

STATE OF GEORGIA;
COUNTY OF FULTON:

No. One of Two
Executed Original Counterparts



**GEORGIA ENVIRONMENTAL FACILITIES AUTHORITY (GEFA)
PROFESSIONAL SERVICES AGREEMENT
CONTRACT NO. ECM-____-____**

THIS PROFESSIONAL SERVICES AGREEMENT (hereinafter referred to as "Agreement") entered into this ____ day of _____, 2010, by and between the **GEORGIA ENVIRONMENTAL FACILITIES AUTHORITY**, (hereinafter referred to as "GEFA" or "Owner") with an office at 233 Peachtree Street NE, Harris Tower, Suite 900, Atlanta, Georgia 30303; and _____, ("Service Provider") whose address is _____, Georgia _____.

WITNESSETH:

WHEREAS, the U.S. Department of Energy's ("DOE") State Energy Program ("Federal Program"), established pursuant to various federal laws, provides grants for states to design and carryout renewable energy and energy efficiency programs; and

WHEREAS, GEFA administers the Federal Program through the Georgia State Energy Program (hereinafter "Georgia SEP") by funding renewable energy and energy efficiency projects in the State of Georgia (hereinafter "Projects"); and

WHEREAS, pursuant to O.C.G.A. § 50-23-32, the Division of Energy Resources of GEFA is authorized to, among other things, administer federal programs, accept and disburse federal, state and private grant funds for energy related matters, and enter into contracts for such purposes; and

WHEREAS, GEFA requires professional services related to design and contract administration of the (Insert name of Project) as described in the Service Provider's Proposal dated (Insert date of Proposal), attached hereto as Exhibit A and incorporated herein by reference (hereinafter referred to as the "Services"); and

WHEREAS, the Service Provider is qualified and desires to perform the required professional services for design and contract administration;

NOW, THEREFORE, GEFA and the Service Provider, in consideration of the premises and the mutual promises and benefits flowing each to the other as hereinafter stated, agree as follows:

1) PROFESSIONAL SERVICES, SCOPE OF WORK, REQUIREMENTS

a. Scope of Design and Contract Administration Services. Service Provider agrees to perform the professional services for design and contract administration of the (Insert name of Project), as described in the Contractor's Proposal dated (Insert Date), attached hereto as **Exhibit A** and incorporated herein by reference ("Services").

i. The Service Provider agrees that all drawings and specifications for engineering services shall be performed by registered professionals in his own organization, or the Service

Provider agrees to employ without additional cost to the Owner, the services of registered professionals regularly engaged in delivering such professional services. Design and construction documents so prepared shall bear the stamp of responsible registered professionals.

ii. The Service Provider shall furnish to the Owner copies of drawings and specifications produced in accordance with Exhibit A in a form suitable for the preparation of bids as the Owner directs.

b. Construction Contract Administration Services General Requirements. In addition to the design services, Service Provider agrees to perform construction contract administration services which shall consist of on-site observation, evaluation, documentation and supervision of the construction work to ensure that the Project is completed in compliance with all applicable laws, codes, plans specifications, and the construction contract.

i. The Service Provider shall have the authority and shall be required to enforce performance of the construction contract. The Service Provider shall have the power to (a) immediately condemn actions, work, or materials known by him to be in violation of the construction contract (b) issue a stop work order to ensure rigid compliance with the applicable laws and codes and to ensure adequate superintendence on the job site, and (c) remove any unskilled workmen from the job.

ii. The Service Provider shall make periodic observations and evaluations of the work performed pursuant to the construction contract ("Work"). The Service Provider shall inspect the Work to ensure that it is installed in accordance with the construction contract. The Service Provider shall have the duty and the authority to approve or reject the materials, equipment and apparatus used to complete the Work.

iii. The Service Provider shall review all payment applications submitted by the contractor pursuant to the construction contract. The Service Provider shall certify that the work has been completed in accordance with the construction contract before the payment application is submitted to the Owner for payment.

2) **AMERICAN RECOVERY AND REINVESTMENT ACT.** The Contractor shall carry out the Services in accordance with the special provisions of the American Recovery and Reinvestment Act of 2009 ("ARRA"), attached hereto as Exhibit "B" and by this reference incorporated herein. In the event of conflict, the provisions in Exhibit "B" shall take precedence over any conflicting terms in this Agreement or in the scope of work in Exhibit "A".

3) **AMOUNT OF STATED COST OF LIMITATION. \$.00.** The Service Provider agrees that he will design this Project such that the lowest responsible and responsive bid will not exceed the Stated Cost Limitation, however budgetary limitations shall not be a justification for the breach of sound design principles. In the event that the Service Provider cannot design the work within the Stated Cost Limitation he shall give written notice to the Owner immediately.

