Active". The Contractor will be required to provide consent for TIN validation to the Government as a part of the CCR registration process.

2) The Contractor certifies that he/ she shall be registered in the CCR database prior to award, during performance, and through final payment of Contract.

3) The Contractor is responsible for the accuracy and completeness of the data within the CCR database, and for any liability resulting from the Government's reliance on inaccurate or incomplete data.

4) To remain registered in the CCR database after the initial registration, the Contractor is required to review and update on an annual basis from the date of initial registration or subsequent updates to its information in the CCR database to ensure it is current, accurate and complete.

5) Updating information in the CCR does not alter the terms and conditions of this Contract and is not a substitute for a properly executed contractual document.

6) If a Contractor has legally changed its business name, "doing business as" name, or division name (whichever is shown on the contract), or has transferred the assets used in performing the Contract, but has not completed the necessary requirements regarding notification and change-of-name agreements in Subpart 42.12, the Contractor shall provide the responsible Contracting Officer a minimum of one business day's written notification of its intention to:

a. Change the name in the CCR database;

b. Comply with the Subpart 42.12 of the FAR;

c. Agree in writing to the timeline and procedures specified by the responsible Contracting Officer. The Contractor must provide with the notification sufficient documentation to support the legally changed name.

7) If the Contractor fails to comply with the requirements of paragraph (6) of this clause, or fails to perform the agreement of this clause, and, in the absence of a properly executed notification or change-of-name agreement, the CCR information that shows the Contractor to be other than the Contractor indicated in the contract will be considered to be incorrect information within the meaning of the "Suspension of Payment" paragraph of the electronic funds transfer (EFT) clause of this Contract.

8) The Contractor shall not change the name or address for EFT payments or manual payments, as appropriate, in the CCR record to reflect an assignee for the purpose of assignment of claims (see FAR Subpart 32.8, Assignment of Claims). Assignees shall be separately registered in the CCR database. Information provided to the Contractor's CCR record that indicates payments, including those made by EFT, to an ultimate recipient other than that Contractor will be considered to be incorrect information within the meaning of the "Suspension of payment" paragraph of the EFT clause of this contract.

Contractor has a DUNS number:

□ Yes □ No

Contractor DUNS Number: _____

Contractor is registered in the CCR:

□ Yes □ No

_____ _____

CONTRACTOR DATE

**EXHIBIT B**

STANDARD FEDERAL EQUAL EMPLOYMENT OPPORTUNITY
CONSTRUCTION CONTRACT SPECIFICATIONS
EXECUTIVE ORDER 11246

1) As used in these specifications:

a. ``Covered area" means the geographical area described in the solicitation from which this contract resulted;

b. ``Director" means Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority;

c. ``Employer identification number" means the Federal Social Security number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941.

d. ``Minority" includes:

(i) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);

(ii) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race);

(iii) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and

(iv) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).

2) Whenever the Contractor, or any Subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of $10,000 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which this contract resulted.

3) As used in these specifications: If the Contractor is participating (pursuant to 41 CFR 60-4.5) in a Hometown Plan approved by the U.S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that Plan for those trades which have unions participating in the Plan. Contractors must

be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each Contractor or Subcontractor participating in an approved Plan is individually required to comply with its obligations under the EEO clause, and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other Contractors or Subcontractors toward a goal in an approved Plan does not excuse any covered Contractor's or Subcontractor's failure to take good faith efforts to achieve the Plan goals and timetables.

4) The Contractor shall implement the specific affirmative action standards provided in paragraphs 7 a through p of these specifications. The goals set forth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. Covered Construction contractors performing construction work in geographical areas where they do not have a Federal or federally assisted construction contract shall apply the minority and female goals established for the geographical area where the work is being performed. Goals are published periodically in the Federal Register in notice form, and such notices may be obtained from any Office of Federal Contract Compliance Programs office or from Federal procurement contracting officers. The Contractor is expected to make substantially uniform progress in meeting its goals in each craft during the period specified.

5) Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the Contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the Contractor's obligations under these specifications, Executive Order 11246, or the regulations promulgated pursuant thereto.

6) In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.

