

**A RESOLUTION FOR RECEIVING AN UPDATE
ON THE TOWN'S ENERGY PLANNING ACTIVITIES
Resolution No. 4/2011-12**

WHEREAS, an ARRA grant application was submitted to and accepted by the US Department of Energy (USDOE) Retrofit Ramp Up/Better Buildings program by the Southeastern Energy Efficiency Alliance (SEEA) in collaboration with the Town of Carrboro, the Town of Chapel Hill and other southeastern jurisdictions to pursue community scale energy efficiency retrofits; and

WHEREAS, the Town has accepted grant award of \$75,000 and negotiated an agreement with the Southeast Energy Efficiency Alliance, and developed a Memorandum of Understanding with Chapel Hill to share administrative and monitoring and verification costs and make all necessary arrangements to implement local programs, now entering a second year; and

WHEREAS, based on its performance and progress, the Town's request for bonus pool funds available from SEEA was successful, garnering \$50,000 in additional funding.

NOW THEREFORE BE IT RESOLVED by the Carrboro Board of Aldermen that the Aldermen

- 1) Receive the staff update on energy planning activities, and
- 2) Accept the award of \$50,000 in bonus pool funding from SEEA, and
- 3) Authorize staff to finalize an amendment to the agreement between SEEA and the Town of Carrboro, and the Interim Town Manager to sign on the Town's behalf.

AMENDMENT TO GRANT AGREEMENT FOR SEEA BONUS POOL FUNDS

Effective Date: August 4, 2011

This Grant Agreement Amendment ("*Amendment*") is made and entered into as of the Effective Date by and between the Southeast Energy Efficiency Alliance ("*SEEA*") and the Town of Carrboro ("*Recipient*").

Whereas, Recipient has submitted to SEEA an application requesting a grant of monies of \$50,000 from the SEEA Bonus Pool to engage in a residential energy efficiency retrofit program, the Better Building Neighborhood Program, Carrboro, North Carolina, as more particularly described on Exhibit A

Whereas, SEEA desires to fund such Project in order to share best practices and leverage a common approach to program structure, evaluation and data-sharing, and to create a model for replication of the project across the Southeastern United States and beyond;

Whereas, SEEA has received a grant from the United States Department of Energy under the American Recovery and Reinvestment Act of 2009 (the "*Reinvestment Act*") to fund projects like the Project; and

Whereas, the parties desire to enter into this Amendment of the original Agreement and intend to be bound by its terms.

Now, therefore, for and in consideration of the mutual promises contained in this Amendment and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties mutually agree as follows:

1. Grant Documents. The documents described below are collectively referred to as the "*Grant Documents*". In the case of conflict between any of these documents, each shall have priority over all others in the order listed below. Upon execution and delivery of this Amendment, it and the other Grant Documents and items required hereunder will constitute a valid and binding agreement between the parties, enforceable in accordance with the terms thereof. The Amendment constitutes the entire agreement between the parties, superseding all prior oral and written statements or agreements.

The Grant Documents consist of:

- (a) This Amendment
- (b) Exhibit A – Southeast Energy Efficiency Alliance Southeast Community Retrofit Ramp-up Consortium Grant Agreement
- (c) Exhibit B - Program Design (Not attached)
- (d) Exhibit C – Program Budget (Not attached)

2. Purpose. The purposes of the grant are for establishing and/or expanding Recipient's building retrofit programs; retrofitting Recipient's commercial and residential facilities; distributing second-and third-year funds to Recipient on a performance basis; and supporting the development of local retrofit workforces.

3. SEEA's Duties. Subject to the appropriation, allocation and availability to SEEA of funds for the Project, SEEA hereby agrees to pay the grant funds (the "*Funds*") to Recipient in accordance with Recipient's performance and the payment procedures listed in the original Agreement (Exhibit A).

4. Recipient's Duties. Recipient shall carry out the Project pursuant to the terms of, and in compliance with, this Amendment.

ATTACHMENT B - 2

5. Contract Period. SEEA's commitment to disburse grant funds under this Amendment shall cease on June 2, 2013 and in accordance with the schedule and explanation in the original Agreement. Recipient shall ensure that all Project work products and the Project final invoice are received by SEEA by the Expiration Date. After the Expiration Date, any Funds remaining under this Amendment will no longer be available to Recipient.

IN WITNESS THEREOF, the parties to this Amendment have duly and validly approved it and caused it to be executed in their behalf by the undersigned agents.

This, the _____ day of _____, 2011.

SOUTHEAST ENERGY EFFICIENCY ALLIANCE

Signature

Printed name and title

Attest

Printed name and title

TOWN OF CARRBORO

Town Manager

Printed name

ATTEST BY TOWN CLERK:

TOWN SEAL:

Town Clerk attests date this the _____ day of _____, 20____

Approved as to form and authorization

TOWN ATTORNEY

This amendment has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act.

FINANCE OFFICER

DATE

Southeast Community Retrofit Ramp-up Consortium

**Southeast Energy Efficiency Alliance
Southeast Community Retrofit Ramp-Up Consortium**

Grant Agreement

Project Title: Better Building Retrofit Program, Carrboro, North Carolina

DOE Grant Number: DE-EE0003575

Recipient: Town of Carrboro, North Carolina

Contract Administrator:

Randy Dodd
Phone: (919) 918-7326
Fax: (919) 918-4454
Email: rdodd@townofcarrboro.org

Federal I.D. Number: 56-6001194

Effective Date: September 27, 2010

Expiration Date: June 2, 2013

Southeast Community Retrofit Ramp-up Consortium

This Grant Agreement ("**Agreement**") is made and entered into as of the Effective Date by and between the Southeast Energy Efficiency Alliance ("**SEEA**") and the Town of Carrboro ("**Recipient**").

Whereas, Recipient has submitted to SEEA an application requesting a grant of monies to engage in an energy efficiency retrofit program, the Better Building Retrofit Program, Carrboro, North Carolina, as more particularly described on Exhibit A

Whereas, SEEA desires to fund such Project in order to share best practices and leverage a common approach to program structure, evaluation and data-sharing, and to create a model for replication of the project across the Southeastern United States and beyond;

Whereas, SEEA has received a grant from the United States Department of Energy under the American Recovery and Reinvestment Act of 2009 (the "**Reinvestment Act**") to fund projects like the Project; and

Whereas, the parties desire to enter into this Agreement and intend to be bound by its terms.

Now, therefore, for and in consideration of the mutual promises contained in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties mutually agree as follows:

1. Grant Documents. The documents described below are collectively referred to as the "**Grant Documents**". In the case of conflict between any of these documents, each shall have priority over all others in the order listed below. Upon execution and delivery of this Agreement, it and the other Grant Documents and items required hereunder will constitute a valid and binding agreement between the parties, enforceable in accordance with the terms thereof. The Agreement constitutes the entire agreement between the parties, superseding all prior oral and written statements or agreements.

The Grant Documents consist of:

- (a) This Agreement
- (b) Exhibit A – Project Description
- (c) Exhibit B – Project Budget
- (d) Exhibit C – General Terms and Conditions.
- (e) Exhibit D – Reporting and Audit Requirements
- (f) Exhibit E – Definitions
- (g) Exhibit F – Year One Allocation

2. Purpose. The purposes of the grant are for establishing and/or expanding Recipient's building retrofit programs; retrofitting Recipient's commercial and residential facilities; distributing second- and third-year funds to Recipient on a performance basis; and supporting the development of local retrofit workforces.

Southeast Community Retrofit Ramp-up Consortium

3. SEEA's Duties. Subject to the appropriation, allocation and availability to SEEA of funds for the Project, SEEA hereby agrees to pay the grant funds (the "**Funds**") to Recipient in accordance with Recipient's performance and the payment procedures set forth herein.

4. Recipient's Duties. Recipient shall carry out the Project pursuant to the terms of, and in compliance with, this Agreement.

5. Contract Period. SEEA's commitment to disburse grant funds under this Agreement shall cease on June 2, 2013 and in accordance with the schedule and explanation in Exhibit A. Recipient shall ensure that all Project work products and the Project final invoice are received by SEEA by the Expiration Date. After the Expiration Date, any Funds remaining under this Agreement will no longer be available to Recipient.

6. Disbursement Requirements.

(a) Application for Reimbursement. Disbursement of Funds for the Project shall be made as set forth in Exhibits A and B.

(b) Certification. At the option of SEEA, reimbursements may be made only on the certificate and seal of a Registered Professional, that the improvements for which the reimbursement is requested have been completed in accordance with approved plans and specifications, to which certificate shall be attached an estimate by the construction contractor setting forth items to be paid out of the proceeds of each such reimbursement. SEEA, at its option, may further require a certificate from such Registered Professional that the portion of the Project completed as of the date of the request for reimbursement has been completed according to schedule and otherwise as approved by SEEA and according to applicable engineering standards and requirements. However, SEEA may, at its discretion, make reimbursements without requiring such certificates or construction contractor's estimate, in which event Recipient shall furnish SEEA a list of and the amounts of items to be paid out of the reimbursement, or such other evidence as SEEA may require. For purposes of this Section 6(b), a "**Registered Professional**" is an appropriately-qualified registered professional determined by SEEA, in its discretion, to be qualified to provide the certification required hereunder. A registered professional may be, without limitation, a professional engineer, a licensed contractor, a Building Performance Institute-certified auditor or a program implementer.

