


**BUSINESS OF THE CITY COUNCIL  
WINDSOR HEIGHTS, IOWA  
AGENDA STATEMENT**

Item No. \_\_\_\_\_ 10 \_\_\_\_  
For Meeting of 04/19/10

**ITEM TITLE:** Consideration of a resolution approving the Energy Efficiency and Conservation Block Grant Sub Recipient Contract.

**CONTACT PERSON:** Marketa George Oliver, City Administrator

In March the Council approved applying for an Energy Efficiency and Conservation Block Grant (EECBG). Since that time, the city was notified that it had received the grant funds for several different projects, including retrofitting traffic lights with LEDs, retrofitting the lighting in Windsor Heights City Hall and Public Works with more efficient lighting and occupancy sensors and new fire bay doors that are insulated. In addition, the city received funding to train the Building Inspector in Energy Efficient Building Codes, the Community Services Director in Energy Efficiency to help write a Windsor Heights Going Green Document, and a study of the Windsor Heights City Hall to see how it can be made the most energy efficient building it can be. The grant has a minimum one to one match with the funds having to be spent to September 2012. The City can also use Mid American Energy Rebates and in-kind services to help meet the one to one match requirement. The contact has been reviewed by the city attorney who did point out that the grant does have very strict reporting and other guidelines that the city has to follow in order to receive full funding. Staff is confident with the relatively small size and simplistic of the grants the city was awarded, that the monitoring paper work should not be too much of a hindrance.

<input checked="" type="checkbox"/> Resolution _____ <input type="checkbox"/> Ordinance _____ <input type="checkbox"/> Contract _____ <input type="checkbox"/> Other (Specify) _____
Funding Source _____
APPROVED FOR SUBMITTAL _____ <div style="text-align: right;"> City Administrator</div>

**STAFF RECOMMENDATION:** Adopt resolution on a roll call vote.

RESOLUTION No. 10-0419/

CONSIDERATION OF A RESOLUTION APPROVING THE ENERGY EFFICIENCY AND  
CONSERVATION BLOCK GRANT SUB RECIPIENT CONTRACT.

Whereas, Congress passed the American Recovery and Reinvestment Act (ARRA) of 2009, which the President signed into law on February 17, 2009, to stimulate the economy and create jobs; and

Whereas, ARRA included funding for the Energy Efficiency and Conservation Block Grant (EECBG) Program; and

Whereas, the City of Windsor Heights is a city with limited financial resources and applied for funds to make energy efficiency changes within the city; and

Whereas, the City of Windsor Heights was awarded grant funds and now must sign a contract with the Iowa Office of Energy Independence; and

Whereas, the City of Windsor Heights intends to comply with all agreed upon contractual requirements of ARRA, the EECBG program and other federal and state law;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WINDSOR HEIGHTS, IOWA, that:

1. The City Council supports and approves the Energy Efficiency and Conservation Block Grant Sub Recipient Contract
2. The Mayor is hereby authorized to approve and execute the contract on behalf of the City.

PASSED AND APPROVED this 19th day of April, 2010.

\_\_\_\_\_  
Jerry Sullivan, Mayor

Attest:

\_\_\_\_\_  
Marketa Oliver, City Administrator/Clerk

*ENERGY EFFICIENCY AND CONSERVATION BLOCK GRANT SUB-  
RECIPIENT CONTRACT*

This Energy Efficiency and Conservation Block Grant Sub-recipient Contract is between the Office of Energy Independence (OEI), an agency of the State of Iowa created by Iowa Code chapter 469, and the Sub-recipient (SR) identified in the attached Term Sheet. The parties agree as follows.

**1. Purpose.**

1.1 OEI has received an Energy Efficiency and Conservation Block Grant (EECBG) from the United States Department of Energy, Award No. DE-EE000812, to fund qualified projects that will reduce the energy use of counties and cities or that will reduce green house gas emission activities, or both.

1.2 The parties are entering into this contract for SR to receive funds under the EECBG program.

**2. Incorporation of documents.**

2.1 **Incorporation.** This contract incorporates the following documents:

.A Funding Opportunity Announcement, EE-FOA-0000013 American Recovery and Reinvestment Act, dated May 11, 2009;

.B OEI's grant application; and

.C Assistance Agreement for Award No. DE-EE000812 between the United States Department of Energy and OEI, including any amendments to that agreement during the term of this contract.

2.2 **Resolution of inconsistencies or conflicts.** If there is a conflict between this contract and federal law, the parties agree that federal law will govern.

**3. Scope of services.**

SR will perform the services identified in Exhibit A, Description of Project and Award Budget.

**4. Compensation.**

**4.1 Reimbursement of allowable costs.** OEI will reimburse SR for the allowable costs that SR incurs in performing the work under this contract in the amount and in manner described in Exhibit A, Description of Project and Award Budget.

