

REQUEST FOR PROPOSALS FOR PROFESSIONAL SERVICES TO MANAGE THE OKLAHOMA CITY BIKE SHARE PROGRAM

I. THE SOLICITATION

The City of Oklahoma City, hereinafter referred to as the City, is soliciting proposals to manage the Oklahoma City Bike Share Program, known as “Spokies.” The City desires to enter into a professional services agreement with a qualified and experienced organization with program management expertise, hereinafter referred to as the Successful bidder or Contractor.

The purpose of this project is to make a bike share program available to residents, employees, and visitors to Oklahoma City. The bike share program will launch with six stations in the central Oklahoma City area. Stations will be located in areas that are destinations for residents, employees, and visitors including attractions, entertainment districts, and employment hubs, and residential hubs. Bike share riders may check out and return a bicycle to any station they choose, enabling a series of short, one-way trips throughout the downtown area. The Contractor shall be responsible for program management. For a complete Scope of Services, see **Attachment A**.

A contract for services will be negotiated with the successful proposer.

Bicycles, station materials, kiosks, and software have been purchased with funds from an Energy Efficiency Conservation Block Grant. The grant originates from the U.S. Department of Energy, American Recovery and Reinvestment Act of 2009 (ARRA). Use of all materials purchased with ARRA funds is subject to ARRA provisions, which are included in **Attachment B**.

II. BACKGROUND

The City of Oklahoma City is currently developing a bike share program to introduce a convenient and accessible bicycle rental system to the downtown area.

Contractor will be responsible for the full scope of services outlined in **Attachment A**. The Contractor will work under the direction of the City of Oklahoma City Office of Sustainability.

III. THE PROPOSAL

Two (2) paper originals of the proposal, as described herein and subject to the conditions herein, shall be submitted by each proposer to the Office of the City Clerk, Municipal Building; 200 North Walker Avenue; Oklahoma City, Oklahoma 73102 **by 4:00 p.m. C.S.T. on Tuesday, December 27, 2011**. Upon receipt, the City Clerk will time stamp the proposal. Proposals not timely received in the City Clerk’s office will not be considered and will be returned unopened.

There will be a pre-proposal conference **at 1:30 p.m. C.S.T. on Monday, December 5, 2011**, in the Conference Room of the Office of the City Clerk, Municipal Building; 200 North Walker Avenue; Oklahoma City, Oklahoma 73102.

Should the proposer find a discrepancy in, or omissions from, the information or the description of the Request for Proposals solicitation as herein contained, or should the proposer be in doubt as to its meaning, the proposer shall at once, and not later than ten (10) days prior to the closing date for receiving proposals, notify Jennifer Gooden in writing. Jennifer Gooden will, at her discretion, thereupon send a written instruction and/or clarification to all proposers in the form

of an addendum to the Proposal Documents. *ONLY WRITTEN INSTRUCTIONS WILL BE CONSIDERED A PART OF THIS RFP.* Questions regarding this proposal shall be directed to Jennifer Gooden, Sustainability Director, Oklahoma City Office of Sustainability; 420 West Main Street, Suite 940; Oklahoma City, Oklahoma 73102; (405) 297-3686; jennifer.gooden@okc.gov.

The proposal must be presented in a sealed envelope addressed to the Office of the City Clerk with the words “PROPOSAL TO MANAGE BIKE SHARE PROGRAM” plainly written on the face of the envelope. The name and address of the proposer submitting the proposal must also appear on the face of the envelope.

Addenda: Any addenda to this Request for Proposals solicitation will be issued by the Office of Sustainability during the time of solicitation and will be considered a part of the Request for Proposals documents. Addenda will be furnished to each recipient of the Request for Proposals documents. The proposer shall acknowledge receipt of such addenda as a part of the sealed proposal delivered to the Office of the City Clerk.

Copies of the City Guidelines and Procedures relating to Requests for Proposals may be obtained from the Office of the City Clerk, Municipal Building; 200 North Walker Avenue; Oklahoma City, Oklahoma 73102.

IV. QUALIFICATIONS

The proposer’s principal advisor for the project shall show proven experience in program management, with special attention given to proposers with experience with cycling, transportation, or sustainability programs. The proposal shall detail the involvement of the principal advisor in the project. A resume or curriculum vitae of each person to be involved in the project shall accompany the proposal.