(c) Reimbursement Based on Progress. Recipient agrees to proceed with diligence to accomplish the Project according to the schedule set out in Exhibit A and shall show appropriate progress prior to each reimbursement. Reimbursement may be withheld or delayed, in whole or in part, if Recipient fails to make progress on the Project satisfactory to SEEA. Amounts withheld shall be reimbursed with subsequent reimbursements in the event that Recipient is able to demonstrate an ability to resume satisfactory progress toward completion of the Project.

(d) Proof of Payment. Recipient agrees to pay, as the work progresses, all bills for labor and materials going into the accomplishment of the Project, and agrees to submit to SEEA all such receipts, affidavits, canceled checks, or other evidences of payment as may be requested from time to time and, when and if requested by SEEA, furnish adequate proof of payment of all indebtedness incurred in the development of the Project.

(e) Alternate Disbursement of Grant Funds. SEEA may, upon request, disburse grant funds prior to actual project payments by Recipient if costs are documented by unpaid third-party invoices. In

Southeast Community Retrofit Ramp-up Consortium

order for SEEA to disburse grant funds to Recipient based upon unpaid third-party invoices, Recipient shall indicate its review and approval of the unpaid third-party invoice in writing, and certify to SEEA that the unpaid third-party invoice will be paid within three (3) working days of receipt of the disbursed grant funds. Recipient will confirm to SEEA that the required payment has been made.

(f) No Excess Costs. SEEA agrees to pay or reimburse Recipient only for costs actually incurred by Recipient that do not exceed the funds budgeted for the Project shown on Exhibit B.

(g) Costs of Project Administration. SEEA agrees to reimburse Recipient for administrative costs consisting only of costs of labor for administrative work conducted exclusively on this Project. Recipient's requests for such reimbursement shall be made under the Project Administration line item of Exhibit B and shall conform with the following:

- (i) Costs allowable under the Project Administration line item shall be only costs of labor needed to comply with the general conditions of the Agreement (e.g., progress reports, payment requests, preparing the project final report, revisions to the Agreement). Allowable Project Administration labor costs may include any of the following: (a) pay to Recipient's payroll employees, plus Recipient's cost of paying benefits on such pay (usually employees' pay times an audited or auditable benefits multiplier); (b) pay to contract employees of Recipient (e.g., temporary office support), payable at Recipient's actual cost, without application of a benefits multiplier; and/or (c) cost of professional services labor contracted by Recipient (e.g., engineering firm or consultant), payable at Recipient's actual cost for that labor.
- (ii) Costs of any other work described in the Project Scope of Work in Exhibit A are not allowable under the Project Administration line item.

(h) Period for Incurring Reimbursable Expenditures. SEEA will reimburse Recipient only for allowable Project expenditures that are incurred by Recipient or Recipient's consultants, contractors, or vendors during the period between the Approval Date and the Expiration Date. SEEA will not reimburse Recipient for Project expenditures that are not incurred during this period.

7. Funding Agent. SEEA shall be entitled to notify Recipient at any time during the term of the Agreement that SEEA will disburse Funds to, and disbursed Funds will be paid on behalf of Recipient from an account administered by, a Person other than Recipient (the "**Funding Agent**"). For the avoidance of doubt, SEEA may be the Funding Agent for Funds disbursed to Recipient. Recipient hereby appoints SEEA or its delegate as Recipient's agent for the purposes of receiving Funds from SEEA, disbursing Funds in accordance with the Project, returning unused Funds to SEEA or otherwise administering or investing the Funds on behalf of the recipient, and acknowledges that all actions taken by the Funding Agent in connection with such purposes will be undertaken as Recipient's agent. In no event will the Funding Agent be liable to any Person for any failure by Recipient to comply with the terms and conditions of this Agreement or in connection with the receipt, disbursement, holding or administration of Funds.

8. Refunds and Reversion of Unexpended Funds. Recipient shall repay to SEEA any and all: (a) compensation it has received that is in excess of the payment to which it is entitled herein, including any interest earned on funds granted pursuant to this Agreement; and (b) unexpended Grant monies upon termination of this Agreement.

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9. Reporting Requirements. Reporting requirements are set forth on Exhibit D. Reports shall be made on the form set forth on Exhibit F.

10. Advance Understanding Concerning Publicly-Financed Energy Improvement Programs. The parties recognize that Recipient may use funds under this Agreement for Property-Assessed Clean Energy (PACE) loans, Sustainable Energy Municipal Financing, Clean Energy Assessment Districts, Energy Loan Tax Assessment Programs (ELTAPS), or any other form or derivation of Special Taxing District whereby taxing entities collect payments through increased tax assessments for energy efficiency and renewable energy building improvements made by their constituents. The Department of Energy intends to publish "Best Practices" or other guidelines pertaining to the use of funds made available to Recipient under this award pertaining to the programs identified herein. By accepting Funds under this Agreement, Recipient agrees to incorporate, to the maximum extent practicable, those Best Practices and other guidelines into the Project within a reasonable time after notification by SEEA or the DOE that the Best Practices or guidelines have been made available.

11. Indemnification.

(a) To the maximum extent allowed by Law, Recipient will indemnify and hold harmless SEEA and its directors, officers, employees and agents (the "*Indemnitees*") from and against any and all third party claims (including those made by Recipient's directors, officers and employees), losses, damages, suits, fees, judgments, costs and expenses (collectively referred to as "*Claims*"), including attorneys' fees incurred in responding to such Claims, that the Indemnitees may suffer or incur arising out of or in connection with: (i) Recipient's gross negligence, willful misconduct or breach of the representations and warranties set forth herein; (ii) any agreement between Recipient and any subsequent recipient of Funds, or any contractor, employee or consultant of any of them; or (iii) any personal injury (including death) or damage to property resulting from Recipient's, its subsequent recipients or their respective contractors, employees or consultants acts or omissions.

(b) Notwithstanding any unenforceability of Recipient's obligations under Section 11(a) (the "*Indemnification Obligations*") arising directly or indirectly from Recipient's status as a municipal corporation: (i) the parties acknowledge that the Indemnification Obligations are fundamental to the basis of the bargain under this Agreement, and that SEEA would not enter into this Agreement or Grant Funds absent such obligations; (ii) SEEA shall be entitled to the full benefit of the Indemnification Obligations; (iii) Recipient shall promptly pay to SEEA all costs incurred by SEEA in pursuing such benefit or contesting the enforceability of any Indemnification Obligation; and (iv) all such costs will be deemed reimbursable costs, which Recipient will pay to SEEA upon SEEA's request.

12. Limits on Liability.

(a) EXCEPT AS SET FORTH IN SECTION 12(B), IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, CONTINGENT OR CONSEQUENTIAL LOSS OR DAMAGES SUFFERED BY THE OTHER PARTY OR ANY THIRD PARTY, INCLUDING LOSS OF USE, DATA, BUSINESS, ANTICIPATED SAVINGS, PROFIT, REPUTATION, GOODWILL OR REVENUE, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, WHETHER AS A RESULT OF A BREACH OF THIS AGREEMENT OR OTHERWISE AND WHETHER IN AN ACTION IN LAW, EQUITY, CONTRACT OR TORT (INCLUDING NEGLIGENCE OR STRICT LIABILITY), EVEN IF THE OTHER PARTY OR ANY THIRD PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. Except as set

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forth in Section 12(b), the liability of each party to the other party for any direct damages resulting from, arising out of or relating to this Agreement, whether based on an action or claim in contract, negligence, tort, strict liability or otherwise, will not exceed, in the aggregate, an amount equal to Funds paid by SEEA hereunder prior to the assertion of the first claim hereunder.

(b) The limitations set forth in Section 12(a) are not applicable to: (i) damages recoverable under Section 11; or (ii) damages resulting from, arising out of or relating to the fraudulent conduct, gross negligence or willful misconduct of a party.

13. Notice. All notices and communications required or permitted to be given by either party under this Agreement ("**Notices**") shall be in writing. Each party's address for purposes of this Section 13 (such party's "**Notice Address**") will be as set forth on the cover page hereto, provided that each party will be entitled to change its Notice Address upon notice to the other party. No Notice will be effective unless given in accordance with one or more of Sections 13(a) – (e); *provided, however*, that notice by email pursuant to Section 13(e) will not be effective notice for purposes of Section 11 of this Agreement or Section 4 of Exhibit C.

(a) *Hand Delivery.* Notice may be hand delivered. Such Notices will be deemed received immediately upon actual delivery.

(b) *Overnight.* Notice may be sent to the receiving party's Notice Address by an internationally recognized express overnight courier with a reliable system for tracking delivery. Such Notices will be deemed received immediately upon actual delivery.

(c) *Certified Mail.* Notice may be sent to the receiving party's Notice Address by registered or certified mail, return receipt requested, postage prepaid. Such Notices will be deemed received on the fourth business day after sending.

(d) *Fax.* Notice may be sent to the receiving party's Notice Address by confirmed fax transmission. Such Notices will be deemed received on the date of such fax transmission, provided that the sending fax machine used for such transmission generates a report showing successful completion of such transaction; provided, however, that if such fax transmission is sent after 5:00 p.m. local time at the location of the receiving fax machine, or is sent on a day other than a business day, such notice or communication will be deemed given as of 9:00 a.m. local time at such location on the next succeeding business day.

