



Agenda # 14
Commission Meeting Date:
March 20, 2012

**CITY OF GREAT FALLS
COMMISSION AGENDA REPORT**

Item: Montana Department of Environmental Quality contract for American Recovery and Reinvestment Act funding of the Wastewater Treatment Plant Return Activated Sludge Pump Upgrades, O.F. 1457.7

From: Public Works Department

Initiated By: Public Works Department

Presented By: Jim Rearden, Public Works Director

Action Requested: Approve Montana Department of Environmental Quality (MDEQ) contract for American Recovery and Reinvestment Act (ARRA) funds

Suggested Motion:

1. Commissioner moves:

“I move the City Commission confirm that it wishes to accept the MDEQ contract for ARRA funds and will abide by the terms outlined in the attached contract.”

2. Mayor calls for a second, discussion, inquiries from the public, and calls for the vote.

Staff Recommendation: Agree to the terms of the MDEQ contract for ARRA funds.

Background:

Significant Impacts

During a recent energy audit conducted at the Wastewater Treatment Plant through an ARRA program, it was recommended that the Return Activated Sludge (RAS) pumps be upgraded to improve their efficiency. As part of the audit and its recommendations, additional ARRA funding was made available in certain cases to conduct these energy upgrades.

Workload Impacts

Accepting the MDEQ contract for ARRA funds requires City staff to follow the bidding and construction guidelines outlined in the contract. The additional workload is minimal and can be accommodated.

Purpose

Agreement with the terms of the attached MDEQ contract is required for allocation of the funds. If the contract is not signed the funds will be allocated to another community.

Project Work Scope

This project will replace the control systems for five pumps to allow for better operational efficiency of those pumps. This increase efficiency will translate into energy savings. This project will also evaluate replacing the motors on the pumps for further energy savings.

Evaluation and Selection Process

This project has not been bid. Gordon-Prill-Drapes (GPD) has been selected to perform the design and construction administration for this project.

Conclusion

City staff recommends accepting the ARRA funds and abiding by the terms outlined in the attached acceptance contract.

Fiscal Impact:

American Recovery and Reinvestment Act funds in the amount of \$42,500 have been approved for this project. These funds require no payback. Project costs exceeding this amount will be funded through Sewer Capital Funds. It is estimated that the project will exceed the ARRA funding by less than \$7,000.

Alternatives:

The City Commission could vote to deny acceptance of the ARRA funds.

Attachments/Exhibits:

1. MDEQ Contract for ARRA funds

DEQ CONTRACT COVERSHEET ~ ~ **STIMULUS PROJECT**

Date: **2/17/2012**

Contract No.: 212083	Task Order No.:	Modification No.:
*Federal Grant No.: DE-EE0000764-001	*Federal Catalog No.: 81.128	Mail Code: (Required) 53630
*DUNS Number: 060267093	Active CCR: Y <input checked="" type="checkbox"/> N <input type="checkbox"/>	

*Note: Federal Grant, Catalog & DUNS Numbers: Only required when federal funds are used. The numbers are found on the grant award document.

Requestor & Procurement Information: (Complete all sections. Use Program only if a subdesignated section within a bureau and use acronyms or abbreviations to designate Program, Bureau & Division whenever possible)

Requestor: SHANNYN HENKEL (Contract/Project Manager) 406.444.5216 (Phone No)	Program: 20
Return Documents To: Designated Contact Person for Program and OIT if Necessary as noted below	Bureau: EPPB
Program: ANGIE CARTER (Designated Contact 406.444.1842 (Phone No)	Division: PPA
OIT (Designated Contact (Phone No)	
Contract Purpose: GREAT FALLS WASTE WATER TREATMENT PLANT RETROFIT	
Procurement Justification: COMPETITIVE GRANT	

DB Dev/Upgrade/Maintenance/other IT (Note: All IT Contracts, SOWs & SOW Mods must be approved by OIT/BDB & DOA/ITSD: All IT Task Orders and Task Order Mods must be approved by OIT/BDB)	<input type="checkbox"/> Yes (If yes, Send to OIT/BDB)	ITPR Required <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	OIT/BDB Approval _____
			ITPR Approval Number _____

Contractor Information: (X the box for type of contractor.)

For Profit: Owner LLC Partnership Corp Non-Profit Education Entity Gov't Entity

Company: **CITY OF GREAT FALLS**
 Address: **PO BOX 8021**
 Address:
 City/State/Zip: **GREAT FALLS, MT 59403** Tax Id No.: **81-6001269**
 Signatory: **GREG DOYAN** Title: **CITY MANAGER**

Financial Information: (Complete areas that apply. For mods complete the modification section and change dates(s) & finance info as necessary.)
 *Note: Organization Units: If you need additional space for ORG Nos. please use form: <H:\FORMS\CSD\ContractForms\coversheet-more-ORGS.doc> & in the first ORG: box put "See Attached". Print both forms and staple together for routing.

Start Date: UPON SIGNATURE	End Date: JULY 31, 2012	Account Code:
Organizational Units*	Fiscal Year: 2012	Fiscal Year:
ORG: 247224/03101	Amount: \$42,500.00	Amount: \$
ORG:	Amount: \$	Amount: \$
ORG:	Amount: \$	Amount: \$

TYPE OF MODIFICATION: Date Change **Contract Total (with mods): \$42,500.00**

Funding: Increase Decrease Other (Language | Terms & Conditions) Amount of change to funding: \$

Working Capital Advance* (Working Capital Advances must be requested & justified in writing by Contractor.) **Amount: \$**
 *Note: Financial Services enters advance budget in MTPi upon contract execution; the **Division** MUST request & authorize payment of the advance.