7) The Contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:

   a. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Contractor's employees are assigned to work. The Contractor, where possible, will assign two or more women to each construction project. The Contractor shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of

and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.

b. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.

c. Maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union or, if referred, not employed by the Contractor, this shall be documented in the file with the reason therefore, along with whatever additional actions the Contractor may have taken.

d. Provide immediate written notification to the Director when the union or unions with which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.

e. Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under 7b above.

f. Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.

g. Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions including specific review of these items with onsite supervisory personnel such as Superintendents, General Foremen, etc., prior to the initiation of construction work at any job site. A written record shall be made and

maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.

h. Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the Contractor's EEO policy with other Contractors and Subcontractors with whom the Contractor does or anticipates doing business.

i. Direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the Contractor shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.

j. Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth both on the site and in other areas of a Contractor's work force.

k. Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3.

l. Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.

m. Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Contractor's obligations under these specifications are being carried out.

n. Ensure that all facilities and company activities are non-segregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.

o. Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.

p. Conduct a review, at least annually, of all supervisors' adherence to and performance under the Contractor's EEO policies and affirmative action obligations.

8) Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (7a through p). The efforts of a contractor association, joint contractor-union, contractor-community, or other similar group of which the contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under 7a through p of these Specifications provided that the contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female workforce participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply, however, is the Contractor's and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance.

9) A single goal for minorities and a separate single goal for women have been established. The Contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the Contractor may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner (for example, even though the Contractor has achieved its goals for women generally, the Contractor may be in violation of the Executive Order if a specific minority group of women is underutilized).

10) The Contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.

11) The Contractor shall not enter into any Subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.

12) The Contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any Contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.

13) The Contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph 7 of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the

requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR 60-4.8.

14) The Contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government and to keep records. Records shall at least include for each employee the name, address, telephone numbers, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, contractors shall not be required to maintain separate records.

15) Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

**EXHIBIT C**

CONTRACTOR CERTIFICATION OF NONSEGREGATED FACILITIES

The undersigned Contractor hereby certifies that:

No segregated facilities will be maintained as required by Title VI of the Civil Rights Act of 1964

Contractor:

| | |
|---|---|
| SIGNATURE | DATE |
| PRINTED NAME | TITLE |

**EXHIBIT D**

SUBCONTRACTOR CERTIFICATION OF NONSEGREGATED FACILITIES

The undersigned Subcontractor hereby certifies that:

No segregated facilities will be maintained as required by Title VI of the Civil Rights Act of 1964.

Subcontractor:

| | |
|---|---|
| _____ | _____ |
| SIGNATURE | DATE |
| _____ | _____ |
| PRINTED NAME | TITLE |

## EXHIBIT E

CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

For construction contracts in excess of $2000, and contracts involving the employment of mechanics or laborers in excess of $2500, the Contractor shall comply with sections 102 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327–333), as supplemented by Department of Labor regulations (29 CFR part 5).

Under section 102 of the Act, each contractor shall be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than 1 ½ times the basic rate of pay for all hours worked in excess of 40 hours in the work week.

Section 107 of the Act is applicable to construction work and provides that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

# EXHIBIT F

WHISTLEBLOWER PROTECTION
(FAR 52.203-15)

Under the American Recovery and Reinvestment Act (ARRA) of 2009:

1) The Contractor shall post notice of employee rights and remedies for whistleblower protections provided under Section 1553 of the ARRA (Pub. L. 111-5).

2) The Contractor shall include the substance of this clause including this paragraph (2) in all subcontracts.

_____ _____

CONTRACTOR SIGNATURE DATE

# **EXHIBIT G**

DRUG FREE WORKPLACE

By signing this agreement, the Contractor is providing the certification set out below. If it is later determined that the contractor knowingly rendered a false certification, or otherwise violated the requirements of the Drug-Free Workplace Act, the City, in addition to any other remedies available, may take action authorized under the Drug-Free Workplace Act.

1) Definitions:

a. **Controlled Substance** – a controlled substance in Schedules I through V of the Controlled Substances Act (21 U.S.C. 812) and as further defined by regulation (21 CFR 1308.11 through 1308.15);

b. **Conviction** – a finding of (including a plea of *nolo contendere*) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

c. **Criminal Drug Statute** – a Federal or non-Federal criminal statute involving the manufacturing, distribution, dispensing, use, or possession of any controlled substance;

d. **Employee** – the employee of a contractor directly engaged in the performance of work under a contract, including:

(i) All direct charge employees;

(ii) All indirect charge employees unless their impact or involvement is insignificant to the performance of the grant; and,

(iii) Temporary personnel and consultants who are directly engaged in the performance of work under the contract and who are on the contractor's payroll.