(e) *Email.* Notices sent by email to the receiving party's Notice Address will be deemed received when the recipient acknowledges having received that email, either by an email sent to the email address for the sender on the signature page of this Agreement or by a Notice given in accordance with one or more of Sections 13(a) – (d) (with an automatic "read receipt" not constituting acknowledgment of an email for purposes of this Section 13(e)).

14. Signature Warranty. Each individual signing below warrants that he or she is duly authorized to sign this Agreement for the respective party, and to bind said party to the terms and conditions of this Agreement.

Southeast Community Retrofit Ramp-up Consortium

In witness whereof, the parties have executed and delivered this Agreement as of the Effective Date.

Southeast Energy Efficiency Alliance

Bentale

SIGNATURE

Juan Lopez

ATTEST

TOWN OF CARRBORO

W. Ward

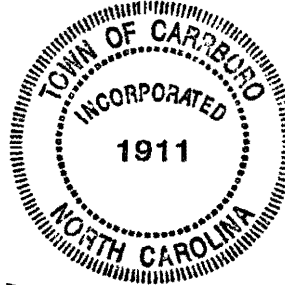
TOWN MANAGER

ATTEST BY TOWN CLERK:

C. Mc

TOWN CLERK

TOWN SEAL



Town Clerk attests date this the 27 day of September, 2010.

Approved as to Form and Authorization

[Signature]

TOWN ATTORNEY

This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act.

[Signature] 9/27/2010

FINANCE OFFICER

Southeast Community Retrofit Ramp-up Consortium

EXHIBIT A

Better Building Retrofit Program, Carrboro, North Carolina

Project Description:

The following text describes Carrboro's Year One project design. This approach represents a collaboration between Carrboro and Chapel Hill staff; pursuit of these efforts assumes that SEEA enters into an agreement with Chapel Hill that authorizes the pursuit of the activities described below. Working with utilities (Duke Energy, Public Service Gas, Piedmont Electric, and OWASA), potential funding agencies, and entities such as the NC Utilities Commission is implicit in the program design. This coordination will include exploration of topics such as on-bill financing, PACE, and other coordination of outreach and leveraging of incentives.

Specific Year One goals are to:

- allocate a majority of incentive dollars to small business commercial loans, with a smaller allocation for subsidies for residential energy audits
- secure additional funding for Year Two based on Year One performance
- take advantage of existing/emerging utility, State, and Federal conservation programs
- investigate opportunities for utility on-bill financing
- develop plan for long-term viability of program

Carrboro and Chapel Hill staff have been collaborating on a proposed budget for first year funds. A principal recommendation is that about ¼ of the first year combined budget be allocated to the establishment of contract support in order to assist with the rapid deployment of energy incentives. This support would be guaranteed for one year; the long term success will depend on successfully launching and marketing the program. Funding for contract support from Clean Energy Solutions, Inc. (CESI) will be provided by Retrofit Ramp Up funds as well as Chapel Hill block grant (EECBG) funds. Sustained funding for the administrative position will be evaluated in the spring of 2011. SEEA is working to develop a monitoring and verification software program that will track the information necessary for DOE reporting. Carrboro has budgeted for the cost and use of this software.

Southeast Community Retrofit Ramp-up Consortium

SEEA agrees to provide Carrboro with support to facilitate successful completion of the project. Funding from DOE to SEEA will provide the resources for SEEA to staff the program with a: program director; accounting director; communication manager; and one or two community program associates. SEEA will also support consultants and vendors as needed by cities participating in the SEEA retrofit ramp up DOE grant for nine categories of anticipated support; this support will be available to Carrboro on an as needed basis during the first year of the program. These categories are:

1. Management Support
2. Accounting Support
3. Monitoring and Verification/Customer Tracking
4. Marketing Strategy
5. Financing assistance
6. State Support
7. Workforce Development
8. Program Design Assistance
9. Communication/Best Practices

To provide Carrboro's access to financing programs, SEEA will allocate funds to a Regional Loan Loss Reserve (LLR) for a Financing Program that SEEA establishes for all communities. SEEA will select a lending team which will establish a program throughout the Southeast to provide process, market, and service a loan program. Consistent with the program strategy above, the LLR will not set allocations by community, but rather will use a single program serving all participating communities. Carrboro will not be obligated to use the LLR.

If Carrboro is successful in meeting Year One goals, SEEA agrees to make available on a competitive basis to Carrboro remaining funds in SEEA's award from the USDOE. SEEA and Carrboro understand that funds available after Year One will be allocated to communities based on completed project agreements with customers, with a minimal cost-share or leveraging requirement of 50%. To do so, SEEA intends to establish a central bank account and process, consistent with DOE guidelines, that disburses incentives and program support funds. These future allotments allocated would be split between customer incentives and program support in any manner Carrboro decides but following SEEA guidelines. SEEA will plan to disburse 50% of the "earned" funds once a customer Letter of Intent (LOI) is signed. The remaining 50% will be sent upon the signing of a customer agreement or contract to move forward. If Carrboro establishes a consistent stream of small customer transactions, SEEA may convert that formula to an advance based on the monthly average of total project dollar value in energy efficiency projects completed. SEEA will establish a dollar ceiling for allocation of the \$7.4 M that any one community cannot surpass. (If the federal government passes Home Star/Building Star legislation, SEEA will adjust the leveraging requirement accordingly.)

Southeast Community Retrofit Ramp-up Consortium

In part because SEEA is establishing a first come, first served basis for funds available after Year One, SEEA will establish ground rules on acceptable customer incentive levels. SEEA will also establish customer incentive limitations as a percentage of total project value by customer end-use and measure category. These incentive formulas would be established in consultation with Carrboro, but will be consistent across the region (controlling for utility rates).

The steps described below in the schedule show details of the proposed approach for implementing the project. This approach has been approved by the Carrboro Board of Aldermen and Chapel Hill Town Council. Steps completed prior to summer 2010 are not included.

Conditions: Assessment of milestones at 6 and 12 months by SEEA.

SEEA will assess the milestones (indicated below) to insure that the project goals have been achieved. Carrboro will receive their Year One allocation in two equal allotments. The first allotment will be received upon execution of this agreement. The second allotment is contingent upon reaching specific milestones. These milestones will focus on program management in place, program designs completed, leverage sources committed, utility relationships formalized, and marketing strategies underway. If Carrboro fails to meet mid term milestones, the remaining Year One funds (50%) are subject to a termination in December 2010 (based on the date of receipt of funding by SEEA from the USDOE). With a successful performance evaluation, Carrboro will gain access to all remaining Year One funds. An evaluation by SEEA in June, 2010 will review the success of the program, largely focusing on the deployment of incentive dollars, leveraged funds and metrics related to community energy efficiency and conservation.

Schedule:

September, 2010

- Carrboro and Chapel Hill ("Towns") simultaneously finalize SEEA contracts and Memorandum of Agreement (MOA) for shared administrative position and monitoring and verification support from SEEA.
- Clean Energy Solutions Inc (CESI), under contract by Chapel Hill and supporting Carrboro through the MOA, draft a program design for Carrboro and Chapel Hill. The program will consider programs from utilities, including, but not necessarily limited to Duke Energy.
 - Application forms
 - Marketing materials
 - Qualifying criteria
 - Loan structure
 - Lending opportunities
 - Finalize incentives (in cooperation with utilities, including but not necessarily limited to Duke Energy)
- Towns and CESI advertise and interview for administrative position
- Monthly conference call CESI and Towns
- Carrboro receives first allotment of SEEA funds

Southeast Community Retrofit Ramp-up Consortium
October, 2010

- CESI and Towns finalize program design
- Program administrator hired and onboard (with Chapel Hill/CESI)
- Carrboro begins pre-application process and program marketing
- Monthly conference calls/report: SEEA/CESI/Towns

November, 2010

- Carrboro begins receiving loan applications
- Towns begin identifying contractors
- Monthly conference calls/report: SEEA/CESI/Towns

December

- Towns finalize list of contractors
- Contractors begin doing audits and energy improvements and continue this for next six months
- 6-month evaluation for both Towns
- Monthly conference calls/report: SEEA/CESI/Towns

Spring 2011

- Carrboro pursues residential energy audits
- All Carrboro SEEA year one funds expended by June 4, 2011

Milestones for first 12 months entail:

- Hire energy program manager (contract)
- Finalize program design
- Utilize all incentive funds by completing:
 - Small business retrofits
 - residential energy audits
- Complete monitoring and verification

EXHIBIT B**Project Budget****(First Year)****Combined Chapel Hill-Carrboro Year One Budget**

Category	Chapel Hill SEEA Funds	Chapel Hill EECBG Funds	Carrboro SEEA Funds	Total
a. New Administration Position	\$17,500	\$25,600	\$10,000	\$53,100
b. Marketing	\$11,000			\$11,000
c. Measure Subsidy/Interest Rate Buydown	\$90,500			\$90,500
d. Audit Subsidy	\$10,000		\$5,000	\$15,000
e. Monitoring & Verification	\$17,000		\$5,000	\$22,000
f. Travel	\$4,000			\$4,000
g. Revolving Loan Fund for Businesses			\$55,000	\$55,000
Total	\$150,000	\$25,600	\$75,000	\$250,600

Based on the draft budget shown above, \$60,000 of Carrboro's allocation is dedicated to incentives. The bulk of these incentives would be geared towards subsidies for energy improvement measures in the commercial sector through the revolving loan fund, with the remainder to subsidize residential energy audits.