4) **TERM.** The term of this Agreement will begin on _____ (hereinafter referred to as "Effective Date") and continue until project completion, but no later than _____, (hereinafter referred to as "Termination Date"), unless terminated earlier under the provisions of this Agreement.

5) **TERMINATION.**

a. **Termination for Convenience.** GEFA may at any time, and for any reason or without any reason or cause, terminate this Agreement by written notice to the Service Provider specifying the termination date, without cause and irrespective of whether or not Service Provider is in default of any of its obligations hereunder. The effective date of termination shall not be earlier than seven days from the date of written notice. In this event, the Service Provider shall be entitled to just and equitable compensation for any satisfactory work completed less set off for expense incurred by GEFA as a result of early termination.

b. Termination for Cause. In the event that any provisions of this Agreement are violated by the Service Provider, GEFA may terminate this Agreement by serving written notice to the Service Provider that it is in default and specifying the termination date of the Agreement. GEFA, in its sole discretion, may elect to grant a cure period, but it is not obligated to do so. In the event of such a termination, GEFA shall not have any further obligation whatsoever to Service Provider as of the effective date of the termination. In addition to the basis for termination set forth previously, GEFA may terminate this Agreement, in whole or in part, immediately, without notice, if: (a) GEFA deems that such termination is necessary to prevent or protect against fraud or otherwise protect the health, life, or property of GEFA, the State of Georgia or the general public; or (b) Service Provider is convicted of any crime or offense, fails or refuses to comply with the written policies or reasonable directives of GEFA, is guilty of serious misconduct in connection with performance hereunder, or breaches any material provisions of this Agreement.

c. Termination by Service Provider. Service Provider may terminate this Agreement, with or without cause, upon 30 days written notice to GEFA.

6) FEES. GEFA shall pay the Service Provider a Fee in an Amount Not-To-Exceed **Dollars (\$0.00)** for completion of the Services contemplated under this Agreement. Funding for the Project is subject to the availability of funds from the DOE. If funding for the Project becomes unavailable, the contract will be terminated pursuant to Paragraph 5(a) above.

7) REIMBURSABLE EXPENSES. During the term of this Agreement, the Service Provider shall bill and GEFA shall reimburse Service Provider for reasonable and ordinary pre-approved out-of-pocket expenses which are incurred in connection with the performance of the Services hereunder, as long as GEFA's prior approval is obtained prior to incurring the expense. GEFA will not make reimbursement for expenses that are not pre-approved by GEFA. Transportation, living expenses, reproduction costs, courier services, and long distance telephone charges shall not be reimbursable unless expressly approved in advance in writing by GEFA. If reimbursable travel expenses are approved in advance in writing by GEFA, such reimbursable expenses will be paid in accordance with the State travel regulations issued by the State Auditor, a copy of which is available at: <http://www.audits.state.ga.us/internet/nalgad/trvlpg.html> and are incorporated herein by reference and made a part of this Agreement.

8) PAYMENT. Service Provider shall submit an invoice at the beginning of each month for Services provided in the immediate preceding month. Payment shall be made by GEFA upon determination that all Services required by the contract, including reporting requirements of various categories and kinds of information, for the period have been provided.

9) ADDITIONAL SERVICES. The parties agree that additional services may be required with the compensation to be agreed upon prior to the Service Provider undertaking the additional services; provided, however, that if such compensation cannot be agreed, the additional services shall be performed at the hourly rates set forth listed in **Exhibit C**, plus reimbursable expenses, with a limitation as to maximum amount specified.

10) INSTRUMENTS OF SERVICE.

a. Definition of Instruments of Service. Instruments of Service are those drawings, specifications and other documents, including those in electronic form, prepared by the Service Provider or his consultants, engineers, or designers. In recognition of the public ownership of the Project, the Service Provider and his consultants, engineers and designers agree and shall be deemed to have prepared their respective Instruments of Service as architectural and engineering works and as works for hire as defined in 17 U.S.C. §§102(a)(8) and 201(b), thereby transferring and vesting pursuant to 17 U.S.C. §201(d) all common law, statutory and other reserved rights, including copyrights in the Instruments of Service and in the buildings, improvements and structures constituting the Project in the Owner.

b. Copyright. Upon execution of the Contract, the Service Provider expressly grants, assigns, transfers and otherwise quitclaims to the Owner, its successors and assigns, pursuant to 17

U.S.C. §201(d), all common law, statutory and other reserved rights, including copyrights in both the Instruments of Service and in the buildings, improvements and structures embodying the architectural and engineering works that constitute the Project, provided that the Owner shall comply with all obligations, including prompt payment of all sums when due, under this Contract. The Service Provider shall obtain similar grants, assignments, transfers and quitclaims from his consultants, engineers and designers consistent with this Contract. The Service Provider warrants (and shall cause each of the Service Provider's subcontractors, consultants, engineers and designers to also warrant) that this transfer of copyright and other rights is valid against the world.