Definitions do not include workers not on the payroll of the Contractor (e.g., volunteers, even if used to meet a matching requirements; consultants or independent contractors not on the contractor’s payroll; or employee of subcontractors in covered workplaces).

2) The contractor certifies that it will or will continue to provide a drug-free workplace by:

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

b. Establishing an ongoing drug-free awareness program to inform employees about:

(i) The danger of drug abuse in the workplace;

(ii) The grantee's policy of maintaining a drug-free workplace;

(iii) Any available drug counseling, rehabilitation, and employee assistance programs; and

(iv) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

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

d. Notifying the employee in the statement required by paragraph (A) that, as a condition of employment under the grant, the employee will:

(i) Abide by the terms of the statement; and,

(ii) Notifying the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such a conviction;

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

f. Taking one of the following actions, within 30 calendar days of receiving notice under paragraph (d)(ii), with respect to any employee who is so convicted:

(i) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or,

(ii) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State or local health, law enforcement, or other appropriate agency;

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

h. Agencies shall keep the original of all disclosure reports in the official files of the agency.

3) The contractor may provide a list of the site(s) for the performance of work done in connection with a specific project or other agreement.

_____ _____

CONTRACTOR SIGNATURE DATE

**EXHIBIT H**

NONCOLLUSION AFFIDAVIT OF CONTRACTOR/ SUBCONTRACTOR

STATE OF GEORGIA
COUNTY OF DEKALB
CITY OF DORAVILLE

_____, being the first duly sworn, deposes and says that:

1) He/she is _____ of _____ , hereinafter referred to as the "Subcontractor";

2) He/she is fully informed respecting the preparation and contents of the Subcontractors Proposal submitted by the Subcontractor to _____ , the Contractor for certain work in connection with the Contract pertaining to the project in:

3) Such Bid is genuine and is not a collusive or sham Bid;

4) Neither the Subcontractor nor any of its officers, partners, owners, subcontractors, agents, representatives, employees or parties in interest including this affiant, has in any way colluded, conspired, connived or agreed, directly or indirectly, with any other Bidder, firm or person to submit a sham Proposal in connection with the Contract, or to refrain from submitting a Proposal in connection with such Contract, or have in any manner, directly or indirectly sought by agreement or collusion or communication or conference with any other Bidder, firm or person to fix price or prices in said Subcontractor's Proposal, or to secure through any collusion, conspiracy, connivance or unlawful agreement and advantage against the City or any person interested in the proposed Contract;

5) No member of the City Council, or other Officers of the City of Doraville, or any person in the employ of the City is directly or indirectly interested in the bid, or the work to which it relates, or in any portion of the profits thereof; and,

6) The price of prices quoted in the attached Bid are fair and proper and are not tainted by any collusion, conspiracy, connivance or unlawful agreement on the part of the Bidder or any of its agents, representatives, owners, employees or parties in interest including this affiant;

BY:_____ ITS:_____
SIGNATURE TITLE

Subscribed and sworn to before me this
_____ day of _____, _____,

_____
NOTARY PUBLIC
My Commission Expires:_____

**EXHIBIT I**

CONTRACT CERTIFICATION
LABOR STANDARDS AND PREVAILING WAGE REQUIREMENTS
(CONTRACTOR)

Contractor Business Name:_____

Address: _____

Phone: _____

Project Name: _____

The undersigned, having executed a contract with the City of Doraville as a Contractor for the aforementioned project, acknowledges that:

1) The Fair Standards provisions are included in the aforesaid contract; and

2) Corrections of any infractions of the aforesaid conditions, including infractions by any of the Contractor's subcontractors, are the responsibility of the Contractor.

The Contractor certifies that:

1) Neither he/ she nor any firm, partnership or association in which he/ she has substantial interest is designated as an ineligible contractor by the Comptroller General of the United States pursuant to Section 5.6(b) of the regulations of the Davis-Bacon Act, as amended (40 U.S.C. 76a-2(a));

2) No part of the aforementioned contract has been or will be subcontracted to any subcontractor or any firm, corporation, partnership or association in which such subcontractor has a substantial interest is designated a ineligible pursuant to any of the aforementioned regulatory or statutory provisions; and

3) He/ She agrees to obtain and forward to the City within ten (10) days after the execution of any subcontract, including those executed by his/ her subcontractor (s), a Subcontractor's Certification Concerning Labor Standards and Prevailing Wage Requirements executed by the subcontractors.