EXHIBIT C**General Terms and Conditions**

1. **Affirmative Covenants.** (a) Compliance with Laws. Recipient shall obtain any required permits, ensure the safety and structural integrity of any repair, replacement, construction or alteration, and perform and maintain the Project in compliance with all federal, state and local laws and regulations, including, without limitation, environmental, zoning and other land use laws and regulations. Recipient agrees to take reasonable steps to advise Project participants that they shall comply in the same manner.

(b) Insurance. In establishment of contracts, recipient agrees to keep structures or improvements of any sort constituting the Project fully insured at all times during construction and to keep fully insured all building materials at any time located on the Project. Recipient will ensure that all contractors furnish adequate payment and performance bonds.

(c) Right of Entry and Inspections. Recipient shall permit representatives of SEEA to visit Recipient's properties that are being used to perform work in connection with the Project to examine such work and property purchased with the Funds, and to review activities pursuant to the Grant. Recipient shall require its direct and indirect subrecipients, contractors and subcontractors to grant SEEA representatives access to properties being used to perform work in connection with the Project for the purposes set forth above.

(d) Material Modifications. Any proposed material modification of the Project shall be subject to approval by SEEA.

(e) Publicity. An acknowledgment of DOE support and a disclaimer must appear in the publication of any material, whether copyrighted or not, based on or developed under the Project, as follows:

Acknowledgment: "This material is based upon work supported by the Department of Energy [add name(s) of other agencies, if applicable] under Award Number(s) [enter the award number(s)]."

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

(f) Schedule of Expenditures. If Recipient is covered by the Single Audit Act Amendments of 1996 and OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations,"

Recipient shall separately identify the expenditures of Funds as expenditures of Federal awards under the Recovery Act on the Schedule of Expenditures of Federal Awards (SEFA) and the Data Collection Form (SF-SAC) required by OMB Circular A-133. OMB Circular A-133 is available at <http://www.whitehouse.gov/omb/circulars/a133/a133.html>. This shall be accomplished by identifying expenditures for Federal awards made under the Recovery Act separately on the SEFA, and as separate rows under Item 9 of Part III on the SF-SAC by CFDA number, and inclusion of the prefix "ARRA-" in identifying the name of the Federal program on the SEFA and as the first characters in Item 9d of Part III on the SF-SAC. Recipient agrees to separately identify to each subrecipient, and document at the time of subaward and at the time of disbursement of funds, the Federal award number, CFDA number and amount of Recovery Act funds.

(g) Compliance with the Davis-Bacon Act and Contract Work Hours and Safety Standard Act. Recipient shall comply with the Davis-Bacon Act of 1931 ("DBA") and the Contract Work Hours and Safety Standard Act, including the provisions thereof attached hereto as Schedule 2 to this Exhibit C. Without limitation of the foregoing, Recipient shall:

- (i) obtain, maintain, and monitor all DBA-certified payroll records submitted by its subrecipients and contractors at any tier under this Agreement;
- (ii) review all DBA-certified payroll records for compliance with DBA requirements, including applicable Department of Labor ("DOL") wage determinations;
- (iii) notify SEEA of any non-compliance with DBA requirements by subrecipients or contractors at any tier, including any non-compliances identified as the result of reviews performed pursuant to paragraph (ii) above;
- (iv) address any subrecipient and any contractor DBA non-compliance issues; if DBA non-compliance issues cannot be resolved in a timely manner, forward complaints, summary of investigations and all relevant information to DOE and SEEA;
- (v) provide SEEA with detailed information regarding the resolution of any DBA non-compliance issues;
- (vi) perform services in support of SEEA and DOE investigations of complaints filed regarding noncompliance by subrecipients and contractors with DBA requirements;
- (vii) perform audit services as necessary to ensure compliance by Subrecipients and contractors with DBA requirements and as requested by SEEA or the DOE; and
- (viii) provide copies of all records upon request by SEEA, DOE or DOL in a timely manner.

(h) Conflicts of Interest. Recipient, as a local government entity, shall comply with all conflicts of interest laws, rules and regulations applicable to it in the State.

(i) Additional Requirements. Recipient shall comply with all legal requirements applicable to the use of the Grant.

2. Representations and Warranties. In order to induce SEEA to enter into this Agreement and to make the Grant as herein provided, Recipient after reasonable inquiry makes the following representations, warranties and covenants, which shall remain in effect after the execution and delivery of

this Agreement and any other documents required hereunder, any inspection or examinations at any time made by or on behalf of SEEA, and the completion of the Project by Recipient:

(a) No Actions. There are no actions, suits, or proceedings pending, or to the knowledge of Recipient, threatened, against or affecting Recipient before any court, arbitrator, or governmental or administrative body or agency which might affect Recipient's ability to observe and perform its obligations under this Agreement.

(b) Validity of Grant Documents. Upon execution and delivery of items required hereunder, this Agreement and the other grant documents and items required hereunder will be valid and binding agreements, enforceable in accordance with the terms thereof.

(c) No Untrue Statements. Neither this Agreement nor any information, certificate, statement, or other document furnished by Recipient in connection with the Grant, contains any untrue statement of a material fact or omits disclosure of a material fact which affects the Project or the ability of Recipient to perform this Agreement.

(d) Waste Stream. Recipient shall create or obtain a waste management plan addressing waste generated by a proposed Project prior to the Project generating waste. This waste management plan will describe Recipient's (and each of its subrecipients') plan to dispose of any sanitary or hazardous waste (e.g., construction and demolition debris, old light bulbs, lead ballasts, piping, roofing material, discarded equipment, debris and asbestos) generated as a result of the Project. Without limitation of Section 1(a) of this Exhibit C, Recipient shall ensure that the Project is in compliance with all Federal, state and local regulations for waste disposal. Recipient shall make the waste management plan and related documentation available upon request to SEEA and the DOE.

(e) Historic Preservation. Prior to the expenditure of Funds to alter any historic structure or site, Recipient or its subrecipient shall ensure that it is compliant with Section 106 of the National Historic Preservation Act (NHPA), consistent with DOE's 2009 letter of delegation of authority regarding the NHPA. Section 106 applies to historic properties that are listed in or eligible for listing in the National Register of Historic Places. If applicable, Recipient or subrecipient must contact the State Historic Preservation Officer ("SHPO"), and the Tribal Historic Preservation Officer ("THPO") to coordinate the Section 106 review outlined in 36 CFR Part 800. In the event that a State, State SHPO and DOE enter into a Programmatic Agreement, the terms of that Programmatic Agreement shall apply to all Recipient and subrecipient activities within that State. SHPO contact information is available at the following link: <http://www.ncshpo.org/find/index.htm>. THPO contact information is available at the following link: <http://www.nathpo.org/map.html>. Section 110(k) of the NHPA applies to DOE funded activities. Recipient or subrecipient certifies that it will retain sufficient documentation to demonstrate that Recipient or subrecipient has received required approval(s) from the SHPO or THPO for the Project. Recipients or subrecipients shall avoid taking any action that results in an adverse effect to historic properties pending compliance with Section 106. Recipient or subrecipient shall deem compliance with Section 106 of the NHPA complete only after it has received this documentation. Recipient or subrecipient shall make this documentation available to DOE on DOE's request (for example, during a post-award audit). Recipient will be required to report annually on September 1 the disposition of all historic preservation consultations by category.

(f) Special Requirements under the Recovery Act. The terms and conditions set forth on Schedule 1 to this Exhibit C are hereby incorporated by reference.

(g) Lobbying Restrictions. Recipient shall not directly or indirectly expend any of the Funds to influence congressional action on any legislation or appropriation matters pending before Congress, other than to communicate to Members of Congress as described in 18 U.S.C. 1913.

(h) Additional Requirements. Recipient shall comply with all legal requirements applicable to the use of the Funds.

(i) Books and Records. Recipient agrees to maintain and make available to SEEA at all reasonable times all documents, books, and records of all expenditures for costs applicable to this Agreement, and to submit properly certified billings for such costs on forms prescribed by SEEA and supported by detailed data sheets which will facilitate the audit of Recipient's records.

3. Intellectual Property. Nonprofit organizations are subject to the intellectual property requirements at 10 CFR 600.136(a), (c) and (d) (attached hereto as Schedule 3). All other organizations are subject to the intellectual property requirements at 10 CFR 600.136(a) and (c).

4. Termination. (a) By Mutual Consent. The parties may terminate this Agreement by mutual written consent with 60 days prior written notice to the Contract Administrators, or as otherwise provided by law.

(b) Termination for Performance. SEEA shall be entitled to terminate this Agreement upon 30 days' prior written notice to Recipient's Contract Administrator if the SEEA determines that Recipient's performance, or the effectiveness of the Project, is insufficient to justify, in SEEA's discretion, further disbursements of Funds to Recipient hereunder.

