

COUNCIL ACTION FORM

SUBJECT: APPROVAL OF STATE ENERGY PROGRAM CONTRACT

BACKGROUND:

In May, Council authorized staff to apply for funds through the State Energy Program for the following three projects: Downsizing pumps and motors in water wells, converting light fixtures to LED at Resource Recovery, and replacing heat pumps at Electric Distribution.

On June 7th, staff received notice that \$63,000 had been awarded to complete these three projects, as follows:

Location	Project	Grant Funds	City Funds	City Funds Source
Resource Recovery	Convert 148 Fluorescent/Metal Halide Lights to LED	\$30,000	\$30,000	11/12 RRP Operating Budget
Water Wells	Downsize pumps and motors on water wells 18, 20, and 21	\$25,000	\$25,000	12/13 Water CIP
Electric Distribution Warehouse	Replace three heat pumps	\$8,000	\$8,000	12/13 Electric Distribution Operating Budget

The three projects identified would likely need to be completed in the next few years as part of routine upgrades and efficiency projects already programmed into the Capital Improvements Plan.

The funding source for these grants is the American Recovery and Reinvestment Act, which requires compliance with certain provisions such as Buy American, Davis-Bacon prevailing wages, and other restrictions. Staff has worked with similar requirements before and is prepared to meet the compliance and reporting requirements involved. Staff intends to commence work on these projects as quickly as possible due to the tight time constraints imposed by the contract. The grant program requires that the City match the grant funds at least 1:1.

ALTERNATIVES:

1. Approve the contract with the Iowa Economic Development Authority for State Energy Program funds.

2. Do not approve a contract with the Iowa Economic Development Authority.

MANAGER'S RECOMMENDED ACTION:

These projects are already planned to occur at some time in the near future. These grant funds will allow the City to reduce the cost to the City's utility ratepayers and to complete these projects now, thus allowing the energy savings to be realized earlier than would otherwise occur.

Therefore, it is the recommendation of the City Manager that the City Council adopt Alternative No. 1, thereby approving a contract with the Iowa Economic Development Authority for State Energy Program Funds.

STATE ENERGY PROGRAM GRANT SUB-RECIPIENT CONTRACT

This State Energy Program Grant Sub-recipient Contract is between the Iowa Economic Development Authority (IEDA), an agency of the State of Iowa, and the Sub-recipient (SR) identified in the attached Term Sheet. The parties agree as follows.

1. **Purpose.**

1.1 IEDA Energy Division (formerly the Office of Energy Independence), has received a State Energy Program (SEP) grant from the United States Department of Energy, Award No. DE-EE000162, to fund energy efficiency and renewable energy improvements for public sector, private sector, and non-profit facilities.

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

2. **Incorporation of documents.**

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

.A Funding Opportunity Announcement, State Energy Program Formula Grants, American Recovery and Reinvestment Act, Funding Opportunity Number DE-F0A-0000052, dated April 24, 2009;

.B IEDA's grant application; and

.C Assistance Agreement for Award No. DE-EE000162 between the United States Department of Energy and IEDA, 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.** IEDA 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.** IEDA 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 IEDA 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.** IEDA 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, IEDA may withhold paying all or a portion of the invoices if SR has failed to comply with this contract, including any problems identified during IEDA's monitoring of SR's performance.

4.7 **Recovery of reimbursed funds.** If IEDA 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 IEDA. IEDA 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, IEDA 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, IEDA 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, IEDA 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 IEDA.

5.8 **Recovery Act reporting requirements.** Under Section 1512 of the Recovery Act, IEDA, 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 IEDA:

- .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 award; 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. Refer to Item 5 of Exhibit A of this document for detailed reporting requirements and submittal deadlines.

.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.

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. Refer to Item 5 of Exhibit A of this document for detailed reporting requirements and submittal deadlines.

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 IEDA.

.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, IEDA 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 **Omitted.**

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, and 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, IEDA 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.

http://www1.eere.energy.gov/recovery/buy_american_provision.html

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 IEDA 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 IEDA 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 IEDA 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 (to include DOE) (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. Further, SR will notify IEDA 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 sub award or subcontract. A complete list of flow-down requirements will be provided under a separate correspondence and may be found on the IEDA resource website: <http://www.energy.iowa.gov/ARRA09/Resources.html>

6. Monitoring activities.

6.1 IEDA and DOE 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 IEDA.** IEDA 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 IEDA determines that SR made a statement, representation, warranty, or certification that is materially false, deceptive, incorrect, or incomplete.

7.2 **Termination on notice by IEDA.** Following 30 days written notice, IEDA 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, IEDA 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 IEDA.** IEDA 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, IEDA 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, IEDA 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, IEDA may seek damages due to the breach or failure to comply with the terms of the contract.

7.5 **Termination by IEDA 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, IEDA 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 IEDA 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 IEDA's authorization to operate is withdrawn or there a material alteration in the programs administered by IEDA;

.E if IEDA's duties are substantially modified.