The Contractor further certifies that:

The legal name of the business and its address is:

| _____ | _____ |
|---|---|
| NAME OF BUSINESS | ADDRESS OF BUSINESS |

The undersigned is:

- □ A single proprietorship
- □ A partnership
- □ A corporation organized in the State of _____
- □ Other organization (please describe):

_____

_____

4) List the names, titles and addresses of owners, partners or officers:

| NAME | TITLE | ADDRESS |
|---|---|---|
| NAME | TITLE | ADDRESS |
| NAME | TITLE | ADDRESS |

5) List the names of all persons, both natural and corporate, having a substantial interest in the undersigned, and the nature of the interests are (if none, so state):

| NAME | TITLE | ADDRESS | INTEREST |
|---|---|---|---|
| NAME | TITLE | ADDRESS | INTEREST |
| NAME | TITLE | ADDRESS | INTEREST |
| NAME | TITLE | ADDRESS | INTEREST |

6) List the names, addresses and trade classifications of contractors in which the undersigned has a substantial interest are (if none, so state):

| NAME | TITLE | ADDRESS | INTEREST |
|---|---|---|---|

| NAME | TITLE | ADDRESS | INTEREST |
|---|---|---|---|
| | | | |

| NAME | TITLE | ADDRESS | INTEREST |
|---|---|---|---|
| | | | |

CONTRACTOR SIGNATURE

DATE

*U.S. Criminal Code, Section 1010, Title 18, U.S.C., provides in part that: Whoever makes, passes, utters or publishes any statement, knowing the same to be false shall be fined not more than $5,000.00 or imprisoned not more than two (2) years or both.*

**EXHIBIT J**

CONTRACT CERTIFICATION
LABOR STANDARDS AND PREVAILING WAGE REQUIREMENTS
(SUBCONTRACTOR)

Subcontractor Business Name: _____

Address: _____ Phone #: _____ - _____ - _____

Project Name: _____

The undersigned, having executed a Contract with (Contractor) _____

_____ as a subcontract for the execution of the aforementioned project acknowledges that:

1) The Fair Standards provisions are included in the aforesaid contract; and

2) Corrections of any infractions of the aforesaid conditions, including infractions by any of the Contractor's subcontractors, are the responsibility of the Contractor.

The Subcontractor certifies that:

3) Neither he/ she nor any firm, partnership or association in which he/ she has substantial interest is designated as an ineligible contractor by the Comptroller General of the United States pursuant to Section 5.6(b) of the regulations of the Davis-Bacon Act, as amended (40 U.S.C. 76a-2(a));

4) No part of the aforementioned contract has been or will be subcontracted to any subcontractor or any firm, corporation, partnership or association in which such subcontractor has a substantial interest is designated a ineligible pursuant to any of the aforementioned regulatory or statutory provisions; and

5) The Subcontractor agrees to obtain and forward to the aforementioned Contractor within ten (10) days after the execution of any subcontract this certification for reporting to the City.

The Subcontractor further certifies that:

The legal name of the business and its address is: _____
BUSINESS NAME

_____
ADDRESS OF BUSINESS

The undersigned is:

- □ A single proprietorship
- □ A partnership
- □ A corporation organized in the State of _____
- □ Other organization (please describe):

_____

_____

6) List the names, titles and addresses of owners, partners or officers:

| NAME | TITLE | ADDRESS |
|---|---|---|
| NAME | TITLE | ADDRESS |
| NAME | TITLE | ADDRESS |

7) List the names of all persons, both natural and corporate, having a substantial interest in the undersigned, and the nature of the interests are (if none, so state):

| NAME | TITLE | ADDRESS | INTEREST |
|---|---|---|---|
| NAME | TITLE | ADDRESS | INTEREST |
| NAME | TITLE | ADDRESS | INTEREST |
| NAME | TITLE | ADDRESS | INTEREST |

8) List the names, addresses and trade classifications of contractors in which the undersigned has a substantial interest are (if none, so state):

| NAME | TITLE | ADDRESS | INTEREST |
|---|---|---|---|
| NAME | TITLE | ADDRESS | INTEREST |
| NAME | TITLE | ADDRESS | INTEREST |

SUBCONTRACTOR SIGNATURE DATE

*U.S. Criminal Code, Section 1010, Title 18, U.S.C., provides in part that: Whoever makes, passes, utters or publishes any statement, knowing the same to be false shall be fined not more than $5,000.00 or imprisoned not more than two (2) years or both.*