**4.2 No reimbursement of unallowable costs.** OEI will not reimburse SR for any cost that is contrary to (1) this contract; (2) any restriction or limitation in the documents identified in paragraph 2.1; (3) 10 CFR Part 600; (4) the applicable cost principles found in OMB Circular A-21 Cost Principles for Educational Institutions, OMB Circular A-87 Cost Principles for State, Local, and Indian Tribal Governments, or OMB Circular A-122 Cost Principles for Non-Profit Organizations; or (5) any other applicable laws, rules, regulations, and policies.

**4.3 Invoices and supporting documentation.** All invoices and all required supporting documentation must comply with all applicable rules concerning payments of these claims.

**4.4 Representations.** By submitting an invoice, SR represents to OEI that all of the following are true:

.A the services identified in the invoice are within the scope of services described in paragraph 3, and

.B the costs are allowable, allocable, and reasonable in accordance with (1) this contract; (2) the documents identified in paragraph 2.1; (3) 10 CFR Part 600; (4) the applicable cost principles in OMB Circular A-21 Cost Principles for Educational Institutions, OMB Circular A-87 Cost Principles for State, Local, and Indian Tribal Governments, or OMB Circular A-122 Cost Principles for Non-Profit Organizations; and (5) any other applicable laws, rules, regulations, and policies.

**4.5 Payment of invoices.** OEI will review each invoice for compliance with this contract and applicable laws, rules, regulations, and policies. It will approve all or a portion of the amount sought in the invoice and will pay the approved amount within the time required by applicable law.

**4.6 Withholding payments.** Despite anything to the contrary in this contract, OEI may withhold paying all or a portion of the invoices if SR has failed to comply with this contract, including any problems identified during OEI's monitoring of SR's performance.

**4.7 Recovery of reimbursed funds.** If OEI or any federal agency concludes that SR has been reimbursed for any cost that is unallowable, unallocable, or

unreasonable under this contract, SR will repay those funds within 30 business days of receiving written notice from OEI. OEI may withhold any payment under this contract if SR fails to repay those funds by the deadline.

4.8 **Payment is no waiver.** By paying all or a portion of an invoice, OEI does not waive its ability to challenge any reimbursement for failing to comply with this contract at a later date.

## 5. **American Recovery and Reinvestment Act requirements.**

5.1 **Acknowledgement of receiving Recovery Act funds.** SR understands and agrees that the source of the payments under this contract, either in whole or in part, is the American Recovery and Reinvestment Act of 2009—Pub. L. 111-5—(Recovery Act). SR further understands and agrees that it will comply with the Recovery Act.

5.2 **Recovery Act process is evolving.** SR understands and agrees that the federal stimulus process is still evolving and that new requirements for Recovery Act compliance may still be forthcoming from the federal government and the State of Iowa. Accordingly, SR agrees that it and its subgrantees and subcontractors will comply with all Recovery Act requirements promulgated by the federal government or the State of Iowa, or both, during the contract.

5.3 **Recovery Act funds are temporary.** SR agrees that Recovery Act funds are temporary and that programs supported with Recovery Act funds, including this program, will not be continued with the State of Iowa financial appropriations when Recovery Act funds are expended.

5.4 **Applicable Recovery Act definitions.** Because this contract uses Recovery Act funds, the Recovery Act defines the following terms that are relevant to this contract:

.A A “prime recipient” is a non-federal entity that receives Recovery Act funds as federal awards in the form of grants, loans, or cooperative agreements directly from the federal government.

.B A “sub-recipient” is a non-federal entity that expends federal awards received from another entity to carry out a federal program but does not include an individual who is a beneficiary of such a program.

5.5 **Prime recipient and sub-recipient.** For purposes of this contract, OEI is the prime recipient and SR is a sub-recipient. Further, SR understands that it might have one or more sub-recipients when performing this contract.

5.6 **Registration requirements.** SR and its first-tier subgrantees and subcontractors must register and maintain their registration in the Central Contractor Registration at all times during which they have active federal awards funded with Recovery Act funds.

5.7 **Enforceability.** SR agrees that if it or one of its subcontractors or subgrantees fails to comply with all applicable federal or state requirements, or both, OEI may withhold or suspend, in whole or in part, any payments to SR under this contract, or recover misspent funds from SR. This provision is in addition to all other remedies available to OEI.