Bonds, Retainage, Withholding & Insurance Information: (Most contracts only require completion of the insurance & work comp sections. Construction change orders increasing costs requires increasing both the performance & L&M payment bonds) **Important Note: Prior to work being performed DEQ MUST RECEIVE proof of insurance & work comp as well as "acceptable" originals of all required bonds and/or Letters of Credit!**

Performance: Bond LOC No. Amount: \$ Expires:

Labor & Materials Payment Bond No. Amount: \$ Expires:

Retainage (\$ or %) 1st Ret: 2nd Ret: Withholding (% or \$):

Insurance: Liability (L) Auto (A) or L&A Combo Prof. EEO Expires: Work Comp Expires:

Legal and Division Approvals

Financial Services Approvals

DEQ Legal Counsel _____	Date _____	Contract Document Logged into FS _____	Date _____
Bureau Chief / Authorizing Agent _____	Date _____	FS Budget Analyst _____	Date _____
Division Fiscal Officer / Contracts Reviewer _____	Date _____	Contracts Officer _____	Date _____
Division Administrator _____	Date _____	Director Approval if Required (or Contract Mailed) _____	Date _____



CONTRACT

1. PARTIES

THIS CONTRACT, is entered into by and between the State of Montana Department of Environmental Quality (DEQ), and **the City of Great Falls** (Contractor). This Contract is entered into in accordance with Title 18, Montana Code Annotated (MCA), the Administrative Rules of Montana (ARM), Title 2, Chapter 5, and the provisions of the American Recovery and Reinvestment Act of 2009 (ARRA), for the purpose of creating or sustaining jobs in Montana, reducing energy consumption, and increasing the use of renewable energy resources.

THE PARTIES AGREE AS FOLLOWS:**2. EFFECTIVE DATE, DURATION, AND RENEWAL**

- 2.1. This Contract shall take effect upon signature of both parties, with the effective date being the later of the two signatures, and terminate on **July 31, 2012**, unless terminated earlier in accordance with the terms of this Contract. (§ 18-4-313 MCA.)

3. SERVICES AND/OR SUPPLIES

- 3.1. Contractor shall:

3.1.1. Provide to DEQ the products and services, which are more fully described in the scope of work attached hereto as **Attachment A** and incorporated herein by reference.

- 3.2. One or more tasks under Attachment A may require environmental review under the National Environmental Policy Act and/or the Montana Environmental Policy Act or by the State Historical Preservation Office. Upon receipt by the Contractor of written notice from the State or the U.S. Department of Energy (DOE) that one or more of these reviews is required, the Contractor may not commence work on any such tasks before, and DEQ will not pay the Contractor for any work on such tasks commenced before, completion of any such reviews. If any such review results in a recommendation by the State or DOE to revise the scope of work, the Contractor and the State shall modify the scope of work to meet the recommendation.

- 3.3. Prior to the expenditure of funds to alter any structure or site, Contractor is required to comply with the requirements of Section 106 of the National Historic Preservation Act (NHPA). Section 106 applies to historic properties that are listed in or eligible for listing in the National Register of Historic Places. In order to fulfill the requirements of Section 106, Contractor shall coordinate with DEQ to coordinate the Section 106 review outlined in 36 CFR Part 800.

4. REPORTING REQUIREMENTS

- 4.1. As a recipient of American Recovery and Reinvestment Act (Recovery Act) funds, DEQ must report to the Department of Energy (DOE) on the use of the funds no later than 10 days after the end of each calendar quarter. This report is posted to www.Recovery.gov. As part of this reporting requirement, Contractor and any subcontractors must have a DUN and Bradstreet Universal Number System (DUNS) number (www.dnb.com) and must maintain active and current profiles in the Central Contractor Registration (www.ccr.gov) for the duration of this Contract. Contractor and any subcontractors must comply with any guidance from the Office of Management and Budget (OMB) related to the reporting requirement of section 1512 of the Recovery Act issued by the OMB or DOE.
- 4.2. Contractor shall submit a written and signed "ARRA-funded Monthly Jobs Reporting Template" and "Main and Waste Stream Tracking," both provided to Contractor from

- DEQ within 5 days of execution of contract, no later than the 5th day of each month that includes:
- 4.2.1.** The total amount of recovery funds received from DEQ under this Contract with a summarization of reimbursements and expenditures by task of project funds for the preceding month;
 - 4.2.2.** The total number of jobs saved or created during the preceding month;
 - 4.2.3.** A brief status of the project that includes any significant problems that require resolution;
 - 4.2.4.** If requested by DEQ, additional detailed information on any subcontracts awarded by the Contractor; and
 - 4.2.5.** If requested by DEQ, copies of weekly timesheets/rate of pay and certified payroll reports for all persons working on the task or activity;
- 4.3.** Contractor shall submit a final report within 30 days after contract end date that includes, at a minimum:
- 4.3.1.** A short narrative of the original project;
 - 4.3.2.** Project highlights;
 - 4.3.3.** A summary of activities performed;
 - 4.3.4.** Overall project accomplishments;
 - 4.3.5.** Successes and failures, including significant problems or unique situations encountered, and corrective actions taken;
 - 4.3.6.** Extent to which the project goals and objectives were met;
 - 4.3.7.** Summarization of expenditures of project funds;
 - 4.3.8.** The total number of jobs saved or created over the course of the project; and
 - 4.3.9.** Digital photos of the project that document the project before initiation, during development and after completion
 - 4.3.10.** Digital photograph of ARRA logo displayed at project site;
 - 4.3.11.** Digital photograph of the Davis Bacon Wage poster displayed at project site;
 - 4.3.12.** A letter certifying compliance with equal opportunity statutes and the Americans with Disabilities Act and any other acts or statutes applicable to your project.
 - 4.3.13.** The total amount of recovery funds received from DEQ under this SOW;
 - 4.3.14.** The total amount of recovery funds received that were obligated and expended to complete the project and, to facilitate reconciliation of funds, the amount of any recovery funds received from DEQ under this SOW not yet obligated and expended;
 - 4.3.15.** A detailed list of all tasks or activities for which recovery funds from DEQ under this SOW were obligated and expended, including –
 - 4.3.15.1.** The name of the task or activity;
 - 4.3.15.2.** A description of the task or activity;
 - 4.3.15.3.** An evaluation of the completion status of the task or activity; and

4.3.15.4. An estimate of the number of jobs created and the number of jobs retained by the task or activity and the total hours worked per task;

4.3.16. Detailed information on any subcontracts or sub grants awarded by Contractor under this SOW to include the data elements required to comply with Federal Funding Accountability and Transparency Act of 2006 (P.L. 109-282), allowing aggregate reporting on awards below \$25,000 or individuals, as prescribed by the Director of OMB.