(c) Termination for Cause; Events of Default. The happening of any of the following, after the expiration of any applicable cure period without the cure thereof, shall constitute an event of default ("Event(s) of Default") by Recipient of its obligations to SEEA, and shall entitle SEEA to exercise all rights and remedies under this Agreement and as otherwise available at law or equity:

- (i) Unsuitable Use. The Funds are used in a manner materially inconsistent with the purposes of this Agreement or the Project.
- (ii) Default in Performance. The default by Recipient in the observance or performance of any of the terms, conditions or covenants of this Agreement; provided, however, that no such default shall occur until Recipient has been given written notice of the default and 30 days to cure have elapsed.
- (iii) Misrepresentation. If any representation or warranty made by Recipient in connection with the Grant or any information, certificate, statement or report heretofore or hereafter made shall be untrue or misleading in any material respect at the time made.
- (iv) Eligibility of Recipient. If Recipient ceases to be qualified to receive Funds or is dissolved or otherwise ceases to exist.
- (v) Abandonment of the Project. If Recipient abandons or otherwise ceases to continue to make reasonable progress towards completion of the Project.

5. SEEA's Rights and Remedies. If an Event of Default shall occur, SEEA shall have the following rights and remedies, all of which are exercisable at SEEA's sole discretion, and are cumulative, concurrent and independent rights:

- (i) **Project Termination.** If an Event of Default occurs, SEEA may, at its discretion suspend and/or terminate all obligations of SEEA hereunder. If, in the judgment of SEEA, such failure was due to no fault of Recipient, amounts required to resolve at minimum costs any irrevocable obligations properly incurred by Recipient shall, in the discretion of SEEA, be eligible for assistance under this Agreement.
- (ii) **Additional Remedies.** If an Event of Default occurs, SEEA shall have the power and authority, consistent with its statutory authority: (a) to prevent any impairment of the Project by any acts which may be unlawful or in violation of this Agreement or any other item or document required hereunder, (b) to obtain title to or otherwise preserve or protect its interest in the Project and any property acquired with Funds, (c) to compel specific performance of any of Recipient's obligations under this Agreement, (d) to obtain return of all Grant Funds, including equipment if applicable and/or (e) to seek damages from any appropriate person or entity. SEEA, or its designee, may also, at SEEA's sole discretion, continue to complete the Project, or any portion thereof deemed appropriate by SEEA, and Recipient shall cooperate in the completion of the Project. SEEA shall be under no obligation to complete the Project.
- (iii) **Nonwaiver.** No delay, forbearance, waiver, or omission of SEEA to exercise any right, power or remedy accruing upon any Event of Default shall exhaust or impair any such right, power or remedy or shall be construed to waive any such Event of Default or to constitute acquiescence therein. Every right, power and remedy given to SEEA may be exercised from time to time and as often as may be deemed expedient by SEEA.

6. Miscellaneous. (a) **Modification.** The terms and conditions of this Agreement may not be amended, waived or modified, except in a writing signed by both parties.

(b) **Benefit.** The parties do not intend to create rights for any person as a third party beneficiary of this Agreement; *provided, however*, that this section shall not preclude SEEA from bringing claims on behalf of an Indemnitee under Section 11 of the Agreement.

(c) **Further Assurance.** In connection with and after the disbursement of Funds under this Agreement, upon the reasonable request of SEEA, Recipient shall execute, acknowledge and deliver or cause to be delivered all such further documents and assurances, and comply with any other requests as may be reasonably required by SEEA or otherwise appropriate to carry out and effectuate the Grant as contemplated by this Agreement and the purposes of the Project.

(d) **Compliance by Others.** Recipient shall be responsible for compliance with the terms of this Agreement by any sub-grant recipient, including but not limited to, a political subdivision, public agency, or qualified non-profit organization to which funds or obligations are transferred, delegated or assigned pursuant to this Agreement. Delegation by Recipient to a sub-grant recipient of any duty or obligation hereunder does not relieve Recipient of any duty or obligation created hereunder. Failure by such sub-grant recipient to comply with the terms of this Agreement shall be deemed failure by Recipient to

comply with the terms of this Agreement. Any such delegation of duties or obligations shall be in writing, signed by Recipient and sub-grant recipient.

(e) Independent Status of the Parties. The parties are independent entities and neither this Agreement nor any provision of it or any of the Grant Documents shall be deemed to create a partnership or joint venture between the parties. Further, neither the Agreement nor any of the Grant Documents shall in any way be interpreted or construed as making Recipient, its agents or employees, agents or representatives of SEEA. Recipient is and shall be an independent contractor in the performance of this Agreement and as such shall be wholly responsible for the work to be performed and for the supervision of its employees. In no event shall SEEA be liable for debts or claims accruing or arising against Recipient. Recipient represents that it has, or shall secure at its own expense, all personnel required in the performance of this Agreement. Such employees shall not be employees of, nor have any individual contractual relationship with, SEEA.

(f) Binding Effect, Agreement Assignable. The terms hereof shall be binding upon and inure to the benefit of the successors, assigns, and personal representatives of the parties hereto; *provided, however,* that Recipient may not assign this Agreement or any of its rights, interests, duties or obligations hereunder or any Funds or other moneys to be advanced hereunder in whole or in part without the prior written consent of SEEA, which may be withheld, conditioned or delayed for any reason. Any attempted assignment (whether voluntary or by operation of law) in violation of this Section 6(f) shall be void *ab initio*.

(g) Governing Law, Construction and Jurisdiction. This Agreement and the other Grant documents and all matters relating thereto shall be governed by and construed and interpreted in accordance with the laws of the State of Georgia, notwithstanding the principles of conflicts of law. The headings and section numbers contained herein are for reference purposes only. The terms of this Agreement shall be construed according to their plain meaning, and not strictly construed for or against either party hereto. Recipient hereby submits to the jurisdiction of the state and Federal courts located in Georgia and agrees that SEEA may, at its option, enforce its rights under the Grant Documents in such courts. Capitalized terms used but not otherwise defined in this Agreement shall have the meaning ascribed to them in Exhibit E.

(h) Severability. In the event that any provision of this Agreement is held invalid or unenforceable in any circumstances by a court of competent jurisdiction, the remainder of this Agreement, and the application of such provision in any other circumstances, will not be affected thereby.

(i) Additional Remedies. Except as otherwise specifically set forth herein, the rights and remedies provided hereunder shall be in addition to, and not in lieu of, all other rights and remedies available in connection with this Agreement.

(j) Survival. The sections of this Agreement that by their nature are intended to survive its expiration or termination, including Sections [to be determined] will survive the expiration or termination of this Agreement.

(k) Incorporation of Exhibits. All exhibits attached to this Agreement are fully incorporated as if set forth herein.

(l) Entire Agreement. This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof. All recitals, exhibits, schedules and other attachments hereto are incorporated herein by reference.

(m) Counterparts. This Agreement may be executed in counterparts, all of which when taken together constitute a single agreement.

SCHEDULE 1 TO EXHIBIT C**Recovery Act Terms and Conditions**

The American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, (the “*Recovery Act*”) was enacted to preserve and create jobs and promote economic recovery, assist those most impacted by the recession, provide investments needed to increase economic efficiency by spurring technological advances in science and health, invest in transportation, environmental protection, and other infrastructure that will provide long-term economic benefits, stabilize State and local government budgets, in order to minimize and avoid reductions in essential services and counterproductive State and local tax increases. Recipient shall use grant funds in a manner that maximizes job creation and economic benefit.

Recipient shall comply with all terms and conditions in the Recovery Act relating generally to governance, accountability, transparency, data collection and resources as specified in Act itself and as discussed below and elsewhere in this Agreement.

The Government has not fully developed the implementing instructions of the Recovery Act, particularly concerning specific procedural requirements for the new reporting requirements. Recipient will be provided these details as they become available.

A. Definitions.

“**Covered Funds**” means funds expended or obligated from appropriations under the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5. Covered Funds will have special accounting codes and will be identified as Recovery Act funds in the grant, cooperative agreement or TIA and/or modification using Recovery Act funds. Covered Funds must be reimbursed by September 30, 2015. For the avoidance of doubt, the Funds are Covered Funds.

“**Non-Federal employer**” means any employer with respect to covered funds – the contractor, subcontractor, grantee or recipient, as the case may be, if the contractor, subcontractor, grantee or recipient is an employer; and any professional membership organization, certification of other professional body, any agent or licensee of the Federal government or any person acting directly or indirectly in the interest of an employer receiving covered funds; or with respect to covered funds received by a State or local government, the State or local government receiving the funds and any contractor or subcontractor receiving the funds and any contractor or subcontractor of the State or local government; and does not mean any department, agency, or other entity of the federal government.

B. Flow Down Requirement. Recipient must include these special terms and conditions in any subaward.

C. Segregation of Costs. Recipient must segregate the obligations and expenditures related to funding under the Recovery Act. Financial and accounting systems should be revised as necessary to segregate, track and maintain these funds apart and separate from other revenue streams. No part of the funds from the Recovery Act shall be commingled with any other funds or used for a purpose other than that of making payments for costs allowable for Recovery Act projects.

D. Prohibition on Use of Funds. None of the funds provided under this agreement derived from the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, may be used by any State or local government, or any private entity, for any casino or other gambling establishment, aquarium, zoo, golf course, or swimming pool.