5.8 **Recovery Act reporting requirements.** Under Section 1512 of the Recovery Act, OEI, as the prime recipient, must submit a report to the federal government no later than 10 calendar days after the end of each calendar quarter ("Reporting Period"). This report must contain the information outlined below. Accordingly, SR agrees to provide the State of Iowa with the following information in a timely manner and in the format or form required by OEI:

- .A The total amount of Recovery Act funds received by SR during the Reporting Period;
- .B The amount of Recovery Act funds that were expended or obligated during the Reporting Period;
- .C A detailed list of all projects or activities for which Recovery Act funds were expended or obligated, including:
  - .1 the name of the project or activity;
  - .2 a description of the project or activity;
  - .3 an evaluation of the completion status of the project or activity; and
  - .4 an estimate of the number of jobs created and the number of jobs retained by the project or activity.
- .D For any subcontracts or sub-grants equal to or greater than \$25,000:
  - .1 The name of the entity receiving the sub-award;
  - .2 The amount of the sub-award;
  - .3 The transaction type;
  - .4 The North American Industry Classification System (NAICS) code or Catalog of Federal Domestic Assistance (CFDA) number;

- .5 Program sources;
- .6 An award title descriptive of the purpose of each funding action;
- .7 The location of the entity receiving the sub-award;
- .8 The primary location of the sub-award, including the city, state, Congressional District, and country;
- .9 A unique identifier of the entity receiving the sub-award and the parent entity of the Contractor/Grantee, should the entity be owned by another; and
- .10 The names and total compensation of the five most highly compensated officers of the company if it received: (1) 80% or more of its annual gross revenues in Federal awards; and (2) \$25,000,000 or more in annual gross revenue from Federal awards.

.E For any subcontracts or sub-grants of less than \$25,000 or to individuals, the information required in subparagraph D may be reported in the aggregate and requires the certification of an authorized officer of the vendor or grantee that the information contained in the report is accurate.

.F Any other information requested by the State of the Iowa or required by state or federal law or regulation.

.G Standard data elements and federal instructions for use in complying with reporting requirements under Section 1512 of the Recovery Act were published in the Federal Register on April 1, 2009 (74 FR 14824), and once approved will be provided online at [www.FederalReporting.gov](http://www.FederalReporting.gov).

5.9 **Department of Energy's reporting requirements.** In addition to any other reporting requirements, the Department of Energy's Federal Reporting Checklist—DOE F 4600.2—identifies the reporting requirements for this contract. SR agrees that it will comply with these reporting requirements.

5.10 **OMB guidance on reporting requirements.**

.A OMB Memorandum M-09-21 dated June 22, 2009, outlines the standard data elements and federal implementation guidance for complying with the reporting requirements under section 1512 of the Recovery Act. SR agrees that it will comply with OMB Memorandum M-09-21 and timely provide the information required by that memorandum to OEI.

.B OMB Memorandum M-10-08 dated December 18, 2009, provides updated guidance on Data Quality, Non-Reporting Recipients, and Reporting

of Job Estimates. SR agrees that it will comply with OMB Memorandum M-10-08 when complying with its reporting obligations.

.C Further, SR agrees that it will comply with any other OMB memorandums or guidances concerning reporting under the Recovery Act.

**5.11 SR's failure to comply with reporting requirements.** SR's failure to comply with any of the Recovery Act reporting requirements—including, without limitation, paragraphs 5.8, 5.9, and 5.10—constitutes a material breach of this contract. In addition to any other remedy, if SR fails to comply with the reporting requirements, OEI may withhold further payments, suspend this contract, or terminate this contract.

**5.12 Segregation of funds.** SR can use Recovery Act funds to supplement, not supplant, other federal funding. SR agrees that it will segregate obligations and expenditures of Recovery Act funds from other funds. In addition, SR must not co-mingle Recovery Act funds with other funds or use Recovery Act funds for a purpose other than that of making payments for costs allowable under the Recovery Act.

**5.13 Prohibition on use of Recovery Act funds.** SR must not use any funds made available under this contract for any casino or other gambling establishment, aquarium, zoo, golf course, swimming pools, or similar projects. In addition, SR must not use Recovery Act funds (a) for construction, such as construction of mass transit systems and exclusive bus lanes, for the construction or repair of buildings and structures, (b) to purchase land, a building, or structure, or any interest therein, (c) to subsidize fares for public transportation, (d) to subsidize utility rate demonstrations or state tax credits for energy conservation or renewable energy measures, or (e) to conduct or purchase equipment to conduct research, development, or demonstration of energy efficiency or renewable techniques and technologies not commercially available.

**5.14 Preservation of open competition.**

.A Unless prohibited by state or local laws, SR must ensure that bid specifications, project agreements, or other controlling documents in construction contracts awarded under this contract, or under a subaward under this agreement, do not:

- .1 require or prohibit bidders, offerors, contractors, or subcontractors to enter into or adhere to agreements with one or more labor organizations, on the same or related construction project or projects;
- or

.2 otherwise discriminate against bidders, offerors, contractors, or subcontractors for becoming or refusing to become or remain signatories or otherwise adhere to agreements with one or more labor organizations, on the same or other related construction project or projects.