**EXHIBIT K**

CONTRACTOR CERTIFICATION
REGARDING EQUAL EMPLOYMENT OPPORTUNITY

_____ _____
NAME OF CONTRACTOR PROJECT NAME

This certification is required pursuant to Executive Order 11246 (30 F.R. 12319-25). The implementing rules and regulations provide that any Contractor, or any of their proposed subcontractors, shall state as an initial proposal or negotiation of the Contract whether it has participated in any previous contract or subcontract subject to the equal opportunity clause: and, if so, whether it has filed all compliance reports due under applicable instructions.

Where the certification indicates that the subcontractor has not filed a compliance report due under applicable instructions, such subcontractor shall be required to submit a compliance report before the City approves the subcontract or permits work to begin under the subcontract.

SUBCONTRACTOR'S CERTIFICATION

NAME AND ADDRESS OF SUBCONTRACTOR

_____

_____

_____

1) Offerer has participated in a previous contract or subcontract subject to the Equal Opportunity Clause.

   □ YES □ NO

2) Compliance reports were required to be filed in connection with such contract or subcontract.

   □ YES □ NO

3) Contractor has filed all compliance reports due under applicable instructions, including SF-100.

   □ YES □ NO

4) Have you ever been or are you being considered for sanctions due to violation of E.O. 11246, as amended?

   □ YES □ NO

NAME AND TITLE OF SIGNER (PRINT)

SIGNATURE

DATE

**EXHIBIT L**

LABOR STANDARDS PAYROLL AUTHORIZATION CERTIFICATE

Project Name: _____ Date: _____

Date of Contract Execution: _____

I (We) hereby certify that I am (We are) the Contractor or Subcontractor for:

_____

(Specify nature of business: i.e. "general construction," "electric," "installation," "maintenance," etc.)

In connection with aforementioned project, and I (we) have appointed: (owner/officer/other employee) _____ whose signature appears below to supervise the payment of my (our) employees beginning _____, 20 _____. That he/ she functions in a payroll documents capacity and in the statement of compliance requirements called the Federal "Anti-Kickback" statute, which he/ she is to execute with my (our) full authority and approval until such times as I (we) submit a new Certificate appointing some other person for the purposed stated herein.

| | |
|---|---|
| SIGNATURE OF APPOINTED | NAME OF FIRM OR CORPORATION |
| NAME OF APPOINTED | TITLE OF APPOINTED |

List with signatures all owners, partners and/ or officers of the firm or corporation below:

| | |
|---|---|
| SIGNATURE | TITLE |
| SIGNATURE | TITLE |
| SIGNATURE | TITLE |

Note: This certificate must be executed by authorized officers of the corporation and/ or by members of the partnership and shall be executed prior to and submitted with the first payroll for this project. Should the appointee be changed during the term of this contract, a new certificate must accompany the first payroll for which the new appointee executes the statement of compliance required by the "Anti-Kickback" statute. A new designation is not necessary as long as the person signing the statement of compliance is an owner, partner or officer of the firm or corporation whose signature appears above.

# EXHIBIT M

CERTIFICATES REGARDING DEBARMENT AND SUSPENSION

CERTIFICATE A

**Certification Regarding Debarment, Suspension, and Other Responsibility Matters – Primary Covered Transactions**

**Instructions for Certification**

1) By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.

2) The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

3) The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

4) The prospective primary participant shall provide immediate written notice to the department or agency to which this proposal is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

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

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

7) The prospective primary participant further agrees by submitting this proposal that it will include the clause titled ``Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

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

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

10) Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

**Certification Regarding Debarment, Suspension, and Other Responsibility Matters – Primary Covered Transactions**

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

   a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal department or agency;

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

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

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

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

CERTIFICATION B

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

**Instructions for Certification**

1) By signing and submitting this proposal, the prospective lower tier participant providing the certification set out below.

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

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

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

5) The prospective lower tier participant agrees by submitting this proposal that, [Page 33043 of Executive Order 12549] should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6) The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled ``Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without

modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

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

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

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

**Certification Regarding Debarment, Suspension, Ineligibility an Voluntary Exclusion – Lower Tier Covered Transactions**

1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

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

| | |
|---|---|
| APPLICANT | DATE |
| AUTHORIZED CERTIFYING OFFICIAL SIGNATURE | TITLE |

## EXHIBIT N

CERTIFICATION REGARDING LOBBYING

The following certification published in the Federal Register (Vol. 54, No. 243, December 10, 1989, page 52321) applies to this activity; and, the undersigned certifies that to the best of his or her knowledge and belief that:

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

2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," (revised Jul-1997) in accordance with its instructions;

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

4) This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000.00 and not more than $100,000.00 for each such failure.