7.6 **SR's remedies if IEDA terminates the contract due to lack of funds or change in law.** If IEDA 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 IEDA's notice of termination for any reason allowed under this contract, SR must:

.A cease all work under this contract except any work that IEDA directs SR to perform;

.B comply with IEDA's instructions for the timely transfer of any active files and related work product; and

.C cooperate in good faith with IEDA during the transition period between the notification of termination and the substitution of any replacement contractor.

7.8 **Set off.** Should IEDA 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 IEDA.** SR must indemnify the State of Iowa and IEDA 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 IEDA 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 IEDA 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. Notwithstanding the above, in the event the SR is a state-level agency in Iowa and the dispute cannot be resolved after a reasonable negotiation, the parties shall, pursuant to Iowa Code section 679A.19, submit the dispute to a board of arbitration of three members. The board of arbitration shall be composed of one member appointed by IEDA, one member appointed by the SR and one member appointed by the governor. The decision of the arbitration board shall be final.

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 IEDA 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 IEDA 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.

IOWA ECONOMIC DEVELOPMENT AUTHORITY

By: _____
Deborah V. Durham, Director

CITY OF AMES

By: _____
Ann Campbell, Mayor

APPROVED AS TO FORM

Douglas R. Marek
City Attorney

TERM SHEET

1. **Sub-recipient.** City of Ames is the Sub-recipient (SR). SR is a State of Iowa Municipal Corporation.
2. **Date of signing contract.** The parties have signed this contract on _____, 2012.
3. **Term.** The term of this contract is from June 4, 2012, through August 31, 2012, unless the contract is terminated in accordance with this contract.
4. **Notice addresses.** Whenever this contract requires a party to send notice or other communication to the other, the party must send that notice to following addresses:

If to IEDA: Iowa Economic Development Authority
Attn: SEP Program Manager
200 East Grand Avenue
Des Moines, IA 50309

If to SR: City of Ames
Attn: Brian Phillips, Project Coordinator
515 Clark Avenue
Ames, Iowa 50010

E-mail Address: b.phillips@city.ames.ia.us
Phone Number: 515-239-5101

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 Ames

Address: 515 Clark Avenue
Ames, IA 50010

County: Story County

Project Title: Energy Efficiency Retrofits

Contract # SEP 11- 45093

2. Project Description/Scope of Work:

SR will install three 40 HP premium efficiency vertical hollow shaft (VHS) motors and ancillary equipment in city groundwater wells.

SR will replace 148 lights at the Resource Recovery System with 143 new LED lights and fixtures.

SR will replace three heat pumps at the Electric Distribution Facility with high efficiency units of 15 SEER and 9 HSPF or greater.

3. Award amount: \$63,000 **Match Amount:** \$ 63,000

Type Award: Grant

Project Start Date: June 4, 2012

Project Completion Date: August 31, 2012

4. Financial Procedures and payment schedule:

a. Payment and invoicing procedures: IEDA will pay SR consistent with the payment schedule identified below and paragraph 4 of this contract. To be paid, SR must provide IEDA 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.

5. Performance Measures, Acceptance Criteria and Payment Schedule:

Task	Completion Date	Performance Measures	Acceptance Criteria
Measures in place to comply with contract requirements	June 30, 2012	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. No adverse effect to historic property.
Complete bid specifications	June 30, 2012	Bid documents completed.	Bid documents completed.
Purchase equipment	July 30, 2012	Equipment ordered.	American-made equipment delivered to site.
Installation	July 30, 2012	SR will install three 40 HP premium efficiency VHS motors and ancillary equipment in city groundwater wells. SR will replace 148 lights at the Resource Recovery System with 143 new LED lights and fixtures. SR will replace three heat pumps at the Electric Distribution Facility with high efficiency units of 15 SEER and 9 HSPF or greater.	Equipment installed per code and industry standard. System must be operational and inspected.
Final Report	August 31, 2012	Final report completed.	All documentation submitted to IEDA. See Section 6b below for final report requirements.

**Some products are exempt from the Buy American provisions; please refer to the following website: www.energy.iowa.gov or http://www1.eere.energy.gov/recovery/buy_american_provision.html for a complete listing of approved categorical exemptions.*

Payment will be based on a cost reimbursement schedule with invoices and match documentation provided. The final payment invoice will be provided within 30 days after the project end date of August 31, 2012.

6. Recovery Act compliance.

a. Compliance with Davis-Bacon.

- The Davis-Bacon Act wage decision for the county or counties in which construction occurs will correspond to the effective date of this contract. IEDA 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, all SRs must submit a Weekly Certified Payroll on a Form WH347 to IEDA at <https://www.iowagrants.gov/index.do>
- In addition, non-governmental SRs must submit the originally signed certified payroll to the Iowa Economic Development Authority each week.
- Governmental SRs 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 25th 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 IEDA 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 IEDA.
 - SR agrees to provide IEDA 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.

Report	Due no later than
Weekly Certified Payroll (Form WH347):	6:00 p.m. each Friday of each week during construction
Monthly Recovery Act and Progress Reports:	The 25 th 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. IEDA’s receipt of reports is no waiver.

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