V. PROPOSER SHALL PROVIDE

Individuals interested in participating in this project shall submit a complete, professional-quality proposal that includes the following information relative to the project planned for execution under the proposed contract:

- A. Description of the project to be completed;
- B. Designation of the personnel to be involved (provide curriculum vitae or resume), the percentage of time assigned to this project, and an hourly compensation rate;
- C. Summary of the proposer’s previous experience with program management, represented by completed projects similar to the proposed project;
- D. Summary of the proposer’s previous experience with promotion, including traditional media, social media, and website, and revenue generation through sponsorships and sales of advertisements;
- E. List of references;
- F. Flat rate for the entire project broken down into phases or components of the project at the proposer’s discretion*; and
- G. Itemized budget including but not limited to salaries, supplies, and travel (NOTE: purchase of equipment is not an acceptable expense for the project performed under the proposed contract.)

*Payments will be based on completion of milestones as outlined in the consultant contract with the successful proposer.

VI. CLARIFICATION

The City reserves the right to request clarification of information submitted and to request additional information from any or all of the proposers within a timeline specified by the City.

VII. DISQUALIFICATION OF PROPOSALS

More than one proposal under the same or different names from any one proposer will not be considered; however, it is acceptable for a proposer to submit multiple alternatives within the same proposal. Reasonable grounds for believing the proposer is interested in more than one proposal will cause the rejection of all proposals in which the proposer is interested. One or more or all proposals will be rejected if there is reason for believing that collusion exists among proposers. (See sample Anticollusion Affidavit in **Attachment C.**)

A Proposal will not be accepted from any proposer who is in arrears or is in default to the City upon any debt or contract, or who is a defaulter as surety or otherwise upon any obligation to the City, or has failed to perform faithfully any previous contract with the City.

Incomplete proposals will not be considered.

VIII. PROPOSALS TO BE RETAINED

Proposals cannot be withdrawn.

IX. PROPOSERS RESPONSIBLE FOR THE PROPOSAL

The proposer shall carefully examine the terms of the proposal documents and minimum requirements, and shall judge for itself all of the circumstances and conditions affecting their proposal.

X. INDEMNIFICATION

To the maximum extent permitted by law, the Consultant shall be liable for and shall hold The City of Oklahoma City harmless from all damage or injury caused to persons or property arising out of the performance of any Contract resulting from this Request for Proposals. The Consultant shall agree to assume the defense of the City and their officers and employees in all legal proceedings with third parties connected with the Consultant's performance under the Consultant Contract awarded to the successful proposer, and to pay all expenses, including court costs and reasonable attorney's fees, incurred by the City directly or indirectly on account of such legal proceedings.

The Consultant's obligations hereunder are expressly conditioned upon the City's provision of notification to the Consultant of any such pending claim or suit.

The City shall cooperate with the Consultant in its handling of any such claim or suit to the extent their interests do not conflict therewith. In no event shall the Consultant be obligated to indemnify or hold the City harmless with respect to any liability caused by the sole negligence of the City.

XI. RIGHT TO ACCEPT OR REJECT PROPOSALS

The City reserves the right to accept or reject, in part or in entirety, any or all proposals for any reason, to cancel in part or entirety the Request for Proposals, to re-advertise for new proposals, and to waive minor irregularities and informalities.

XII. WITHDRAWAL OF SELECTION

The City reserves the right to withdraw its selection of a proposer without any liability to the

City at any time before the Consultant Contract has been fully executed by all parties and approved by the City.

XIII. OKLAHOMA OPEN RECORDS ACT

All materials submitted to The City of Oklahoma City or its Trusts pursuant to this Request for Proposals potentially become subject to the mandates of the Oklahoma Open Records Act, 51 Okla. Stat. §§ 24A.1. *et seq.* The purpose of this Act is to ensure and facilitate the public's right of access to and review of government records so they may efficiently and intelligently exercise their inherent political power. Almost all "records," as that term is defined in the Act, may be disclosed to the public upon request. Except where specific state or federal statutes create a confidential privilege, persons who submit information to public bodies have no right to keep this information from public access, nor reasonable expectation that this information will be kept from public access. *See* 51 Okla. Stat. §§ 24A.

If you believe that any of the information you have submitted to The City or its Trusts pursuant to this Request for Proposals is confidential under a specific state or federal statute and therefore not subject to public access, you must comply with the following.