_____ _____

SIGNATURE DATE

# EXHIBIT O

PROVISION FOR REMEDIES

*It is required that any contract, regardless of value, contain a provision for remedies in case of violation or breach of terms, including sanctions. The following is a sample clause which meets the requirement. There is no specific language required, and the recipient's attorney should approve whatever language is used.*

1) **Termination:** Unearned payments under this Contract may be suspended or terminated upon refusal to accept any additional conditions that may be imposed by City; or if the grant to the City under the Community Development Block Grant Program is suspended or terminated. Moreover, if through any cause, the Contractor shall fail to fulfill its obligations under this Contract in a timely and proper manner, or if the Contractor shall violate any of the covenants, agreements, conditions or obligations of the Contract documents; the City may terminate this Contract by giving written notice to the Contractor and surety of such termination and specifying the effective date of such termination. In such event, the City may take over the work and prosecute the same to completion, by contract or otherwise, and the Contractor and his/her sureties shall be liable to the City for any additional cost incurred by the liquidated damages for any delay in the completion of the work as provided below. Furthermore, the Contractor will paid an amount which bears the same ratio to the total completion as the work and services actually performed bear to the total work and services required. Provided, however, that if less than sixty percent (60%) of the services required by this Contract have been performed upon the effective date of such termination, the Contractor shall be reimbursed (in addition to the above payment) for that portion of the actual out-of-pocket expenses (not otherwise reimbursed under this Contract) incurred by the Contractor during the Contract period which are directly attributable to the uncompleted portion of the services required by this Contract.

2) **Liquidated Damages for Delay:** If the work is not completed within the time stipulated, therefore, including any extensions of time for excusable delays as herein provided, the Contractor shall pay to the Owner as fixed and agreed liquidated damages (it being impossible to determine the damages occasioned by the delay) for each working day of the delay, until the work is completed, the amount as set forth in this Exhibit as $50 per day and the Contractor and his sureties shall be liable to the Owner for the amount thereof.

3) **Excusable Delays:** The right of the Contractor to proceed shall not be terminated nor shall the Contractor be charged with liquidated damages for any delays in the completion of the work due:

   a. To any acts of the Government, including controls or restrictions upon or requisitioning of materials, equipment, tools, or labor by reason of war, National Defense, or any other national emergency;

   b. To any acts of the Owner;

c. To causes not reasonably foreseeable by the parties to this Contract at the time of the execution of the Contract which are beyond the control and without the fault or negligence of the Contractor, including, but not restricted to, acts of God or of the public enemy, acts of another contractor in the performance of some other contract with the Owner, fires, floods, epidemics, quarantine, strikes, freight embargoes, and weather of unusual severity such as hurricanes, tornadoes, and cyclones; and

d. To any delay of any subcontractor occasioned by any of the causes specified in subparagraphs (a), (b) and (c) or this subparagraph (d).

Provided, however, that the Contractor promptly notified the Owner within ten (10) days of the cause of the delay. Upon receipt of such notification, the Owner shall ascertain the facts and the cause and extent of the delay. If upon the basis of the terms of this Contract, the delay is properly excusable, the Owner shall extend the time for completing the work for a period of time commensurate with the period of excusable delay.

# **EXHIBIT P**

COMPLIANCE WITH CLEAN AIR AND WATER ACTS

The Contract is subject to the requirements of the Clean Air Act, as amended, 42 U.S.C. 1857 et. seq., and the regulations of the Environmental Protection Agency with respect thereto, at 40 C.F.R. Part 15, as amended from time to time.

In compliance with said regulations:

1) The Contractor shall require of subcontractors that any facility to be utilized in the performance of any nonexempt contract or subcontract is not listed on the List of Violating Facilities issued by the Environmental Protection Agency (EPA) pursuant to 4C C.F.R. 15.20.