4.3.17. Summary of leveraged funds including utility rebates and incentives and local government funds used.

4.3.18. Brief individual human interest stories with contact information of persons who benefited from the jobs created under this agreement and any other anecdotal information that would show success of the project.

5. CONSIDERATION/PAYMENT

5.1. In consideration of services rendered pursuant to the Contract, DEQ agrees to reimburse Contractor up to a maximum of **\$42,500** for the goods and services described in Attachment A.

5.2. No later than the 5th day of each month, Contractor shall submit to DEQ a reimbursement request for the actual costs incurred during the preceding month. If no costs were incurred during that month, Contractor shall still provide DEQ with written notice to this effect to allow DEQ to remain in compliance with ARRA reporting requirements.

5.3. Contractor shall utilize the billing statement attached to this contract as Attachment B entitled "**Billing Statement**" and incorporated herein by reference. Contractor shall fill Billing Statement out completely and provide original signature.

5.4. DEQ will reimburse Contractor within 30 days after receipt of each billing statement, contingent upon the following:

5.4.1. Payment for questioned costs may be withheld pending resolution and may require rebilling by Contractor or submittal of additional documentation, including any records required to be kept by Contractor;

5.4.2. For any period in which a monthly report may be due, the payment for that period may be withheld pending receipt of the progress monthly reports and acceptance and approval of any such report by DEQ; and

5.4.3. DEQ may withhold payment if Contractor has not performed in accordance with the Contract. Such withholding cannot be greater than the additional costs to DEQ caused by Contractor's lack of performance.

5.5. Contractor shall submit to DEQ a final billing statement that must be prior to the termination date provided under this Contract.

5.6. Contractor shall not use the funds received under this Contract to supplant other Contractor budgeted expenses or funds.

5.7. This Contract is funded in whole or in part by a federal grant from the United States Department of Energy (DOE) in the amount of **\$9,593,500 (Federal Grant number: DE-EE0000764-001; Federal Catalog number: 81.128)**.

- 6. ACCOUNTING, AUDITING, RECORD RETENTION, COST PRINCIPLES, AND ACCESS TO RECORDS** [10 CFR 600.21, and 600.242]
- 6.1.** In addition to the access to records provisions of 10 CFR 600.21 and 600.242 and in accordance with the provisions of Section 1515 of the Recovery Act, Contractor shall maintain books, records, documents, other evidence directly pertinent to performance of work under this Contract and current accounting for all funds received and expended pursuant to this Contract in accordance with generally accepted accounting principles and to comply with the cost principles contained in OBM Circular 87 to determine allowable costs. Contractor shall comply with all requirements in 10 CFR 600.242 relating to recordkeeping. Contractor's accounting system must be able to allocate costs associated with this Contract in a manner that keeps these costs separate from the costs of other Contracts.
- 6.2.** DEQ, the Legislative Auditor, the DOE, the Comptroller General of the United States, or any of their authorized representatives, shall have the right of access to accounting records of Contractor for purposes of making an inspection, audit, excerpts, or transcripts of funds received and expended by Contractor pursuant to this Contract. Notwithstanding the provisions of the Termination Section of this Contract, this Contract may be terminated upon any refusal of Contractor to allow access to records necessary to carry out the audit and analysis referred to above (ref. 18-1-118, MCA). Authorized representatives shall have access to records at any reasonable time for as long as Contractor maintains the records. Audits conducted under this provision shall be in accordance with generally accepted auditing standards as established by the American Institute of Certified Public Accountants and with established procedures and guidelines of the reviewing or auditing company or agency.
- 6.3.** Contractor agrees to disclose all information and reports resulting from access to the records maintained in paragraph 6.1 of this clause to any of the agencies referred to in paragraph 6.2.
- 6.4.** Contractor agrees to retain all financial records for three years as required by the United States government. Contractor agrees this period meets the requirements of state and federal law with respect to funding utilized. In addition, Contractor agrees to maintain any records relating to any litigation, claim, negotiation, audit, cost recovery, or other action involving the records, until completion of the action and resolution of all issues, or until the end of the three-year period, whichever is longer. Contractor may not destroy any records without first offering the records to DEQ.
- 6.5.** In the event that an audit shows that Contractor has not complied with federal or state laws and rules concerning the handling and expenditure of the funds received under this Contract, Contractor agrees to correct the areas of non-compliance within six months after Contractor receives the audit report.
- 6.6.** If Contractor receives a total of \$500,000 or more in federal funds from any and all sources of federal funding sources during any fiscal year during which this Contract is performed, it must comply with the accounting and audit requirements of the most current version of the Federal Office of Management and Budget (OMB) Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations" and OMB Circular A-87 "Cost Principles for State and Local Governments and Indian Tribal Governments" including the "Compliance Supplement for Single Audits," concerning the use of the funds provided under this Contract.
- 6.7.** Contractor must provide DEQ with a copy of its annual or biennial audit report covering the year in question within 30 days after the report's issuance. The audit report must include all of the following information:

- 6.7.1. Federal grantor/pass-through grantor program title;
 - 6.7.2. Federal CFDA number;
 - 6.7.3. Pass-through grantor's number or this Contract number;
 - 6.7.4. Program or award amount;
 - 6.7.5. Cash accrued or deferred revenue at July 1 or the first day of Contractor's fiscal year;
 - 6.7.6. Receipts or revenue recognized during the period;
 - 6.7.7. Total disbursements/expenditures;
 - 6.7.8. Cash accrued or deferred revenue at June 30 or the last day of Contractor's fiscal year; and
 - 6.7.9. An indication of the basic accounting used in determining the above information in a footnote to the schedule of federal financial awards.
- 6.8. If Contractor receives less than \$500,000 in total federal assistance during any fiscal year during which this Contract is performed, and therefore does not need to submit an audit report to DEQ, Contractor must notify DEQ in writing within 30 days after the end of that year.
- 6.9. Contractor agrees to incorporate paragraphs 6.1 through 6.8 in any subcontract it awards in excess of \$5,000, at any tier, and in all change orders directly related to project performance.
- 6.10. All records maintained pursuant to this Section shall be available and present in proper form within 30 days of a written request made by DEQ.

7. DAVIS-BACON ACT AND CONTRACT WORKHOURS AND SAFETY STANDARD ACT

Definitions: For purposes of this provision, "Davis Bacon Act and Contract Work Hours and Safety Standards Act," the following definitions are applicable:

- (1) "Award" means any grant, cooperative agreement or technology investment agreement made with Recovery Act funds by the Department of Energy (DOE) to a Recipient. Such Award must require compliance with the labor standards clauses and wage rate requirements of the Davis-Bacon Act (DBA) for work performed by all laborers and mechanics employed by Recipients (other than a unit of State or local government whose own employees perform the construction) Subrecipients, Contractors, and subcontractors.
- (2) "Contractor" means an entity that enters into a Contract. For purposes of these clauses, Contractor shall include (as applicable) prime contractors, Recipients, Subrecipients, and Recipients' or Subrecipients' contractors, subcontractors, and lower-tier subcontractors. "Contractor" does not mean a unit of State or local government where construction is performed by its own employees."
- (3) "Contract" means a contract executed by a Recipient, Subrecipient, prime contractor, or any tier subcontractor for construction, alteration, or repair. It may also mean (as applicable) (i) financial assistance instruments such as grants, cooperative agreements, technology investment agreements, and loans; and, (ii) Sub awards, contracts and subcontracts issued under financial assistance agreements. "Contract" does not mean a financial assistance instrument with a unit of State or local government where construction is performed by its own employees.

- (4) "Contracting Officer" means the DOE official authorized to execute an Award on behalf of DOE and who is responsible for the business management and non-program aspects of the financial assistance process.
- (5) "Recipient" means any entity other than an individual that receives an Award of Federal funds in the form of a grant, cooperative agreement, or technology investment agreement directly from the Federal Government and is financially accountable for the use of any DOE funds or property, and is legally responsible for carrying out the terms and conditions of the program and Award.
- (6) "Subaward" means an award of financial assistance in the form of money, or property in lieu of money, made under an award by a Recipient to an eligible Subrecipient or by a Subrecipient to a lower-tier subrecipient. The term includes financial assistance when provided by any legal agreement, even if the agreement is called a contract, but does not include the Recipient's procurement of goods and services to carry out the program nor does it include any form of assistance which is excluded from the definition of "Award" above.
- (7) "Subrecipient" means a non-Federal entity that expends Federal funds received from a Recipient to carry out a Federal program, but does not include an individual that is a beneficiary of such a program.

(a) Davis Bacon Act

(1) Minimum wages.

- (i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and, without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in § 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein, *provided* that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

- (ii)(A) The Contracting Officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the Contract shall be classified in conformance with the wage determination. The Contracting Officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:
- (1) The work to be performed by the classification requested is not performed by a classification in the wage determination;
 - (2) The classification is utilized in the area by the construction industry; and
 - (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.
- (B) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the Contracting Officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the Contracting Officer to the Administrator of the Wage and Hour Division, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.
- (C) In the event the Contractor, the laborers or mechanics to be employed in the classification or their representatives, and the Contracting Officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the Contracting Officer shall refer the questions, including the views of all interested parties and the recommendation of the Contracting Officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.
- (D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii)(B) or (C) of this section, shall be paid to all workers performing work in the classification under this Contract from the first day on which work is performed in the classification.
- (iii) Whenever the minimum wage rate prescribed in the Contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.
- (iv) If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, *provided* that the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(2) Withholding. The Department of Energy or the Recipient or Subrecipient shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the Contractor under this Contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Contractor or any subcontractor the full amount of wages required by the Contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the Contract, the Department of Energy, Recipient, or Subrecipient, may, after written notice to the Contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) Payrolls and basic records.

(i) Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made, and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii) (A) The Contractor shall submit weekly for each week in which any Contract work is performed a copy of all payrolls to the Department of Energy if the agency is a party to the Contract, but if the agency is not such a party, the Contractor will submit the payrolls to the Recipient or Subrecipient (as applicable), applicant, sponsor, or owner, as the case may be, for transmission to the Department of Energy. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead, the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The

prime Contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the Department of Energy if the agency is a party to the Contract, but if the agency is not such a party, the Contractor will submit them to the Recipient or Subrecipient (as applicable), applicant, sponsor, or owner, as the case may be, for transmission to the Department of Energy, the Contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the sponsoring government agency (or the Recipient or Subrecipient (as applicable), applicant, sponsor, or owner).