.B The term “construction contract” as used in this provision means any contract for the construction, rehabilitation, alteration, conversion, extension, or repair of buildings, highways, or other improvements to real property.

.C Nothing in this provision prohibits bidders, offerors, contractors, or subcontractors from voluntarily entering into an agreement with labor organizations.

#### 5.15 **Buy American requirement.**

.A As required by Section 1605 of the Recovery Act, SR agrees that neither SR nor its subcontractors or sub-grantees will use Recovery Act funds for a project for the construction, alteration, maintenance, or repair of a public building or public work unless all of the iron, steel, manufactured goods used in the project are produced in the United States. SR understands this requirement may only be waived by the applicable federal agency if the requirement is determined to be (a) inconsistent with the public interest, (b) the relevant manufactured goods are not produced in the United States in sufficient and reasonably available quantities of and of a sufficient quality, or (c) inclusion of the relevant manufactured goods produced in the United States will increase the cost of the overall project by more than 25%, as set out in Section 1605 of the Recovery Act.

.B For additional information about waivers of the Recovery Act’s Buy American requirement, OEI directs SR’s attention the Department of Energy’s Guidance on the Buy American Provisions as Applied to Energy Efficiency and Renewable Energy Projects Funded by the American Recovery and Reinvestment Act of 2009 and Administered by the Office of Energy Efficiency and Renewable Energy dated December 17, 2009.

5.16 **Wage requirements.** As required by Section 1606 of the Recovery Act, SR agrees that all laborers and mechanics employed by contractors and subcontractors on the work funded under this contract will be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by

the United States Secretary of Labor under the Davis-Bacon Act, 40 U.S.C. § 3141 et sec.

**5.17 Whistleblower protection.** SR agrees that both it and its subcontractors and sub-grantees will comply with Section 1553 of the Recovery Act. SR and its subcontractors and sub-grantees must not discharge, demote, or otherwise discriminate against any employee who discloses, in the ordinary course of the employee's duties, information the employee reasonably believes is evidence of (1) gross mismanagement of the contract or grant relating to Recovery Act funds; (2) a gross waste of Recovery Act funds; (3) a substantial or specific damage to public health or safety related to the implementation or use of Recovery Act funds; (4) the abuse of authority related to implementation or use of Recovery Act funds; or (5) a violation of law, rule, or regulation related to an agency contract (including the competition for or negotiation of a contract) or grants awarded or issued relating to Recovery Act funds. Further, SR agrees that it and its subcontractors and subgrantees will post notice of the rights and remedies available under Section 1553 of the Recovery Act.

**5.18 National Environmental Policy Act (NEPA) requirements.**

.A SR cannot take any action using federal funds that would have an adverse affect on the environment or limit the choice of reasonable alternatives before the Department of Energy or OEI provides either a NEPA clearance or a final NEPA decision about the project. If SR proceeds with activities that are not authorized for federal funding of the Department of Energy Contracting Office before the final NEPA decision, SR risks not receiving federal funding and those costs may not be recognized as allowable cost. If the contract includes construction activities, SR must submit an environmental evaluation report or evaluation notification form regarding NEPA issues before the Department of Energy or OEI initiating the NEPA process.

.B SR agrees to manage waste generated through this project in accordance with all federal, state, and local regulatory requirements.

.C SR also agrees to submit to OEI a solid and hazardous waste management plan before project implementation. At a minimum, the waste management plan must include:

- .1 type and estimated volume of waste that the project proponent anticipates will be generated; and
- .2 the disposal path for each waste stream (e.g., landfill disposal, recycling, reuse).

**5.19 National Historic Preservation Act.** Before expending any Recovery Act funds to alter any structure or site that are listed or eligible for listing in the National Register of Historic Places, SR must first comply with Section 106 of the National Historic Preservation Act (NHPA), consistent with the Department of Energy's 2009 letter of delegation of authority about the NHPA.

**5.20 False Claims Act.** SR agrees that it will promptly refer to an appropriate Federal Inspector General any credible evidence that a principal, employee, agent, sub-grantee, subcontractor, or other person has committed a false claim under the False Claims Act or has committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving those funds.

**5.21 Non-discrimination.** SR must comply with Title VII of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, Title IX of the Education Amendments of 1972, the Age Discrimination Act of 1975, and other civil rights laws applicable to recipients of federal financial assistance.

**5.22 Job posting requirements.** Section 1512 of the Recovery Act requires the State of Iowa to report on the jobs created and retained as a result of the stimulus funds. SR is encouraged to post job opportunities created in connection with the projects funded in whole or in part with Recovery Act funds on the State of Iowa job opportunity website and the federal Recovery Act website, if required.