2) The Contractor will comply with all requirements of Section 114 of the Clean Air Act, as amended (42 U.S.C. 1857c-8) and Section 308 of the Federal Water Pollution Control Act as amended, (330 U.S.C. 1318) relating to inspection, monitoring, entry, reports, and information, as well as all other requirements specified in said Section 114 and Section 308, and all regulations and guidelines issued thereunder.

3) The Contractor will provide prompt notice of any notification received from the Director, Office of Federal Activities, and EPA, indicating that a facility utilized or to be utilized for the Contract is under consideration to be listed on the EPA List of Violating Facilities.

4) The Contractor will include or cause to be included the criteria and requirements to paragraph (1) through paragraph (4) of this section in every nonexempt subcontract and take such action as the Government will direct as a means of enforcing such provisions.

**EXHIBIT Q**

CONTRACTOR AFFIDAVIT AND AGREEMENT

By executing this Affidavit, the undersigned Contractor verifies its compliance with O.C.G.A. §§13-10-91, stating affirmatively that the individual, firm, or corporation which is contracting with the City of Doraville has registered with and is participating in a federal work authorization program [any of the electronic verification of work authorized programs operated by the United States Department of Homeland Security or any equivalent federal work authorization program operated by the United States Department of Homeland Security to verify information of newly hired employees, pursuant to the Immigration Reform and Control Act of 1986 (IRCA), P.L. 99-603], in accordance with the applicability provisions and deadlines established in O.C.G.A. §§13-10-91.

The Contractor further agrees that, should it employ or contract with any Subcontractor(s) in connection with the physical performance of services pursuant to this Agreement with the City of Doraville, Contractor will secure from such Subcontractor(s) similar verification of compliance with O.C.G.A. §§ 13-10-91 on the Subcontractor affidavit provided in Rule 300-10-01-.08 or a substantially similar form. Contractor further agrees to maintain records of such compliance and provide a copy of each such verification to the City of Doraville at the time the Subcontractor(s) is retained to perform such service.

EEV / Basic Pilot Program User Identification Number: _____

BY: Authorized Officer or Agent of Contractor: _____

Title of Authorized Officer or Agent of Contractor: _____

Printed Name of Authorized Officer or Agent: _____

Date: _____

SUBSCRIBED AND SWORN

BEFORE ME ON THIS THE

_____ DAY OF _____, 2010.

_____
Notary Public

Print Name:_____ (SEAL)
My Commission Expires: _____

**EXHIBIT R**

SUBCONTRACTOR AFFIDAVIT

By executing this Affidavit, the undersigned Subcontractor verifies its compliance with O.C.G.A. §§13-10-91, stating affirmatively that the individual, firm or corporation which is engaged in the physical performance of services under a contract with the City of Doraville has registered with and is participating in a federal work authorization program [any of the electronic verification of work authorization programs operated by the United States Department of Homeland Security or any equivalent federal work authorization program operated by the United States Department of Homeland Security to verify information of newly hired employees, pursuant to the Immigration Reform and Control Act of 1986 (IRCA), P.L. 99-603], in accordance with the applicability provisions and deadlines established in O.C.G.A. § 13-10-91.

_____
EEV / Basic Pilot Program User Identification Number

By:_____

Printed Name: _____

Company Name: _____

Title: _____

## EXHIBIT S

DISCLOSURE OF FRAUD OR MISCONDUCT

Each recipient or sub-recipient (s) of these funds made available under the ARRA shall promptly refer to the U.S. Department of Energy (DOE) Office of Inspector General any credible evidence that a principle, employee, agent, contractor, subcontractor, sub-recipient or other person has submitted a false claim under the False Claim Act or has committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving the funds of this project.

If the Contractor has any credible evidence that a principle, employee, agent, subcontractor or any recipient has committed a violation of the False Claims Act or a violation of Federal criminal law involving fraud, conflict of interest, bribery or gratuity violations in connection with these project funds, performance, or closeout of a contract or any related subcontract. If you wish to provide information that does not fall within these guidelines, please visit the DOE Office of Inspector General website at: http://www.ig.energy.gov/ or email: ighotline@hq.doe.gov or call: (800) 541-1625 or (202) 586-4073.

## **EXHIBIT T**

EXAMINATION OF RECORDS

The Contractor agrees to give the City, GEFA, DOE Inspector General or the U.S. Comptroller General, through any authorized representative, access to and the right to examine all records, books, papers or documents relating to this Contract. The Contractor also agrees to retain all records related to this Contract for a period of three (3) years after completion of the terms of this Contract.

PMT9721.DOCX