E. **Access to Records.** With respect to each financial assistance agreement awarded utilizing at least some of the funds appropriated or otherwise made available by the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, any representative of an appropriate inspector general appointed under section 3 or 8G of the Inspector General Act of 1988 (5 U.S.C. App.) or of the Comptroller General is authorized:

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

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

F. **Publication.** An application may contain technical data and other data, including trade secrets and/or privileged or confidential information, which the applicant does not want disclosed to the public or used by the Government for any purpose other than the application. To protect such data, the applicant should specifically identify each page including each line or paragraph thereof containing the data to be protected and mark the cover sheet of the application with the following Notice as well as referring to the Notice on each page to which the Notice applies:

Notice of Restriction on Disclosure and Use of Data

The data contained in pages ---- of this application have been submitted in confidence and contain trade secrets or proprietary information, and such data shall be used or disclosed only for evaluation purposes, provided that if this applicant receives an award as a result of or in connection with the submission of this application, DOE shall have the right to use or disclose the data here to the extent provided in the award. This restriction does not limit the Government's right to use or disclose data obtained without restriction from any source, including the applicant.

Information about this agreement will be published on the Internet and linked to the website www.recovery.gov, maintained by the Accountability and Transparency Board. The Board may exclude posting contractual or other information on the website on a case-by-case basis when necessary to protect national security or to protect information that is not subject to disclosure under sections 552 and 552a of title 5, United States Code.

G. **Protecting State and Local Government and Contractor Whistleblowers.** The requirements of Section 1553 of the Act are summarized below. They include, but are not limited to:

(1) **Prohibition on Reprisals:** An employee of any non-Federal employer receiving covered funds under the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, 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 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 (or other person working for the employer who has the authority to investigate, discover or terminate misconduct), a court or grant jury, the head of a Federal agency, or their representatives information that the employee believes is evidence of: (a) gross management of an agency contract or grant relating to covered funds; (b) a gross waste of covered funds; (c) a substantial and specific danger to public health or safety related to the implementation or use of covered funds; (d) an abuse of authority related to the implementation or use of

covered funds; or (e) as violation of law, rule, or regulation related to an agency contract (including the competition for or negotiation of a contract) or grant, awarded or issued relating to covered funds.

(2) *Agency Action*: Not later than 30 days after receiving an inspector general report of an alleged reprisal, the head of the agency shall determine whether there is sufficient basis to conclude that the non-Federal employer has subjected the employee to a prohibited reprisal. The agency shall either issue an order denying relief in whole or in part or shall take one or more of the following actions: (a) order the employer to take affirmative action to abate the reprisal; (b) order the employer to reinstate the person to the position that the person held before the reprisal, together with compensation including back pay, compensatory damages, employment benefits, and other terms and conditions of employment that would apply to the person in that position if the reprisal had not been taken; (c) order the employer to pay the employee an amount equal to the aggregate amount of all costs and expenses (including attorneys' fees and expert witnesses' fees) that were reasonably incurred by the employee for or in connection with, bringing the complaint regarding the reprisal, as determined by the head of a court of competent jurisdiction.

(3) *Nonenforceability of Certain Provisions Waiving Rights and remedies or Requiring Arbitration*: Except as provided in a collective bargaining agreement, the rights and remedies provided to aggrieved employees by this section may not be waived by any agreement, policy, form, or condition of employment, including any predispute arbitration agreement. No predispute arbitration agreement shall be valid or enforceable if it requires arbitration of a dispute arising out of this section.

(4) *Requirement to Post Notice of Rights and Remedies*: Any employer receiving covered funds under the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, shall post notice of the rights and remedies as required therein. (Refer to section 1553 of the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, www.Recovery.gov, for specific requirements of this section and prescribed language for the notices.).

H. False Claims Act. Recipient and sub-recipients shall promptly refer to the DOE or other appropriate Inspector General any credible evidence that a principal, employee, agent, contractor, sub-grantee, subcontractor or other person has submitted a false claim under the False Claims Act or has committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity or similar misconduct involving those funds.

I. Information in Support of Recovery Act Reporting. Recipient may be required to submit backup documentation for expenditures of funds under the Recovery Act including such items as timecards and invoices. Recipient shall provide copies of backup documentation at the request of the Contracting Officer or designee.

J. Availability of Funds. Funds obligated to this award are available for reimbursement of costs until 36 months after the award date.

K. Additional Funding Distribution and Assurance of Appropriate Use of Funds. Certification by Governor – For funds provided to any State or agency thereof by the American Reinvestment and Recovery Act of 2009, Pub. L. 111-5, the Governor of the State shall certify that: 1) the state will request and use funds provided by the Act; and 2) the funds will be used to create jobs and promote economic growth.

Acceptance by State Legislature -- If funds provided to any State in any division of the Act are not accepted for use by the Governor, then acceptance by the State legislature, by means of the adoption of a concurrent resolution, shall be sufficient to provide funding to such State.

Distribution -- After adoption of a State legislature's concurrent resolution, funding to the State will be for distribution to local governments, councils of government, public entities, and public-private entities within the State either by formula or at the State's discretion.

L. Certifications. With respect to funds made available to State or local governments for infrastructure investments under the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, the Governor, mayor, or other chief executive, as appropriate, certified by acceptance of this award that the infrastructure investment has received the full review and vetting required by law and that the chief executive accepts responsibility that the infrastructure investment is an appropriate use of taxpayer dollars. Recipient shall provide an additional certification that includes a description of the investment, the estimated total cost, and the amount of covered funds to be used for posting on the Internet. A State or local agency may not receive infrastructure investment funding from funds made available by the Act unless this certification is made and posted.

SCHEDULE 2 TO EXHIBIT C**Davis-Bacon Act Provisions and
Contract Work Hours and Safety Standard Act Provisions**

Definitions: For purposes of this Schedule 2 to Exhibit C, 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.

(c) [Intentionally Omitted]

(d) Rates of Wages. The prevailing wage rates determined by the Secretary of Labor can be found at <http://www.wdol.gov/>.

SCHEDULE 3 TO EXHIBIT C**Intangible Property
10 C.F.R. 600.136 (a) through (d)****§ 600.136 Intangible property.**

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

(b) Recipients are subject to applicable regulations governing patents and inventions, including government-wide regulations issued by the Department of Commerce at 37 CFR part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements."

(c) The DOE has the right to:

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

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

(2) The following definitions apply for purposes of this paragraph (d):

(i) *Research data* is defined as the recorded factual material commonly accepted in the scientific community as necessary to validate research findings, but not any of the following: preliminary analyses, drafts of scientific papers, plans for future research, peer reviews, or communications with colleagues. This "recorded" material excludes physical objects (e.g., laboratory samples). *Research data* also do not include:

(A) Trade secrets, commercial information, materials necessary to be held confidential by a researcher until they are published, or similar information which is protected under law; and

(B) Personnel and medical information and similar information the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, such as information that could be used to identify a particular person in a research study.

(ii) *Published* is defined as either when:

(A) Research findings are published in a peer-reviewed scientific or technical journal; or

(B) A Federal agency publicly and officially cites the research findings in support of an agency action that has the force and effect of law.

(iii) *Used by the Federal Government in developing an agency action that has the force and effect of law* is defined as when an agency publicly and officially cites the research findings in support of an agency action that has the force and effect of law.

EXHIBIT D**Reporting and Audit Requirements**

1. **Generally.** Failure to comply with the reporting requirements set forth in this Exhibit D may result in termination of the Grant. Recipient acknowledges that information in reports provided under this Agreement may be made available to the public, and that public disclosure of certain information required by such reports is mandated by applicable Laws.

2. **Special Status Reports.** Recipient must report the following events by e-mail as soon as possible after they occur:

(a) Developments that have a significant favorable impact on the Project.

(b) Problems, delays, or adverse conditions which materially impair the recipient's ability to meet the objectives of the Project or which may require SEEA or DOE to respond to questions relating to such events from the public. For example, the recipient must report any of the following incidents and include the anticipated impact and remedial action to be taken to correct or resolve the problem/condition:

- (i) Any single fatality or injuries requiring hospitalization of five or more individuals;
- (ii) Any significant environmental permit violation;
- (iii) Any verbal or written Notice of Violation of any Environmental, Safety, and Health statutes or regulations;
- (iv) Any incident which causes a significant process or hazard control system failure;
- (v) Any event which is anticipated to cause a significant schedule slippage or cost increase;
- (vi) Any damage to Government-owned equipment in excess of \$50,000; or
- (vii) Any other incident that has the potential for high visibility in the media.