**5.23 Inspection of records.** SR agrees that it will permit the United States Comptroller General or its representative or the appropriate inspector general appointed under Section 3 or 8G of the Inspector General Act of 1978 or its representative (1) to examine any records that directly pertain to, and involve transactions relating to, this contract; and (2) to interview any officer or employee of SR or any of its subcontractors or sub-grantees regarding the projects funded with Recovery Act funds.

**5.24 Lobbying restrictions.** By accepting funds under this contract, SR agrees that none of the funds under this contract will be expended, directly or indirectly, 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. This restriction is in addition to those prescribed elsewhere in statute and regulation.

**5.25 Suspension and debarment.** SR agrees that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction nor from federal financial

or non-financial assistance, nor are any of the participants involved in the execution of this contract suspended, debarred, or voluntarily excluded by any federal department or agency in accordance with Executive Order 12549 (Debarment and Suspension) and 44 CFR Part 17, or are on the disbarred vendors list at [www.epls.gov](http://www.epls.gov). Further, SR will notify OEI by certified mail if SR or any of its agents become debarred, suspended, or voluntarily excluding during the term of this contract.

**5.26 Flow-down requirements.** SR must include the terms of this contract in any subaward or subcontract.

**6. Monitoring activities.**

6.1 OEI has the right to monitor SR's performance of this contract—including the performance of SR's subcontractors, subgrantees, or sub-recipients—to verify that SR is complying with this contract.

6.2 Monitoring activities include, but are not limited to:

- .A a 100% inspection;
- .B a random sampling;
- .C a periodic inspection;
- .D inspecting any document related to SR's performance of this contract;
- .E auditing or reviewing any documents related in any way to any payments under this contract;
- .F inspecting the work at any time;
- .G allowing its consultants, agents, or experts to examine or evaluate completed work, work in progress, payments, or any other matter related in any way to SR's performance of this contract;
- .H examining the books, ledgers, documents, papers, and records related in any way to this contract; and
- .I attending any meetings where SR discusses matters related to the performance of this contract.

**7. Termination.**

**7.1 Immediate termination by OEI.** OEI may immediately terminate this contract when one or more of the following events occurs:

.A SR fails to comply with any provision of this contract that provides for immediate termination; or

.B OEI determines that SR made a statement, representation, warranty, or certification that is materially false, deceptive, incorrect, or incomplete.

**7.2 Termination on notice by OEI.** Following 30 days' written notice, OEI may terminate this contract in whole or in part for convenience without the payment of any penalty or incurring any further obligation to the non-terminating party. Following termination upon notice, OEI will pay SR, upon submission of invoices and proper proof of claim, for services provided under this contract up to and including the date of termination.

**7.3 Termination for cause by OEI.** OEI may declare SR to be in default of its obligations under this contract when any of the following events occurs:

.A SR fails to observe and perform any covenant, condition or obligation created by the contract;

.B SR fails to make substantial and timely progress toward performance of the contract;

.C SR's work product and services fail to conform with the requirements of this contract; or

.D SR's work product or services infringe on any patent, trademark, copyright, trade dress or any other intellectual property right.

**7.4 Notice of default.** If there is a default event that SR can cure, OEI must provide written notice to SR requesting that the breach or noncompliance be immediately remedied. If the breach or noncompliance continues 10 days beyond the date of the written notice, OEI may:

.A immediately terminate the contract without additional written notice; or

- .B enforce the terms and conditions of the contract and seek any legal or equitable remedies.

In either event, OEI may seek damages due to the breach or failure to comply with the terms of the contract.

**7.5 Termination by OEI due to lack of funds or change in law.** Despite anything in this contract to the contrary, and subject to the limitations, conditions, and procedures set forth below, OEI may terminate this contract without penalty by giving 60 days' written notice to SR if any of the following occurs:

- .A the legislature or governor fails to appropriate funds sufficient to allow OEI to operate as required and to fulfill its obligations under this contract;
- .B if funds are de-appropriated or not allocated;
- .C if the federal government reduces or eliminates the federal grant;
- .D if OEI's authorization to operate is withdrawn or there a material alteration in the programs administered by OEI;
- .E if OEI's duties are substantially modified.

**7.6 SR's remedies if OEI terminates the contract due to lack of funds or change in law.** If OEI terminates this contract due to lack of funds or change in law as provided above, SR's exclusive, sole, and complete remedy is the payment for services completed prior to and including the date of termination.

**7.7 SR's duties on termination.** When SR receives OEI's notice of termination for any reason allowed under this contract, SR must:

- .A cease all work under this contract except any work that OEI directs SR to perform;
- .B comply with OEI's instructions for the timely transfer of any active files and related work product; and
- .C cooperate in good faith with OEI during the transition period between the notification of termination and the substitution of any replacement contractor.

7.8 **Set off.** Should OEI obtain a money judgment against SR because of a default under this contract, SR consents to such judgment being set off from moneys owed SR by the State of Iowa or any other agency of the State of Iowa under any other contract.