- c. License to Service Provider.** Notwithstanding the rights, ownership, grants, assignments, transfers and quitclaims set forth in paragraphs 10(a) and (b) of this Article above, GEFA expressly grants, assigns and transfers a permanent and exclusive license to the Service Provider, and its successors and assigns, for the Service Provider's Instruments of Service, and to each Service Provider (including the Service Provider's successors and assigns) of the Service Provider for such Service Provider's instruments of service, to use, reproduce, sell, transfer and accomplish derivative works therefrom, for any and all purposes.
- d. Release of Liability.** GEFA agrees and hereby forever releases the Service Provider from all liabilities that might arise from the GEFA's use of the Instruments of Service for any alterations, additions, subtractions, or modifications of the Instruments of Service or of the buildings, improvements and structures of the Project resulting therefrom, or for use in other projects; provided, however, that this release does not apply to liabilities arising from the original Instruments of Service and the buildings, improvements and structures of the Project that have not been altered, added to, subtracted from, or modified subsequent to completion of construction of the Project by GEFA, its successors or assigns.
- e. Use of Instruments of Service.** Except for the licenses granted in this Article, no other license or right shall be deemed granted or implied under this Contract. GEFA permits and authorizes the Contractor, subcontractors, sub-subcontractors and material or equipment suppliers to reproduce applicable portions of the Instruments of Service appropriate to and for use in their execution of the Work.

11) PROFESSIONAL STANDARDS. The Service Provider warrants that it is possessed of that degree of care, learning, skill, and ability which is ordinarily possessed by other members of his profession ("Professional Standard of Care.") The Service Provider warrants it shall exercise the Professional Standard of Care in the performance of all professional services under this Contract.

12) DESIGN WARRANTY AND INDEMNITY.

- a. Design Warranty.** The Service Provider warrants to the Owner that the Services provided for the Project shall reasonably meet the intent of the Project, shall be consistent with sound design principles commonly used by Service Providers under similar circumstances, and the resulting design shall be constructible. The Service Provider further warrants to the Owner that the equipment specified by the Service Provider meets industry standards. The Service Provider acknowledges and agrees that GEFA does not undertake to approve or pass upon matters of professional judgment and that GEFA, therefore, assumes no responsibility for such. The Service Provider acknowledges and agrees that GEFA approval or acceptance of the Service Provider's design, supervision and/or work product is limited to the function of determining whether there has been compliance with GEFA's instructions. GEFA does not undertake to inquire into the adequacy, fitness or correctness of engineering or architectural design or other work product. The Service Provider agrees that no approval of plans and specifications or other work product by any person, body, or agency shall relieve the Service Provider of its responsibility for the adequacy, fitness, suitability and correctness of the Service Provider's Services and for supervising any construction or installation (if required and authorized under this Agreement) in accordance with sound accepted professional principals.
- b. Professional Services Indemnity.** The Service Provider shall indemnify, release, and hold harmless the Owner, its officers, members, employees, and agents, from and against all

liability, damages, costs, expenses (including reasonable attorney's fees and expenses incurred by the Owner and any of the Owner's officers, members, employees or agents), claims, suits and judgments to the extent arising or resulting from a negligent act, error, or omission in the performance of professional services under this Contract or the failure to exercise the Design Professional's Standard of Care.

- c. **Non-Professional Services Indemnity.** The Service Provider shall indemnify, release and hold GEFA, its officers, members, employees and agents, harmless from and against all liability, damages, costs, expenses (including reasonable attorney's fees and expenses incurred by GEFA and any of GEFA's officers, members, employees or agents), claims, suits and judgments to the extent arising from any non-professional services and activities of Service Provider under this agreement, which would not be considered Professional Services, and involve bodily injury or property damage, provided, however, GEFA shall not be indemnified for the results of its sole negligence or in the case of multiple negligence for the share caused by GEFA 's negligence.