- (B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the Contract and shall certify the following:
- (1) That the payroll for the payroll period contains the information required to be provided under § 5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under § 5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;
 - (2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the Contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;
 - (3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the Contract.
- (C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.
- (D) The falsification of any of the above certifications may subject the Contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 3729 of title 31 of the United States Code.
- (iii) The Contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the Department of Energy or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the Contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) Apprentices and trainees—

- (i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a Contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.
- (ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a

trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

- (iii) Equal employment opportunity. The utilization of apprentices, trainees, and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended and 29 CFR part 30.
- (5) Compliance with Copeland Act requirements. The Contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this Contract.
- (6) Contracts and Subcontracts. The Recipient, Subrecipient, the Recipient's, and Subrecipient's contractors and subcontractor shall insert in any Contracts the clauses contained herein in(a)(1) through (10) and such other clauses as the Department of Energy may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The Recipient shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of the paragraphs in this clause.
- (7) Contract termination: debarment. A breach of the Contract clauses in 29 CFR 5.5 may be grounds for termination of the Contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.
- (8) Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this Contract.
- (9) Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this Contract shall not be subject to the general disputes clause of this Contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the Recipient, Subrecipient, the Contractor (or any of its subcontractors), and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.
- (10) Certification of eligibility.
 - (i) By entering into this Contract, the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
 - (ii) No part of this Contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

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

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

- (1) Overtime requirements. No Contractor or subcontractor contracting for any part of the Contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
- (2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (b)(1) of this section, the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.
- (3) Withholding for unpaid wages and liquidated damages. The Department of Energy or the Recipient or Subrecipient shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any other Federal contract with the same prime Contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.
- (4) Contracts and Subcontracts. The Recipient, Subrecipient, and Recipient's and Subrecipient's contractor or subcontractor shall insert in any Contracts, the clauses set forth in paragraph (b)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The Recipient shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (b)(1) through (4) of this section.
- (5) The Contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the Contract for all laborers and mechanics, including guards and watchmen, working on the Contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. The records to be maintained under this paragraph shall be made available by the Contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the Department of Energy and the Department of Labor, and the Contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

8. OMB GUIDANCE

This Contract is subject to all applicable provisions of implementing guidance for the Recovery Act issued by the OMB, including the Initial Implementing Guidance for the American Recovery and Reinvestment Act (M-09-10) issued in February 18, 2009 and available on www.recovery.gov.

9. DISPLAY OF ARRA LOGO

9.1. Because this project receives funding under the American Recovery and Reinvestment Act of 2009 (Recovery Act) Contractor shall display at least one Recovery Act Logo as soon as signage is available in a manner that informs the public that the project is a Recovery Act investment. DEQ will work with Contractor to determine in what manner Contractor is able to comply with this provision and will ensure that Contractor receives the appropriate ARRA logo dependent upon which of the two following logos is used:

9.1.1. The Recovery Act Primary Emblem, which is required to be prominently displayed at the project location and maintained through project and contract completion.

9.1.2. The Recovery Act Horizontal Logomark, which is required to be used for any press releases or other online or offline communications.

10. ASSIGNMENT, TRANSFER AND SUBCONTRACTING

Contractor may subcontract for performance of any of its tasks under this contract, and any language in a statement of work that requires Contractor to perform a task is not intended to limit Contractor's ability to subcontract for that work. Contractor shall ensure that any solicitations for services are conducted in accordance with Montana law. Contractor is responsible to DEQ for the acts and omissions of all subcontractors or agents and of persons directly or indirectly employed by such contractors, and for the acts and omissions of persons employed directly by Contractor. No contractual relationships exist between any subcontractor and DEQ.

11. HOLD HARMLESS/INDEMNIFICATION

Contractor agrees to protect, defend, and save DEQ, its elected and appointed officials, agents, and employees, and while acting within the scope of their duties as such, harmless from and against all claims, demands, causes of action of any kind or character, including the cost of defense thereof, arising in favor of Contractor's employees or third parties on account of bodily or personal injuries, death, or damage to property arising out of services performed or omissions of services or in any way resulting from the acts or omissions of Contractor and/or its agents, employees, representatives, assigns, or subcontractors, except for the sole negligence of DEQ, under this Contract.

12. REQUIRED INSURANCE

12.1. General Requirements. The Contractor shall maintain for the duration of the Contract, at its cost and expense, insurance against claims for injuries to persons or damages to property, including contractual liability, which may arise from or in connection with the performance of the work by the Contractor, and/or its agents, employees, representatives, assigns, or subcontractors. This insurance shall cover such claims as may be caused by any negligent act or omission by Contractor, and/or its agents, employees, assigns, or subcontractors.

12.2. Specific Requirements for Commercial General Liability. The Contractor shall purchase and maintain for bodily injury, personal injury, and property damage of \$750,000 per claim and \$1,500,000 per occurrence to cover such claims as may be caused by any act, omission, or negligence of the Contractor and/or its officers, agents, representatives, assigns or subcontractors.

- 12.3. Specific Requirements for Automobile Liability.** The Contractor shall purchase and maintain coverage for bodily injury and property damage of \$750,000 per claim and \$1,500,000 per occurrence to cover such claims as may be caused by any act, omission, or negligence of the Contractor and/or its officers, agents, representatives, assigns or subcontractors.
- 12.4. Certificate of Insurance/Endorsements.** A certificate of insurance was received by the Department of Environmental Quality prior to execution of this Contract. The certificate must indicate compliance with the insurance coverages and the required limits set forth in this Section of the Contract. The required insurance must be maintained in force and effect for the duration of the Contract. Contractor must notify the State immediately of any material change in insurance coverage, such as changes in limits, coverages, changes in status of policy, etc. Failure to comply with this requirement may result in termination per Section 20.1 of this Contract.
- 12.5.** Participation by a local government in a risk sharing pool authorized by section 2-9-211, MCA that offers the required coverages shall meet the insurance requirements of this contract.

13. COMPLIANCE WITH WORKERS' COMPENSATION ACT

Neither Contractor nor its employees are employees of DEQ. Contractor and any subcontractor must comply with the provisions of the Montana Workers' Compensation Act while performing work for DEQ of Montana in accordance with sections 39-71-401, 39-71-405, and 39-71-417, MCA. Proof of compliance must be in the form of workers' compensation insurance, an independent contractor's exemption, or documentation of corporate officer status. This insurance or exemption must be valid for the entire term of the Contract. If the insurance or exemption used as proof of compliance expires during the term of this Contract or a renewal, Contractor shall immediately send proof of current insurance/exemption.