8. **Indemnification.**

8.1 **SR's indemnification of OEI.** SR must indemnify the State of Iowa and OEI from any and all liabilities, damages, settlements, judgments, costs and expenses, related to or arising from:

- .A SR's violation of this contract;
- .B SR's negligent acts or omissions;
- .C SR's performance or attempted performance of this contract;
- .D SR's failure to comply with all local, state and federal laws and regulations; or
- .E SR's failure to make all reports, payments and withholdings required by Federal and State law with respect to social security, employee income and other taxes, fees or costs required by SR to conduct business in the State of Iowa.

8.2 **Survives termination.** All indemnification obligations imposed by this section survive the termination of this contract.

9. **Insurance.** SR agrees to procure and maintain insurance required to protect any work funded in whole or in part under this contract.

10. **Fiscal procedures.**

10.1 **SR's accounting system.** SR represents that its accounting system is adequate to comply with this contract.

10.2 **Audit exceptions.** If an authorized federal or state audit takes exception to the services provided under this contract for which federal or state reimbursement has been paid, SR must refund the reimbursement if the audit exception is due to the SR's error. If the audit exception is due solely to the Department's error, the Department is responsible for the reimbursement. If the audit exception is a joint responsibility, the parties will work together to achieve an equitable resolution.

**11. Compliance with laws.**

**11.1 In general.** SR must comply with all applicable federal, state, and local laws, rules, ordinances, regulations, and orders when performing services under this contract. SR represents that it has complied with all federal, state, and local laws regarding any business permits and licenses that may be required to carry out the work to be performed under this contract.

**11.2 Compliance with anti-discrimination laws.**

.A SR must comply with all laws applicable to the prevention of discrimination in employment.

.B In addition, SR, as a sub-recipient of a federal grant, must comply with all laws prohibiting discrimination on the basis of race, color, national origin, age, religion, sex, or disability in the delivery of services or benefits.

**11.3** SR agrees to comply with the organizational audit requirements of OMB Circular A-133, Audits of States, Local Governments, and Non-Profit Organizations.

**12. Certification.** By signing this contract, SR certifies that it will comply with all applicable federal and state laws including, without limitation, the Recovery Act. This certification is a material representation of act upon which OEI is relying when entering into this contract. A false certification constitutes a material breach of this contract.

**13. Contract administration.**

**13.1 Amendments.** No supplement, modification, or amendment of this contract will be binding unless it is in writing and signed by both parties.

**13.2 Third parties.** This contract has no third party beneficiaries; it benefits only OEI and SR.

**13.3 Assignment and delegation.** No party may assign, transfer, or convey in whole or in part this contract without the prior written consent of the other party. For purposes of this clause, a transfer of a controlling interest in SR constitutes an assignment.

**13.4 Choice of law and forum.** Iowa law governs this contract without regard to its choice-of-law provisions. Any litigation arising out of or related to this contract must be brought in Des Moines, Iowa, Polk County District Court.

**13.5 Representations.** Each party represents to the other that:

.A It has the right, power, and authority to enter into and perform its obligations under this contract.

.B It has taken all requisite action (corporate, statutory, or otherwise) to approve the execution, delivery, and performance of this contract.

.C This contract constitutes a legal, valid, and binding obligation on itself in accordance with its terms.

**13.6 Integration.** This contract constitutes the entire agreement between the parties and none of the parties are relying on any representations that may have been made that are not included in this contract.

**13.7 Not a joint venture.** Nothing in this contract creates the relationship of a partnership, joint venture, or other association of any kind, or agent and principal relationship between the parties. Each party is an independent contractor to the other contracting for services and acting toward the mutual benefits derived from this contract. No party, unless otherwise specifically authorized in this contract, has the authority to enter into any contract or create any obligation or liability on behalf of, in the name of, or be binding on another party to this contract.

**13.8 Obligations beyond the term of this contract.** This contract will remain in full force and effect to the end of the specified term or until terminated or canceled under this contract. All obligations of the parties incurred or existing under this contract as of the expiration, termination, or cancellation will survive the termination or cancellation of this contract.

**13.9 Supersedes former agreements.** This contract supersedes all prior contracts between OEI and SR for the services provided under this contract.

**13.10 Waiver.** No waiver of any term of this contract constitutes a waiver of any other provision, whether similar or dissimilar. No waiver of any term constitutes a continuing waiver of that term. No waiver is binding unless it signed in writing by the waiving party.

**13.11 Notices.** Whenever this contract requires a party to send notice or other communication to the other party, the notice must be in writing and must be delivered personally or sent by certified or registered mail, or by overnight courier, postage prepaid, to the addresses identified in the Term Sheet. A notice is effective either (1) on the day of personal delivery, or (2) two days after the date of mailing, whichever is earlier.