13) INSURANCE. Service Provider shall obtain insurance for the Project in accordance with the terms below and submit proof of coverage to GEFA:

- a. **Service Provider's Professional Liability (Errors and Omissions) Insurance.** Service Provider shall obtain Professional Liability Insurance that is applicable to the Services being provided. If there is no applicable Professional Liability Insurance, the Service Provider shall obtain commercial general liability coverage. Limits shall not be less than \$1,000,000 per claim and \$1,000,000 in aggregate coverage. All coverage shall not exceed a maximum of \$25,000 deductible per claim. If demanded in writing by the insurer, the deductible limit may, with the Owner's approval, be increased to an amount not in excess of the limit established for the Service Providers under the usual deductible guidelines of the insurer.
- b. **Service Provider's Worker's Compensation and Employer's Liability.** Service Provider shall obtain statutory coverage plus Employer's liability in the minimum amount of \$1,000,000 per occurrence.
- c. **Service Provider's Commercial General Insurance.** Service Provider shall obtain commercial general liability insurance. Coverage shall be a minimum of \$1,000,000 per person and \$1,000,000 per occurrence, with Commercial General Umbrella coverage of \$3,000,000 per occurrence.

14) CONFIDENTIALITY AND OPEN RECORDS. No reports, information or material given to or prepared by the Service Provider under this Agreement shall be made available to any person by the Service Provider without the prior written approval of GEFA. Service Provider acknowledges and agrees that all documents collected or produced for use by a private person, firm, or corporation pursuant to a contract or other agreement or understanding with any governmental entity, including Owner, are public records and are subject to disclosure under the Open Records Act (see O.C.G.A. 50-18-70). The Open Records Act makes it mandatory that any contract with a private person, firm, or corporation provide for the inspection or copying of public records within three business days of the receipt of an open records request. Details and procedures, including permissible exemptions and the means of claiming such exemptions, are contained in the Act. Service Provider acknowledges that non-compliance with the Act may constitute a criminal act. Service Provider must promptly advise Owner in writing within 24 hours of a request for records falling under the Act. Failure to comply with the Act is a material breach of this Contract which may result in termination for cause.

15) ACCESS AND AUDIT. GEFA shall have access to any pertinent books, documents, papers, and records of the Contractor for the purpose of making audits. Records of reimbursable expenses and expenses pertaining to services performed shall be kept on the basis of generally accepted accounting principles and shall be available to GEFA at mutually convenient times, but in no event more than seventy-two (72) hours after a written request from GEFA.

- 16) INSPECTIONS AND MONITORING.** GEFA, DOE and their agents, shall have the right to inspect the physical location of any Project undertaken pursuant to this Agreement. Inspections will be conducted during regular business hours.
- 17) CAPTIONS.** The caption of each numbered provision hereof is for identification and convenience only and shall be completely disregarded in construing this Agreement.
- 18) TIME OF THE ESSENCE.** All time limits stated herein are of the essence. A reference to day, month or year shall mean calendar day, month or year.
- 19) NOTICE.** Any notice (the word “notice”, as used herein shall include, but not be limited to, statements, demands, requests, consents, approvals and authorizations) hereunder given by either party to the other party shall be in writing and shall be sent by United States Certified Mail, return receipt requested, postage prepaid, addressed to the party to be notified as follows:

In case of GEFA, to:

Phil Foil
Executive Director
Georgia Environmental Facilities Authority
233 Peachtree Street
Harris Tower, Suite 900
Atlanta, Georgia 30303

In case of the Service Provider, to:

(Insert Name and Address)

The sender of such notice shall require the United States Postal Service to “show to whom, date and address of delivery” of said notice. The day upon which any such notice is so mailed shall be treated as the date of service. Either party may from time to time by notice to the other party designate a different address to which notices shall be sent.

- 20) DRUG FREE WORKPLACE.** The Service Provider acknowledges that it is fully aware of the contents and requirements of Chapter 24 of Title 50 of the Official Code of Georgia. The Service Provider does hereby certify that it and its subcontractors are in compliance with the aforesaid code section.
- 21) ASSIGNMENT.** Service Provider shall not transfer or assign all or any of its right, title or interest in this Agreement or delegate any of its duties or obligations hereunder without the prior written consent of GEFA.
- 22) NO AGENCY.** This Agreement shall not be construed as making either party the agent of the other, or as creating a partnership, joint venture or similar relationship between the parties, and neither party shall have the power to obligate or bind the other party in any manner whatsoever. Neither party shall represent to third parties that it is an agent, partner or joint venture with the other party.
- 23) PROHIBITION AGAINST CONTINGENT FEES.** As required pursuant to O.C.G.A. §50-22-6(d), the Service Provider warrants that he has not employed or retained any company or person, other than a *bona fide* employee working solely for him, to solicit or secure this contract and that he has not paid or agreed to pay any person, company, corporation, individual or firm, other than a *bona fide* employee working solely for him, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or the making of this Contract.
- 24) CONFLICTS OF INTEREST.** The Service Provider acknowledges and certifies that the provisions of O.C.G.A. 45-10-1 *et seq.* concerning conflicts of interest and prohibitions of certain state officials and employees dealing with state agencies have not been and will not be violated.