3. **Monthly Status Reports.**

(a) Recipient shall submit a written detailed narrative progress report describing the work accomplished on the Project and progress toward meeting the Project objectives to the Contract Administrator of SEEA no later than three business days after the end of each calendar month. Such report shall include:

- (i) A detailed list of all projects for which Funds were expended or obligated including:
 - (A) A description of each project;
 - (B) An evaluation of the completion status of project;
 - (C) An estimate of number of jobs created and retained by project in the manner and form prescribed by SEEA from time to time; and
 - (D) Infrastructure investments made by State and local governments, purpose, total cost, rationale or agency for funding infrastructure investment, name of agency contact.
 - (E) Energy (kwh/therms/gallons/BTUs/etc.) saved
 - (F) Renewable energy generated
 - (G) GHG emissions reduced
 - (H) Cost savings

- (I) Square footage of buildings retrofitted.
- (ii) A description of short-term outcomes, calculated in accordance with guidelines provided by SEEA or DOE from time to time, including:
 - (A) Energy Savings (kwh equivalents):
 - (1) Annual reduction in natural gas consumption (mmcf) by sector and end-use category
 - (2) Annual reduction in electricity consumption (MWh) by sector and end-use category
 - (3) Annual reduction in electricity demand (MW) by sector and end-use category
 - (4) Annual reduction in fuel oil consumption (gallons) by sector and end-use category
 - (5) Annual reduction in propane consumption (gallons) by sector and end-use category
 - (6) Annual reduction in gasoline and diesel fuel consumption (gallons) by sector and end-use category
 - (B) Job Creation/Retention:
 - (1) Number
 - (2) Type
 - (3) Duration
 - (C) Renewable Energy Capacity and Generation:
 - (1) Amount of wind-powered electric generating capacity installed (MW)
 - (2) Amount of electricity generated from wind systems (MWh)
 - (3) Amount of photovoltaic generating capacity installed (MW)
 - (4) Amount of electricity generated from photovoltaic systems (MWh)
 - (5) Amount of electric generating capacity from other renewable sources installed (MW)
 - (6) Amount of electricity generated from other renewable sources (MWh)
 - (D) Emissions Reductions (tons) (CO2 equivalents)
 - (1) Methane
 - (2) Carbon
 - (3) Sulfur dioxide
 - (4) Nitrogen oxide
 - (5) Carbon monoxide

4. **Annual Report.** Recipient shall submit to SEEA's Contract Administrator an annual report on the following dates (July 8, 2011; July 6, 2012, and June 21, 2013) and in accordance with the schedule shown on Exhibit A. The annual report shall parallel the scope and conditions of the Agreement as defined in Exhibit A. If the annual report is not acceptable to SEEA, it shall be returned to Recipient for correction. Final payment will not be made until the annual report is acceptable to SEEA. The required format for this report is set forth on Exhibit G, and the report shall include:

- (a) A narrative statement evaluating and summarizing the completed Project including a concise statement of the Scope of Work in Exhibit A, a detailed description of the objectives Recipient hoped to accomplish with the Project, and comparison of the objectives with accomplishments;
- (b) A narrative description and evaluation of the energy efficiency improvements achieved or are expected to be achieved as a result of this Project;
- (c) A discussion of the extent to which local partners and stakeholders participated in the Project, with respect to both funding and effort or time;
- (d) A discussion of what Recipient might do differently on a similar future project (*i.e.*, "lessons learned");
- (e) Any other documents, reports or other evidence, including photographs necessary to verify that the Project has been concluded in compliance with this Agreement; and
- (f) A copy of Engineer's Certification of Completion, if applicable.

5. **Protected Personally Identifiable Information (PII).** Reports must not contain any Protected PII. PII is any information about an individual which can be used to distinguish or trace an individual's identity. Some information that is considered to be PII is available in public sources such as telephone books, public websites, university listings, etc. This type of information is considered to be Public PII and includes, for example, first and last name, address, work telephone number, e-mail address, home telephone number, and general educational credentials. In contrast, Protected PII is defined as an individual's first name or first initial and last name in combination with any one or more of types of information, including, but not limited to, social security number, passport number, credit card numbers, clearances, bank numbers, biometrics, date and place of birth, mother's maiden name, criminal, medical and financial records, educational transcripts, etc.

6. **Registration Requirements Under § 1512 of the Recovery Act.** Recipient shall maintain a current registration in the Central Contractor Registration (<http://www.ccr.gov>) at all times during which it is in receipt of Funds. A Dun and Bradstreet Data Universal Numbering System (DUNS) Number (<http://www.dnb.com>) is one of the requirements for registration in the Central Contractor Registration.

7. **Project Audits.** Recipient will maintain full, correct and complete books and records and supporting documentation (including timesheets, work specifications, invoices and receipts) pertaining to the Project and the Funds (collectively, "**Recipient Records**"). Recipient Records will be maintained for a period of five years following completion of the Project. During the term of this Agreement and for a period of five years thereafter, SEEA will be entitled, either directly or through an independent accounting firm, to audit the Recipient Records for the purpose of verifying Recipient's compliance with this Agreement. Such audits shall take place during Recipient's normal business hours upon not less than five business days' prior written notice, and shall be conducted in a manner that does not unreasonably interfere with Recipient's normal operations.

8. **Department of Energy Oversight.** DOE will exercise normal Federal stewardship in overseeing the project activities performed under amounts awarded by the DOE (including the Funds). Stewardship activities include, but are not limited to, conducting site visits; reviewing performance and financial reports; providing technical assistance and/or temporary intervention in unusual circumstances to correct deficiencies which develop during the project; assuring compliance with terms and conditions;

and reviewing technical performance after project completion to ensure that the award objectives have been accomplished. DOE's authorized representatives have the right to make site visits at reasonable times to review project accomplishments and management control systems and to provide technical assistance, if required. Recipient shall provide reasonable access to facilities, office space, resources, and assistance for the safety and convenience of the government representatives in the performance of their duties. All site visits and evaluations must be performed in a manner that does not unduly interfere with or delay the work.

9. **Further Assurances.** Recipient will promptly, completely and accurately respond to all reasonable requests by the SEEA for additional reporting relating to the Project or the Funds. Any such request for information required by Law to be included in any report to a Governmental Authority, or necessary for SEEA's completion of any such report required by Law, will be deemed to be a reasonable request.

EXHIBIT E**Definitions**

Unless indicated otherwise from the context, the following terms shall have as their meanings in this Agreement the definitions set forth below.

1. **"DOE"** means the United States Department of Energy.
2. **"Governmental Authority"** means any nation or government, any federal, state, local or other political subdivision thereof, any quasi-governmental authority, and any court, tribunal, arbitral body, taxation authority, department, commission, board, bureau, agency, instrumentality thereof or thereto which exercises executive, legislative, judicial, regulatory or administrative functions of or pertaining to government.
3. **"Grant"** means financial assistance provided by SEEA to Recipient to carry out activities described in this Agreement.
4. **"Law"** means all applicable laws (including those arising under common law), statutes, codes, rules, regulations, reporting or licensing requirements, ordinances and other pronouncement having the effect of law of the United States, any foreign country or any domestic or foreign state, county, city or other political subdivision, including those promulgated, interpreted or enforced by any Governmental Authority.
5. **"Person"** means an individual, corporation, limited liability company, partnership, trust, association, joint venture, unincorporated organization or entity of any kind or nature, or a Governmental Authority.

EXHIBIT F**Year One Allocation**

Under this Grant Agreement and DOE award #DE-EE0003575, the Town of Carrboro will be given up to \$75,000 for the year one allocation from the SEEA program. Only the first \$37,500 of year one funding is guaranteed. The remainder of year one funding will be allocated based on the Town's ability to meet the criteria set forth in SEEA's six-month performance evaluation. Years 2 and 3 of the program are also performance based, whereby SEEA will match incentives and rebate levels, and therefore a dollar amount cannot be assigned at this date.



TOWN OF CARRBORO

NORTH CAROLINA

TRANSMITTAL PLANNING DEPARTMENT

DELIVERED VIA: ☒ HAND ☐ MAIL ☐ FAX ☐ EMAIL

To: **Matt Efird, Interim Town Manager**
 Mayor and Board of Aldermen

From: **Randy Dodd, Environmental Planner**
 Nora Barger, Clean Energy Solutions, Inc.
 Annette Stone, Economic and Community Development Director

Cc: **Patricia McGuire, Planning Director**

Date: **August 19, 2011**

Subject: **Southeast Energy Efficiency Alliance Project Update: Receipt of Bonus Pool Funds and Completion of Surplus Sids Loan**

Summary

The purpose of this memo is to update Board members and the public on Carrboro's implementation for a community scale energy efficiency grant. Town staff have worked with Chapel Hill staff and a nonprofit, the Southeastern Energy Efficiency Alliance (SEEA), to participate in a successful application to the US Department Of Energy (DOE) for ARRA funds geared towards community scale energy efficiency retrofits of existing buildings. Previous agenda items about the opportunity were provided on June 1, June 22 and December 3, 2010, and June 15 2011; information from those reports is for the most part not repeated in this memo.

Overview and Update

This grant funded project has been underway for almost one year, and will continue to unfold over the next one to two years, with the vision being the establishment of a long term, sustaining partnership and program. Chapel Hill and Carrboro have entered into separate but coordinated agreements with SEEA, and a Memorandum of Agreement (MOA) between the towns. The MOA with Chapel Hill has recently been renewed to reflect plans for the second year. Chapel Hill and Carrboro are receiving administrative support from Clean Energy Solutions, Inc. to pursue this effort.

Carrboro applied for (and was notified of award in early August, 2011) \$50,000 in additional funding from SEEA discretionary funds. In consideration of the successful completion of a

commercial loan for Surplus Sid's, the additional capitalization of the commercial fund and the approval of the residential program design and intention to capitalize the residential program in June 2011, Town and CESI staff are proceeding with a draft budget for utilization of the funds for residential improvements (Table 1).