- A. Place said documents/records in a separate envelope marked "Confidential". DO NOT label your entire response to the Request for Proposal as "Confidential" – label only those portions of the response that you feel are made confidential by state or federal law as "Confidential". If only a portion of a document is confidential, please identify specifically the portions of the document you are claiming are confidential. Under the Oklahoma Open Records Act, the City is obligated to produce documents for public inspection even if the documents contain a portion, which is confidential, but can redact the confidential parts.
- B. For each such document for which you are claiming a confidential privilege, identify the federal and/or state law that creates said privilege, e.g., for trade secrets, see 21 O.S. § 1732 (Larceny of Trade Secrets and the Uniform Trade Secrets Act, 78 O.S. §§ 85, *et seq.*

Should an Open Records request be presented to the City/Trust requesting information you have identified as "Confidential," you will be responsible for initiating any legal action necessary to protect the information or records and to defending your position in the District Court if needed.

If you fail to identify any records submitted as part of your proposal as "Confidential" by placing them in the "Confidential" envelope AND you fail to identify the specific state or federal law creating said privilege, you are agreeing that said records are not confidential and are subject to public access.

XIV. NO PROPOSAL COMPENSATION

No proposer will be compensated for submission of a proposal or for any time or services provided as part of the proposal, evaluation, or negotiation process.

XV. PROPOSAL EVALUATION

The City will evaluate **complete** proposals **received by the deadline** cited above. The following evaluation criteria will be applied to each proposal:

GUIDE FOR ASSIGNING POINTS FOR PROPOSAL RANKING

For those categories in the proposal ranking system that have a possible point range, the following shall be used to assign the points

- The proposer clearly demonstrates that the proposer understands the project work included in the RFP.
- The proposer demonstrates that all principal project personnel have successful experience in carrying out similar types of project work.
- The proposer demonstrates an understanding of applicable bike share practices.
- The proposer indicates that the proposed budget is sufficient to ensure successful completion of the project work, and each cost is reasonable and necessary.

XVI. SCHEDULE OF PERFORMANCE

All contracted work shall be completed and submitted within the timeframes established by the contract, unless such term is modified by written agreement between the City and the Consultant. The reporting periods that follow are specifically for the first project assigned under the contract resulting from this Solicitation process. Reporting periods for subsequent projects will be established on a project by project basis.

Report Due: March 4, 2012

Report Period: Beginning of Contract – February 29, 2012

Task: Contractor begins work on project upon execution of the contract, which is anticipated to be in mid-January, 2012. Contractor takes over management of station installation, publicity, membership recruitment, and all activities described in the Scope of Work.

Report Due: April 5, 2012; thereafter on the 4th of each month

Report Period: March 1 – March 31, 2012; thereafter for the month prior

Task: Contractor officially launches the bike share program in March or April 2012 and continues all activities described in the Scope of Work.

XVII. CONTRACT

Upon selection of the Consultant, a Professional Services Contract will be prepared. Said Contract must be fully executed and encumbered before work is initiated. The contract may contain or incorporate the following:

- Standard clauses;
- Scope and nature of services;
- Anti-collusion affidavit;
- Certificate of non-discrimination;
- Business relationship affidavit;
- Independent contractor clause;
- Procurement policies in accordance with 10 CFR 600.236 in the Code of Federal Regulations;
- A requirement for insurance on City forms or forms acceptable to the City Manager;
- A requirement to keep records and a right to audit;
- A description of claim payment procedures and requirement to create and keep necessary records to support such claims;
- A statement making all working papers, reports, documentation, and products the property of the City;
- A description of the responsibilities of all parties;
- Timelines and deadlines for completion of tasks and services;
- Type, content and frequency of reports to be submitted;

- Method, schedule and total amount of fees and payments, which may include payments related to specific tasks or services;
- Procedures for resolving disputes (the resolution of such disputes shall be governed by Oklahoma Law and any action shall be brought in a court of competent jurisdiction, state or federal, located in Oklahoma County, Oklahoma);
- Procedures for amending or terminating the contract or any task or services therein;
- A requirement that all authorizations and approvals have been or shall be obtained from the holders of patents, trademarks, copyrights, licenses or other rights;
- A requirement for indemnification and legal representation of the City, its trusts, officers, agents and employees for acts and omissions of the Consultant;
- A clause for inclusion by reference of the RFP, the proposal, and the representations of the proposer into contract and a statement of the order of precedence should the terms, provisions or conditions thereof conflict;
- A requirement for insurance naming the City as additional insured and evidenced by a certificate of insurance on a form approved by the City Manager; and
- A right of the City to terminate the contract upon notice with or without cause.