14. COMPLIANCE WITH LAWS

Contractor and any subcontractor must, in performance of work under this Contract, fully comply with all applicable federal, state, or local laws, rules and regulations, including the Montana Human Rights Act, Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975, the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973, Title IX of the Education Amendment of 1972, and the Fair Housing Act. Any subletting or subcontracting by Contractor subjects subcontractors to the same provision. In accordance with section 49-3-207, MCA, Contractor agrees that the hiring of persons to perform the Contract will be made on the basis of merit and qualifications and there will be no discrimination based upon race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin by the persons performing the Contract.

15. INTELLECTUAL PROPERTY (10 CFR 600.234)

All patent and other legal rights in or to inventions created in whole or in part under this Contract must be available to DEQ for royalty-free and nonexclusive licensing. Both parties shall have a royalty-free, nonexclusive, and irrevocable right to reproduce, publish or otherwise use and authorize others to use, copyrightable property created under this Contract.

16. PATENT AND COPYRIGHT PROTECTION (10 CFR 600.234)

- 16.1. Third Party Claim.** In the event of any claim by any third party against DEQ that the products furnished under this Contract infringe upon or violate any patent or copyright, DEQ shall promptly notify Contractor. Contractor shall defend such claim, in DEQ's name or its own name, as appropriate, but at Contractor's expense. Contractor will indemnify DEQ against all costs, damages and attorney's fees that accrue as a result of such claim. If DEQ reasonably concludes that its interests are not being properly

protected, or if principles of governmental or public law are involved, it may enter any action.

- 16.2. Product Subject of Claim.** If any product furnished is likely to or does become the subject of a claim of infringement of a patent or copyright, then Contractor may, at its option, procure for DEQ the right to continue using the alleged infringing product, or modify the product so that it becomes non-infringing. If none of the above options can be accomplished, or if the use of such product by DEQ shall be prevented by injunction, DEQ will determine if the Contract has been breached.

17. FEDERAL REQUIREMENTS

The following provisions are incorporated into this Contract and shall be included by Contractor in each subcontract or sub-tiered agreement under any subcontract it enters into in connection with this Contract:

- 17.1. Required Use Of American Iron, Steel, And Manufactured Goods (Covered Under International Agreements) – Section 1605 Of The American Recovery And Reinvestment Act Of 2009**

(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, Chinese Taipei (Taiwan), 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);
- (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; or
- (4) An Agreement between Canada and the United States of America on Government Procurement country (Canada).

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) The award term and condition described in this section implements-
 - (i) Section 1605(a) of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5) (Recovery Act), 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. As of January 1, 2010, this obligation

shall only apply to projects with an estimated value of \$7,804,000 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 section.
 - (3) The requirement in paragraph (b)(2) of this section does not apply to the iron, steel, and manufactured goods listed by the Federal Government as follows: None.
 - (4) The award official may add other iron, steel, and manufactured goods to the list in paragraph (b)(3) of this section 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 good 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 section 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 section.
 - (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 section.
 - (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 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 section 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 Cost Comparison

Description	Unit of measure	Quantity	Cost (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.]

17.2. Limit on Funds. Contractor and any subcontractor shall not use these funds for particular activities for any casino or other gambling establishment, aquarium, zoo, golf course, or swimming pool

17.3. Trafficking Victim Protection Act of 2000. Contractor and any subcontractor must not engage in severe forms of trafficking in persons during the period of time that the award

is in effect; procure a commercial sex act during the period of time that the award is in effect; or use forced labor in the performance of sub award.

- 17.4. Protection Of Whistleblowers.** In accordance with section 1553 of the Recovery Act, Contractor and subcontractor employees may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing, including a disclosure made in the ordinary course of an employee's duties, to the Recovery Accountability and Transparency Board, an inspector general, the Comptroller General, a member of Congress, a State or Federal regulatory or law enforcement Agency, a person with supervisory authority over the employee, a court or grand jury, the head of a Federal agency, or their representatives, information that the employee reasonably believes is evidence of (1) gross mismanagement of an agency contract or grant relating to grant funds ; (2) a gross waste of covered funds; (3) a substantial and specific danger to public health or safety related to implementation or use of grant funds; (4) an abuse of authority related to implementation or use of covered funds; or (5) a violation of law, rule, or regulation related to a grant awarded or issued relating to covered funds.
- 17.5. False Claim.** Contractor and subcontractors agree to promptly refer to DOE's Inspector General any credible evidence that a principal, employee, agent, contractor, subcontractor, loan recipient, or other person has submitted a false claim under the False Claims Act or has committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving funds provided under this grant or sub-grants awarded by the grantee.
- 17.6. Supersession.** This Section applies to the work eligible for DOE assistance to be performed under this Contract, and the provisions within it supersede any conflicting provisions of this Contract.
- 17.7. Drug Free Workplace (10 CFR 607).** Contractor agrees to maintain a drug-free workplace. Contractor certifies, by signing this Contract that its employees and subcontractors will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in the performance of this Contract.
- 17.8. Lobbying (10 CFR 601).** Contractor certifies that no federal appropriated funds have been paid or will be paid, by or on behalf of Contractor, to any person for influencing or attempting to influence Congress or any federal agency in connection with the awarding of any federal/state contract, the making of any federal/state grant, the making of any federal/state loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal/state contract, grant, loan or cooperative agreement. If any funds other than federal or state appropriated funds have been paid or will be paid to any person for influencing or attempting to influence Congress or any federal agency in connection with this Contract, grant, loan or cooperative agreement, Contractor shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.
- 17.9. Debarment, Suspension, Ineligibility and Voluntary Exclusion (10 CFR 600.235).** Contractor certifies that it and its principals: (1) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from the award of contracts by any federal department or agency; (2) have not within a 3-year period preceding this Contract 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) contract or subcontract; been in violation of federal or state antitrust statutes, or been convicted of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property; or otherwise criminally or civilly charged by a governmental entity (federal, state, or local) with commission of any of the offenses enumerated in (2)

above; and, (3) have not within a 3-year period preceding this Contract, had one or more contracts terminated for cause or default by any federal or state agency.