**13.12 Severability.** If any term of this contract is for any reason invalid or unenforceable, the rest of the contract remains fully valid and enforceable.

**13.13 Cumulative rights.** The various rights, powers, options, elections, and remedies of any party in this contract are cumulative and not one of them is exclusive of the others or exclusive of any rights, remedies, or priorities allowed either party to pursue any other equitable or legal remedy to which either party may be entitled as long as any default remains unremedied, unsatisfied, or undischarged.

**13.14 Time is of the essence.** Time is of the essence with respect to the performance of the terms of this contract.

**13.15 Successors in interest.** This contract binds and inures to the benefit of all parties and their successors, assigns, and legal representatives.

**13.16 Record retention and access.** SR must maintain books, records, and documents that sufficiently and properly document and calculate all charges billed to OEI throughout the term of this contract for a period of at least 5 years following the date of final payment or completion of any required audit, whichever is later. SR must permit the Auditor of the State of Iowa or any authorized representative of the State of Iowa and where federal funds are involved, the Comptroller General of the United States or any other authorized representative of the United States government, to access and examine, audit, excerpt and transcribe any directly pertinent books, documents, papers, electronic or optically stored and created records or other records of SR relating to orders, invoices, or payments or any other documentation or materials pertaining to this contract. SR must not impose a charge for audit or examination of SR's books and records.

The parties are signing this contract on the date stated in the Term Sheet.

OFFICE OF ENERGY INDEPENDENCE

By: \_\_\_\_\_  
Roya Stanley, Director

SUBRECIPIENT NAME

By: \_\_\_\_\_  
Jerry Sullivan, Mayor



*EXHIBIT A*

*DESCRIPTION OF THE PROJECT AND AWARD BUDGET*

*TO STATE ENERGY GRANT SUB-RECIPIENT CONTRACT*

DESCRIPTION OF THE PROJECT AND AWARD BUDGET

**1. General**

**Name of SR:** City of Windsor Heights

**Address:** City Hall  
1133 66th Street  
Windsor Heights, IA 50324

**County:** Polk

**Project Title:** Going Green

**Contract #** EECBG 10-3167

**2. Project Description/Scope of Work:**

SR will train building inspector in building energy efficiency codes. Following training, the SR will adopt an energy conservation building code for the inspector to enforce. The inspector will also train contractors, home and businesses owners to comply with the code, as well as train home and businesses owners in weatherization and green building techniques.

SR will install LED traffic lights at 103 locations. SR will advertise the project in a newsletter and with press releases, including the energy and costs saved.

SR will retrofit and replace existing lighting at City Hall and the City Hall garage with 111 T-8 light fixtures. SR will install occupancy sensors and replace the east facing fire bay doors with new energy efficient models.

SR will develop a clear and concise “Going Green” plan that citizens and staff can follow to achieve the goals set forth by the committee. The plan will focus on three areas: 1) businesses, 2) citizens and 3) the city plan. Each area will contain short term, mid-term and long term achievable energy efficient goals and benchmarks. Staff will work with Mid American Energy to define what goals can be reached. SR will create a clear construction plan that will make City Hall as energy efficient as possible, exploring green roofs, more insulation, windows, doors, layout, daylight sensors, geothermal, etc.

**3. Award amount: \$42,602.45 Match amount: \$45,241.75**

**Type Award:** Grant

**Project Start Date:** 04/26/2010

**Project Completion Date:** 01/30/2012

**4. Financial procedures and payment schedule:**

**a. Payment and invoicing procedures:** OEI will pay SR consistent with the payment schedule identified below and paragraph 4 of this contract. To be paid, SR must provide OEI with an invoice, a GAX form, and a progress report. Verification that the expenditure of matching funds is proceeding as planned must be included with the submittal.

**b. Performance measures, acceptance criteria and payment schedule:**

<b>Task</b>	<b>Completion Date</b>	<b>Performance Measures</b>	<b>Acceptance Criteria</b>	<b>Payment Amount</b>
Measures in place to comply with contract requirements	05/01/2010	Document the SR has measures in place to comply with NEPA, NHPA, Davis-Bacon Act, Buy American Act, and has completed a waste management plan.	Waste management plan, NEPA, NHPA, Buy American*, and Davis-Bacon requirements met.	
Engineering design and bid specification work		Completion of design and bid documents for lighting project	Approval of documents by City Council	
Receive equipment		Equipment obtained	American-made equipment delivered to site.	\$17,000
Project bid and contractor selected		Bids received and low bidder selected	City Council accepts bid and issues contract for project	