All contracts will be submitted to the Municipal Counselor's Office for review and approval. The Municipal Counselor's Office will forward the contract documents to the City Manager for inclusion on the formal docket for final approval or rejection by the City Council. The memorandum to Council shall include the number of RFPs obtained by firms and the number of firms submitting proposals.

Any document may be waived or amended as a part of contract negotiation subject to approval or ratification of the written contract by the City Council. However, should a requirement or document be imposed by law (for example, a grant or federal requirement) then such requirement or document may only be waived as permitted by law. Proposers are hereby further required to bring to the City's attention any exceptions to these requirements in the Proposal.

*End of Request for Proposals
Attachments A, B, and C follow*

SCOPE OF SERVICES

MANAGE THE OKLAHOMA CITY BIKE SHARE PROGRAM

1.1 GENERAL INFORMATION

The City of Oklahoma City Office of Sustainability provides sustainability planning, energy efficiency upgrading, technical recommendations, and outreach services to City departments and Oklahoma City residents and visitors so they can integrate sustainability into decision making for improved economic, environmental and social health.

The purpose of this Request for Proposals is enter into a professional services agreement with a Contractor to manage a bike share program scheduled to launch in spring 2012. The specific items required are set forth in Section 1.3 of this Attachment A.

1.2 BIKE SHARE PROGRAM INFORMATION

1.2.1 – Program structure

The organization selected as the City’s Contractor for the bike share program will work with, report to, and be accountable to the City’s Office of Sustainability. The Contractor will be responsible for overseeing other vendor relationships, including vendors already selected or to be selected for bicycles, kiosks, stations, maintenance, public relations, or other equipment or services.

1.2.2 – Ownership of assets

Bicycles, stations, kiosks, and all other assets acquired for this program with City funding will remain the property of the City of Oklahoma City. The Contractor is authorized to use these assets free of charge and will be responsible for managing and caring for the assets.

1.2.3 – Insurance

The City of Oklahoma City will maintain liability insurance to cover the City’s assets, including the bicycles, stations, kiosks, and other assets acquired for this program with City funding. The Contractor is required to maintain additional insurance, which will be described in the contract.

1.2.4 – Authority

The City of Oklahoma City will retain the authority to provide final approval of program expansion, station locations, membership and user fee schedules, liability waiver and other legal materials, age requirements for users, the sponsorship package, list of advertising opportunities, and selection of vendors or subvendors. The Contractor’s recommendation will be sought in such decisions.

1.2.5 – Contract

The selected Contractor will enter into a contract with the City of Oklahoma City. As such, the Contractor will be subject to all City policies and procedures, including procurement policies. The contract will be an annual contract with an option of up to three renewals, subject to availability of City Council appropriation.

1.2.6 – Hours and season

The program will operate from 5:00 a.m. to 10:00 p.m. daily. Depending on use and weather, the program may close seasonally during the winter.

1.3 SCOPE OF WORK

1.3.1 – Roles and responsibilities

- A. **Financial accountability:** The Contractor is expected to manage all financial transactions involved in the bike share program, including fees from membership, fees from bike use, revenue from advertisements or sponsorships, financial transactions with other vendors (bicycle, station, kiosk, maintenance, service providers, etc.). The Contractor will be responsible for paying for any costs incurred due to theft or vandalism.
- B. **Sponsorships and advertisement sales:** The Contractor is expected to develop a sponsorship solicitation package and list of advertising opportunities, which must be approved by the City’s Office of Sustainability. Sponsorship opportunities may include but are not limited to lead sponsorship, station sponsorship, or event sponsorship, and advertising opportunities may include but are not limited to print material, website, social media, advertising on the bicycles, advertising on the stations, or recognition in news releases or other materials. The Contractor is expected to cultivate, solicit, and maintain sponsors and deliver all benefits included in sponsorship agreements. The targeted amount to be raised through sponsorships and advertisements is at minimum the total program operating expense less revenue generated through membership and user fees. Additional sponsorship and ad revenue will be used for program expansion.
- C. **Partnership/vendors:** The Contractor is expected to create and manage working partnerships with other entities, including vendors, advocacy groups, and other entities with bike share programs.
- D. **Membership:** The Contractor is expected to solicit and manage membership, including the membership database (capability included in software); payments/billing of membership fees, deposits, and user fees through website, kiosks, and/or other means (capability included in software); membership discounts or promotions (capability included in software); issuing membership cards (capability included in software); customer service; and providing a customer service telephone hotline during business hours. Note that, through August 1, 2012, software fees will be paid by the City. After August 1, 2012, software fees will be paid by the Contractor with revenue generated through membership fees, user fees, sponsorships, and ad sales.
- E. **Stations:** The City will determine the locations of the initial six bike share stations and work on revocable permits and station installation in fall and winter 2011/2012. Upon selection of a Contractor, the Contractor is expected to take responsibility for these activities. These activities may involve cooperation with property owners, the City Office