- 17.10.** Procurement of Recycled Goods (42 U.S.C 6962). In accordance with Section 6002 of the Resource Conservation and Recovery Act, when the purchase of an item exceeds \$10,000 or where the quantity of such items acquired in the course of the preceding fiscal year was \$10,000 or more, Contractor and subcontractors shall give preference to the purchase of specific products containing recycled materials.
- 17.11.** Use of Recycled Paper (Executive Order 13423 (January 24, 2007)). Contractor certifies that recycled paper will be used for all reports, documents, or other submittals prepared by Contractor under the terms of this Contract.
- 17.12.** Copyright And Right To Use (10 CFR 600). Any discovery or invention made, or data or text developed, or under development, as a result of work conducted under this Contract, is subject to DOE requirements and regulations pertaining to reporting and patent rights, and copyrights and rights in data. In any event, DEQ and DOE shall have a royalty-free, nonexclusive, and irrevocable right to reproduce, publish or otherwise use and authorize others to use, any patented or copyrightable property developed under this Contract.
- 17.13.** Equipment, Supplies and Materials (10 CFR 600.232).
 - 17.13.1.** Any purchase of equipment required under this Contract must be approved in advance and in writing by DEQ prior to purchase by Contractor.
 - 17.13.2.** In accordance with 10 CFR 600.232, title of equipment, defined as having a purchase price of over \$5,000 and a useful life of more than one year, acquired under this Contract, shall vest with Contractor. Contractor agrees to maintain the equipment in good working condition and provide accountability of the equipment per state law and rule concerning Asset Management.
- 17.14.** Subcontracting Under Disadvantaged Business Enterprise (DBE) Program (10 CFR 600.7 and 600.236)
 - 17.14.1.** Contractor shall take all necessary affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms are used when possible.
 - 17.14.2.** Affirmative steps shall include:
 - 17.14.2.1.** Placing qualified small and minority businesses and women's business enterprises on solicitation lists.
 - 17.14.2.2.** Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources.
 - 17.14.2.3.** Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, and women's business enterprises.
 - 17.14.2.4.** Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority business, and women's business enterprises
 - 17.14.2.5.** Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce.

- 17.14.2.6.** Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs 17.14.2.1 through 17.14.2.5 of this section.

18. CONFLICT OF INTEREST

- 18.1.** For the purposes of the Montana Code of Ethics, Contractor and each of its employees and subcontractors is a “public employee” for the purposes of this Contract. As such, Contractor and each of its employees and subcontractors is subject to the requirements of Title 2, Chapter 2, MCA, regarding conflicts of interest, including but not limited to sections 2-2-104, 2-2-105, 2-2-121, and 2-2-201, MCA.
- 18.2.** If DEQ discovers that an employee of Contractor is in violation of this Section, DEQ may, after consulting with Contractor, terminate this Contract or take other appropriate measures to address the conflict and Contractor shall reimburse DEQ for any services DEQ requires be performed by another Contractor that duplicate the services performed by the employee who violated this Section.

19. DISCLOSURE

- 19.1.** Contractor agrees to notify DEQ of any actual, apparent, or potential conflict of interest with regard to any individual working on a work assignment or having access to information regarding a subcontract. Notification of any conflict of interest shall include both organizational conflicts of interest and personal conflicts of interest (which are defined as the same types of relationships as organizational conflicts of interest, but applicable to an individual). In the event that a personal conflict of interest exists, the individual who is affected shall be disqualified from taking part in any way in the performance of the assigned work that created the conflict of interest situation.
- 19.2.** Contractor certifies that it has identified all current employees and proposed subcontractor’s employees that have worked for the State of Montana in the last two years prior to submitting the Request for Proposal which resulted in the award of this Contract. Contractor further certifies that no former employee of DEQ, the State of Montana or local government may work under this Contract for a period of twelve months after voluntary termination of public employment, if by working under the Contract the employee will take direct advantage, unavailable to others, of matters with which the employee was directly involved during the employee’s public employment. A former employee of state or local government may not, within 6 months following the termination of public employment, contract or be employed by an employer who contracts with the State of Montana or any of its subdivisions involving matters with which the former public employee was directly involved during employment. Contractor further certifies it shall identify any new employees hired during this Contract that have worked for the State of Montana in the last two years prior to submitting the Request for Proposal which resulted in the award of this Contract. Disclosure in all cases shall include the name of the agency and the nature of work performed by the employee.

20. CONTRACT TERMINATION

- 20.1.** Termination for Cause. DEQ may, by written notice to Contractor, terminate this Contract in whole or in part at any time Contractor fails to perform this Contract.
- 20.2.** Contract Contingent on Funding. This Contract is automatically canceled if federal funds under the American Recovery and Reinvestment Act of 2009, Public Law 111-5, are not appropriated or otherwise made available to support the Contract’s commencement or continuation of performance.

Contractor further understands and agrees that this contract is automatically canceled if

federal funds under the United States Department of Energy's Energy Efficient Conservation Block Grant are not appropriated or otherwise made available to support the contract's commencement or continuation of performance.

- 20.3. This Contract is automatically cancelled if the federal awarding agency unilaterally terminates the award due to a violation of the Trafficking Victim Protection Act of 2000.
- 20.4. Any termination of this Contract is subject to the exception that Section 6.2, relating to retention of and access to records, will remain in effect.