Table 1: Budget Summary

	Original SEEA Funds	Additional Town Appropriation	Bonus Pool Funds	TOTAL
Program Management	\$10,000	\$7,900	\$2,100	\$20,000
Commercial EERLF	\$55,000	\$45,000		\$100,000
Residential Measure/Finance Subsidy			\$34,650	\$34,650
Audit Subsidy	\$5,000		\$9,750	\$14,750
QA/QC	<u>\$5,000</u>		<u>\$3,500</u>	<u>\$8,500</u>
total	\$75,000	\$52,900	\$50,000	\$177,900

Commercial Program

The Town appropriated \$45,000 of the Revolving Loan Fund to increase the size of the Energy Efficiency Revolving Loan Fund (EERLF) for small commercial. The total fund was increased to \$100,000.

The first EERLF applicant, Sid's Surplus, has been approved for a \$30,000 loan. On August 12, 2011 he received the WISE Customer/ Contractor agreement to sign from Southern Energy Management, effectively placing him under contract with SEM to complete the energy efficiency project. Previously Annette Stone provided him with Town of Carrboro loan documents to sign once the Customer/ Contractor agreement was fully executed. Once all signatures are in place, the Town will release the \$30,000 and Sid can begin the project.

Economic and Community Development Director, Annette Stone, has been meeting with several local businesses to promote the program, including Fleet Feet, The Frame Shop, the property manager of Carrboro Plaza and Carr Mill Mall.

Nora Barger, Energy Efficiency Coordinator on this project, is creating a database of contacted local businesses for future reference and is contacting local HVAC contractors to make sure that they are aware of the program to promote to local businesses that inquire about services. SEEA has indicated that we need to have another project in the EERLF process by November at the latest.

Residential Program

The Carrboro WISE residential program currently has 7 homes signed up for assessments with 5 more pending Homeowner Participation Agreements.

One project has already been completed with another currently underway. We currently estimate the WISE subsidy contingent on Board of Aldermen acceptance of the \$50,000 bonus pool

funds. The subsidy has been capped at \$1,500 so it is in line with the proposed subsidy in Chapel Hill. With the Duke Pilot Incentive and other Duke and PSNC incentives, each homeowner will be eligible for over \$2,000 in subsidies for projects that move forward.

Mark Bashista, Home Performance NC, has had two recent articles in the Chapel Hill News in the Real Estate section about energy efficiency and home performance assessments. He also mailed out 1500 post cards promoting the WISE subsidy to homeowners. This has generated approximately 7 additional homeowner applications to date. The postcards were sent at the end of July.

Advanced Energy has agreed to provide Quality Assurance working off of the agreement with Chapel Hill. Once the contractors have been trained as Home Performance with Energy Star (HPwES) contractors they may participate in both WISE programs. Some funds (\$2,000) have been set aside for any issues that arise that are outside of the contract. The Town is working with Brian Coble of Advanced Energy to create a basic contract for Carrboro that references the Chapel Hill contract.

A letter was sent to residents on the Homestead Act list. Several interested homeowners contacted the project coordinator in response later decided not to apply because they could not afford the cost. For each of these homeowners information and resources for the Weatherization Assistance Program (WAP) has been provided.

A final detail to report on is that the Town participated in a grant audit performed by a SEEA contractor, Reznick, the week of August 15th.

Town staff intend to continue to work with Chapel Hill, CESI, SEEA, and Duke Energy staff, contractors, and all other stakeholders to satisfy all ARRA and grant specific requirements, and to plan for future enhancements to the program. The intent is to have the two Town's residential programs be designed to work in tandem to grow demand for energy efficiency services, learn from experience in rolling out the programs, minimize confusion to the community, streamline administration and delivery of services and information, and maximize collaboration/partnering and the leveraging of funds. In the near future, in addition to continuing to implement the program elements and grant requirements described above and in previous staff reports, staff intend to work with CESI and Chapel Hill to review the results of Chapel Hill's residential program, and develop a longer term strategic plan for the program. Staff will also be recruiting additional businesses to participate in the Energy Efficiency Revolving Loan Fund efforts.

Appendix

Additional Information About Energy Efficiency Program

Town staff have worked with CESI, Chapel Hill, and Duke Energy staff to release residential energy efficiency incentives, including subsidies for residential energy assessments for homeowners, and improvements for Duke Energy residential customers. Funding for assessments is being provided through the SEEA grant; prequalified contractors will conduct energy assessments for eligible homeowners. As the initial step in the establishment of a residential energy efficiency program, the Town is subsidizing up to \$150 of the cost of the assessment for a residence. It is the homeowner's responsibility to cover the rest of the cost of the assessment, and contact the prequalified contractors to arrange for the energy assessment. Completing an assessment through one of the Town's prequalified contractors will prepare a homeowner to apply for and receive any additional subsidies for improvements if they become available.

An additional incentive to working through the Town's program and prequalified contractors is that doing so will facilitate a homeowner served by Duke Energy in gaining access to subsidies being offered by Duke Energy for air sealing and insulation improvements. The Town is partnering with Duke Energy and Chapel Hill to offer up to a \$425 subsidy for insulation and air sealing for single family, owner occupied homes within the Carrboro or Chapel Hill municipal limits for Duke Energy customers with central air conditioning. This pilot program is currently set up to offer this subsidy to up to 100 customers.

Both the SEEA sponsored energy assessments and Duke sponsored pilot program were released in June, 2011; it is therefore too early to predict the success of these initiatives. Additional information about these subsidies is available online at <http://www.ci.carrboro.nc.us/ecd/EERLF.htm>

Chapel Hill released a residential energy efficiency program in early 2011. This program quickly reached capacity (125 homes) for the initial phase of the program, and included a 50% subsidy for selected measures focusing on building envelope and a 25% subsidy for selected measures focusing on systems and appliances, with a maximum subsidy of \$5,000. On the first 33 projects scheduled to move forward the average subsidy has been \$3,600. The average home value for participating homeowners has been \$431,000. The program has utilized both SEEA and Energy Efficiency Community Block Grant (EECBG) funds, and resulted in the leveraging of about 3:1 private \$ for every \$ of funds provided through the SEEA grant (with additional subsidy provided by the EECBG funds). The program has been served by four prequalified contractors, with quality assurance provided by Advanced Energy. Chapel Hill intends to evaluate this first phase and release a second phase of the program in late summer 2011. More details on the program are available at <http://www.ci.chapel-hill.nc.us/index.aspx?page=1666>.

Carrboro WISE Expanded Residential Energy Efficiency Program Design: Program Overview

With the funding (\$50k) from the SEEA discretionary grant funds and in addition to the home energy assessment subsidy and Duke Energy pilot residential subsidy, a more robust residential energy efficiency improvement program has been developed. The following program design is based largely on the existing Chapel Hill WISE residential energy efficiency program. This program design is intended for the initial release, and may be modified (as recommended by staff and approved by the Board of Aldermen) in the future. Additional details are provided in a separate program design document.

Program Eligibility

All owner-occupied, detached single family Carrboro residences within the town limits are eligible for the pilot energy efficiency incentive program. The pilot is constrained to this geographic scope because of limited funding and administrative support for the program. Homeowners are eligible for the pilot energy efficiency incentive program on a first-come, first-served basis. Incentives are only available for existing homes. The list of approved measures is subject to a \$2,000 limit on incentive dollars (total amount from all sources, including state and federal tax credits and utility incentives) per customer per project.

Approved Measures

Improvements can include a combination of measures that will result in 15-20% energy savings from their energy baseline (more details available in the program design document):

40% rebate (after all other rebates and incentives):

Envelope air sealing
Insulation improvements, including:
Duct sealing and repair
Outdoor thermostats for homes with heat-pumps

20% rebate (after all other rebates and incentives)

HVAC upgrades
Hot water heater
Energy-efficient appliances
Recirculating hot water systems
Programmable thermostats
Lighting upgrades
Solar thermal hot water
Solar PV or geothermal ONLY if in combination with EE measures expected to generate 15% energy savings, (i.e., attic air sealing, duct sealing, and insulation improvements, unless there is documentation that no further improvement is warranted)

Other Incentives

A goal of the program is to fully utilize and leverage other incentives offered by utilities. Duke Energy has just released the pilot program mentioned above. In addition, Duke offers a “Smart Saver” program. Public Service offers various rebates, as does Piedmont Electric. Piedmont also offers its customers an energy efficiency loan program.

Contractor Network

Clean Energy Solutions is supporting the Town in developing a network of prequalified contractors who will conduct energy assessments and complete retrofits. Contractors may apply for inclusion to the program, with preference given to local contractors. Contractors must provide evidence of various technical qualifications, references, insurance, and agree to the program terms. Homeowners will pick a contractor from the pre-qualified list.

Staff plan to contact Advanced Energy to negotiate a Quality Assurance (QA) services contract to both evaluate and mentor contractors. This process is under development, but will likely include:

- ♣ 2-3 mentored energy assessments
- ♣ 100% QA on the first 2-4 jobs
- ♣ 10% QA on subsequent jobs, at the discretion of CESI and Town staff and depending on performance during early jobs.

For evaluative purposes, the retrofit standard known as Home Performance with Energy Star (HPwES) will be used. To date, one contractor (Home Performance NC) has completed the prequalification process; several other contractors are currently prequalified for the residential program with Chapel Hill, and may consider pursuing prequalification for Carrboro’s program.

Miscellaneous Other Program Design Elements

CESI will be responsible for developing a marketing plan, and working with Town staff to implement the plan. The plan will be highly tailored to the local market. CESI will also reach out to local institutions to provide an easy-to-access financing product to homeowners.