of Sustainability, other City departments, design review commissions, planning commission, City Council, and other community organizations. For future expansion of the bike share program, the Contractor will develop a proposal for locations that will be approved by the City. A third-party consultant may or may not be used for an expansion proposal.

- F. **Maintenance:** The Contractor will be responsible for maintenance of equipment and materials, both directly and through third-party vendors. Direct maintenance responsibilities include monitoring stations daily; maintaining stations, including kiosks, solar panels, wireless access, locking mechanisms, and video monitors if applicable; and addressing any issues caused by vandalism or theft. The University of Central Oklahoma has been engaged as a vendor for maintenance of bicycles, including problems incurred through vandalism, on a fee for service basis. Contractor will be responsible for coordinating needed service from the maintenance vendor. Note that, through August 1, 2012, maintenance fees up to \$40,000 will be paid by the City. After August 1, 2012, maintenance fees will be paid by the Contractor with revenue generated through membership fees, user fees, sponsorships, and ad sales.
- G. **Promotion:** Downtown OKC, Inc. has contributed to development of promotional materials, including a logo, color selection, and supplementary graphics. The Contractor is expected to continue collaboration with Downtown OKC as a supporter and stakeholder of the program. The Contractor will be responsible for full promotion of the program, including website, media, social media, print materials, and events, such as tours, workshops, or organized rides. High quality promotion will be critical to the success of the bike share program.

1.3.2 – Reporting

The Contractor shall report to the City’s Office of Sustainability on a monthly and quarterly basis. The monthly report will include a request for payment and performance metrics, including but not limited to number of members/users, number of rides, number of maintenance issues, and average percentage of bikes available to members/users during operating hours. The quarterly report will include a narrative on the program’s successes, challenges, and lessons learned; a financial report, including a budget to actual variance report; and copies of any publication, advertisement, or other work product, or the program for any seminar or meeting funded in whole or in part under this project. Additional reporting requirements may be included in the contract.

Attachment B

SPECIAL PROVISIONS RELATING TO WORK FUNDED UNDER AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009 (May 2009)

Preamble

The American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, (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. Recipients shall use grant funds in a manner that maximizes job creation and economic benefit.

The 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.

Recipients should begin planning activities for their first tier subrecipients, including obtaining a DUNS number (or updating the existing DUNS record), and registering with the Central Contractor Registration (CCR).

Be advised that Recovery Act funds can be used in conjunction with other funding as necessary to complete projects, but tracking and reporting must be separate to meet the reporting requirements of the Recovery Act and related guidance. For projects funded by sources other than the Recovery Act, Contractors must keep separate records for Recovery Act funds and to ensure those records comply with the requirements of the Act.

The Government has not fully developed the implementing instructions of the Recovery Act, particularly concerning specific procedural requirements for the new reporting requirements. The Recipient will be provided these details as they become available. The Recipient must comply with all requirements of the Act. If the recipient believes there is any inconsistency between ARRA requirements and current award terms and conditions, the issues will be referred to the Contracting Officer for reconciliation.

Definitions

For purposes of this clause, 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.

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.

Recipient means any entity that receives Recovery Act funds directly from the Federal government (including Recovery Act funds received through grant, loan, or contract) other than an individual and includes a State that receives Recovery Act Funds.

Special Provisions

A. Flow Down Requirement

Recipients must include these special terms and conditions in any subaward.

B. Segregation of Costs

Recipients 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.

C. 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.

D. 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.

E. 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.

F. 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:

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 grand jury, the head of a Federal agency, or their representatives information that the employee believes is evidence of:

- gross management of an agency contract or grant relating to covered funds;
- a gross waste of covered funds;
- a substantial and specific danger to public health or safety related to the implementation or use of covered funds;
- an abuse of authority related to the implementation or use of covered funds; or
- 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.

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:

- Order the employer to take affirmative action to abate the reprisal.

- 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.

- 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.

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.

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.).

G. Reserved

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.