21. LIAISON AND SERVICE OF NOTICES

- 21.1. All project management and coordination on behalf of DEQ shall be through a single point of contact designated as DEQ's liaison. Contractor shall designate a liaison that will provide the single point of contact for management and coordination of Contractor's work. All work performed pursuant to this Contract shall be coordinated between DEQ's liaison and Contractor's liaison.

Shannyn Henkel, or designee will be the liaison for DEQ.
PO Box 200901
Helena, MT 59620-0901
Telephone: 406.841.5216
Fax: 406.841.5091
E-mail: SHenkel@mt.gov

Mike Jacobson will be the liaison for Contractor.
PO Box 8021
Great Falls, MT 59403
mjacobson@greatfallsmt.net
406.727.1325

- 21.2. DEQ's liaison and Contractor's liaison may be changed by written notice to the other party. Written notices, requests, or complaints will first be directed to the liaison.

22. MEETINGS

Contractor is required to meet with DEQ's personnel, or designated representatives, to resolve technical or Contractual problems that may occur during the term of the Contract or to discuss the progress made by Contractor and DEQ in the performance of their respective obligations, at no additional cost to DEQ. Meetings will occur as problems arise and will be coordinated by DEQ. Contractor will be given a minimum of three full working days notice of meeting date, time, and location.

23. TRANSITION ASSISTANCE

If this Contract is terminated prior to the completion of a project, or if the work on a project is terminated, for any reason, Contractor must provide for a reasonable period of time after the expiration or termination of this project or Contract, all reasonable transition assistance requested by DEQ, to allow for the expired or terminated portion of the services to continue without interruption or adverse effect, and to facilitate the orderly transfer of such services to DEQ or its designees. Such transition assistance will be deemed by the parties to be governed by the terms and conditions of this Contract, except for those terms or conditions that do not reasonably apply to such transition assistance. DEQ shall pay Contractor for any resources utilized in performing such transition assistance at the most current rates provided by the Contract. If there are no established Contract rates, then the rate shall be mutually agreed upon. If DEQ terminates a project or this Contract for cause, then DEQ will be entitled to offset the cost of paying Contractor for the additional resources Contractor utilized in providing transition assistance with any damages DEQ may have otherwise accrued as a result of said termination.

24. CHOICE OF LAW AND VENUE

This Contract is governed by the laws of Montana. The parties agree that any litigation concerning this bid, proposal, or subsequent Contract must be brought in the First Judicial District in and for the County of Lewis and Clark, State of Montana, and each party shall pay its own costs and attorney fees. (See Mont. Code Ann. § 18-1-401.)

25. SCOPE, AMENDMENT AND INTERPRETATION

25.1. Contract. This Contract consists of **23** numbered pages and any Attachments as required including the Request for Applications, as amended and Contractor's response as amended. In the case of dispute or ambiguity about the minimum levels of performance by Contractor the order of precedence of document interpretation is in the same order.

25.2. Entire Contract. These documents contain the entire Contract of the parties. Any enlargement, alteration or modification requires a written amendment signed by both parties.

26. EXECUTION

The parties through their authorized agents have executed this Contract on the dates set out below.

CITY OF GREAT FALLS

DATE

GREG DOYON, City Manager

PO Box 8021
Great Falls, MT 59403

Federal Employer's ID No.: **81-6001269**

MONTANA DEPARTMENT OF ENVIRONMENTAL QUALITY

DATE

VICKI J. WOODROW, Contracts Officer

Financial Services
Metcalf Building, Room 003
1520 E. Sixth Avenue
Helena, MT 59620-0901

Approved as to Legal Content:

DATE

DEQ Attorney

**DEQ Contract #212083
Attachment A**

Project Description: City of Great Falls Waste Water Treatment Plant Return Activated Sludge (RAS) Pump Retrofit

Agency Consultant: City of Great Falls
P.O. Box 5021
Great Falls, MT 59403-5021

DEQ Project Manager: Shannyn Henkel

EECBG Funds: \$ 42,500.00

Project completion/deadline date: July 31, 2012

Project main deliverable: Contractor shall provide for the design of the five Return Activated Sludge Pump retrofit replacing the 40-HP eddy current drives with Variable Frequency Drives and complete the retrofit to design standards.

Task 1: Retrofit existing Return Activated Sludge Pumps

Task Description: Contractor shall design and replace the five 40-HP eddy current drives and install new Variable Frequency drives in the five Return Activated Sludge Pumps. Contractor shall ensure that all material meets the Buy American Act provisions and laborers are paid Davis Bacon Act wages applicable.

Funding/Costs: \$42,500.00

Project completion/deadline date: July 31, 2012

Outputs/Deliverables: Contractor shall provide DEQ evidence of the installation of New Variable Frequency Drives on the five Return Activated Sludge Pumps. This may be accomplished by photographs and invoices specifying materials purchased and installed.

BILLING STATEMENT

ATTACHMENT B

PROJECT:	GREAT FALLS WW TREATMENT PLANT RAS PUMP RETROFIT
	DEQ CONTRACT NUMBER:
Billing Period:	Statement Date:

Goal/Objective/Task (as listed in Attachment A)	CONTRACTED AMOUNT	CURRENT BILLING	TO-DATE EXPENDED (INCLUDING CURRENT BILLING)	BALANCE REMAINING
TASK 1: RETROFIT EXISTING RETURN ACTIVATED SLUDGE PUMPS	\$42,500.00	\$0.00	\$0.00	\$42,500.00
TOTALS	\$42,500.00	\$0.00	\$0.00	\$42,500.00
TOTALS THIS BILLING CYCLE		\$0.00		

COMMENTS SECTION: PLEASE INCLUDE HERE HOW MUCH OF THE BILLING GOES TOWARD THE ADVANCE.

I certify that the above costs are actual, necessary, and allowable for the performance of the agreement. There are no duplicate costs, and the statement is mathematically correct. All progress reports required under this agreement are current.

Date

Signed

If you need a copy of this billing statement emailed to you, please call Angie Carter at 406.444.1842.