Training City Inspector	12/31/2011	Building inspector will be trained on current energy building codes and enforce the building energy code. The inspector will train contractors, home and businesses owners to comply with the code, as well as train home and businesses owners in weatherization and green building techniques.	Building energy codes adopted by SR shall be as stringent as, or more stringent, than the state building energy code. Synopsis of training provided to OEI. Names, dates, and type of training provided to contractors, business owners, and homeowners provided to OEI. Results of code enforcement conducted by building inspector provided to OEI.	
LED Traffic Lamps	09/15/2010	Install LED traffic lights at 103 locations. Advertise the project in a newsletter and with press releases, including the energy and costs saved.	LEDs installed per code, industry standard, and manufacturers specifications. Copies of newsletters and press releases provided to OEI.	
City Hall Lamp Retrofit	11/30/2010	Retrofit and replace existing lighting in buildings with 111 T8 light fixtures and electronic ballasts. Install occupancy sensors and replace east facing fire bay doors with new energy efficient models.	Lighting must meet IES minimum lighting standards. Lamps, ballasts, fixtures, LEDs, occupancy sensors and fire bay doors installed per code, industry standard, and manufacturers specifications.	\$17,000

Going Green Plan	12/31/2011	Develop "Going Green" plan for businesses, citizens and the city plan. Each will have short term, mid-term and long term energy efficient goals exploring green roofs, more insulation, windows, doors, layout, daylight sensors, geothermal, etc. Coordinate with MidAmerican Energy to define goals. Create construction plan to improve City Hall's energy efficiency.	Plan submitted to OEI for approval.	
Final report	01/31/2012	Final report completed	All documentation submitted to OEI. See section 5B below for final report requirements.	\$8,602.45

\*CFL's, electronic ballasts and LED traffic lights/signals may be exempt from Buy American requirement

## 5. Recovery Act compliance.

### a. Compliance with Davis-Bacon.

- SR must sign a DOL Standard Form 1413, Statement of Acknowledgement signifying an understanding of Davis Bacon compliance requirements.
- The Davis-Bacon Act wage decision for the county or counties in which construction occurs will correspond to the effective date of this contract. OEI will provide the general decision number and wage decision to the SR. The wage decision that is in effect at the time of the effective date of this contract will remain throughout the entire term of this contract. Current and archived wage decisions can be found at: <http://www.wdol.gov/dba.aspx#0>
- Each Friday of each week during construction, SR must submit a Weekly Certified Payroll on a Form WH347 to OEI at <https://www.iowagrants.gov/index.do>
- SR must retain the original, signed weekly form. The file must be available for review for a period of three years from project completion.

**b. Compliance with Recovery Act reporting requirements.**

- SR must provide monthly Recovery Act progress reports at <https://www.iowagrants.gov/index.do> no later than the 25<sup>th</sup> day of the month for each year of this contract. In addition to any other requirements, each progress report must include the following information for the preceding month:
  1. Cumulative number of individuals compensated for any amount of work during the time period;
  2. Updated project progress to include accomplishments or setbacks;
  3. Updated development timelines;
  4. Quantification of performance measures achieved.
  
- SR must provide quarterly Recovery Act progress reports at <https://www.iowagrants.gov/index.do> no later than December 26, March 25, June 25, and September 25 of each year of this contract. In addition to any other requirements, each progress report must include:
  1. Jobs created through both Recovery Act funds and non-federal funds;
  2. Cumulative number of individuals compensated for any amount of work during the time period;
  3. Updated project progress to include accomplishments or setbacks;
  4. Updated development timelines;
  5. Quantification of performance measures achieved;
  6. Receipts and invoices for reimbursements.
  
- SR must provide a final report to OEI upon completion of the project. SR must send the final report to <https://www.iowagrants.gov/index.do> . Among other things, the final report must include:
  1. A synopsis of the completed project;
  2. Job creation/retention statistics;
  3. Before/during/after photo documentation;
  4. Performance measures achieved;
  5. Quantification of energy saving and cost saving results to date;
  6. Quantification of energy saving and cost saving projections for the next three calendar years;
  7. Construction punchlist, commissioning reports, and other technical project evaluations resulting from project implementation;
  8. Financial information;
  9. Any other information requested by OEI.

- SR agrees to provide OEI with long term project implementation results as requested following the closure of the project account as necessary to document the ongoing benefits associated with the completion of this project.

**c. Table summarizing reporting deadlines.**

<b>Report</b>	<b>Due no later than</b>
Weekly Certified Payroll (Form WH347):	6:00 p.m. each Friday of each week during construction
Monthly Recovery Act and Progress Reports:	The 25 <sup>th</sup> day of every month of this contract
Quarterly Recovery Act, Progress, and Invoice Reports:	March 25, June 25, September 25, and December 26 of each year of this contract
Final Report:	30 days after project completion

**d. OEI's receipt of reports is no waiver.**

By receiving any report, OEI does not waive its ability to challenge any report for failing to comply with this contract at a later date, nor does OEI's receipt of a report waive any remedy it may have against SR for the report failing to comply with this contract.