- 25) **ENVIRONMENTAL AND HISTORIC PRESERVATION LAWS.** The Service Provider shall comply with all applicable Federal, State, and local environmental and historic preservation (EHP) requirements and shall provide any information requested by the DOE, or other awarding Federal agency, to ensure compliance with applicable laws including, but not limited to: the National Environmental Policy Act, the National Historic Preservation Act, Endangered Species Act, the Clean Air Act, the Federal Water Pollution and Control Act, and Executive Orders on Floodplains (11988), Wetlands (11990) and Environmental Justice (12898). The Contractor shall cause this or a similar provision to be a part of all contracts entered into by Contractor concerning the Project.
- 26) **IMMIGRATION REFORM COMPLIANCE.** The Service Provider hereby certifies its compliance with the Immigration Reform and Control Act of 1986 (IRCA), D.L. 99-603 and the Georgia Security and Immigration Compliance Act OCGA 13-10-90 *et seq.* Service Provider certifies that it has registered at <https://www.vis-dhs.com/EmployerRegistration> to verify information of all newly hired employees in order to comply with the Immigration Reform and Control Act of 1986 (IRCA), D.L. 99-603 and the Georgia Security and Immigration Compliance Act. Service Provider further certifies that it shall execute any affidavits required by the rules and regulations issued by the Georgia Department of Labor set forth at Rule 300-10-1-.01 *et seq.* Service Provider warrants that it has included a similar provision in all written agreements with any subcontractors engaged to perform services under this Agreement.
- 27) **SEVERABILITY.** If any provision of this Agreement should be ruled void or unenforceable or contrary to public policy by any court, then the remaining part of such provision and all other provisions of this Agreement shall survive and be enforceable, and any invalid portion shall be construed or reformed to preserve as much of the original words, terms, purpose and intent as shall be permitted by law.
- 28) **ENTIRETY.** The making, execution and delivery of this Agreement have been induced by no representations, statements or warranties other than those herein expressed. This instrument embodies the entire understanding of GEFA and Service Provider and there are no further or other agreements or understandings, written or oral, in effect between GEFA and Service Provider, relating to the subject matter hereof. This Agreement may be amended or modified only by a written instrument of equal formality signed by both GEFA and Service Provider.
- 29) **GEORGIA LAW.** This agreement will be governed, construed, performed and enforced in accordance with the laws, other than the choice of law provisions, of the State of Georgia.
- 30) **ROLE OF GSFIC.** The Georgia State Financing and Investment Commission (“GSFIC”) shall act as the agent for GEFA in all matters related to the administration of this Agreement. GSFIC in consultation with GEFA shall be responsible for the evaluation and approval of all payments, decisions and actions required to properly deliver the product required by this Agreement.

IN WITNESS WHEREOF, GEFA and Service Provider, acting by and through their duly authorized representative, have signed, sealed and delivered these presents the day, month and year first above written.

GEFA:

Service Provider:

**GEORGIA ENVIROMENTAL FACILITIES
AUTHORITY**

(INSERT NAME)

Printed Name: Phil Foil

Printed Name: _____

Title: Executive Director

Title: _____

By: _____

By: _____

EXHIBIT A
SCOPE OF SERVICES

[INSERT SCOPE OF SERVICES]

[INSERT REQUIREMENTS FOR SUBMISSION OF PROGRAM STATUS REPORTS TO GEFA]

Reports shall be submitted in accordance with the *Instructions & Guidance for Quarterly Reporting: State Energy Program Contracts*, attached hereto as Attachment 1 to Exhibit A, and incorporated herein by reference.

EXHIBIT A: ATTACHMENT I

**INSTRUCTIONS AND GUIDANCE FOR QUARTERLY PROGRAM STATUS
REPORTING: SEP AWARDS**

All contractors receiving funding from the State Energy Program must submit quarterly reports describing progress towards the milestones set forth in Exhibit A: Scope of Services. Project milestones are negotiated at the beginning of the contract and remain consistent throughout the term of the award. Each quarter, the contractor indicates the number of steps taken toward completion. Together these steps added across all four quarters should meet or exceed the number of activities planned as indicated in the quarterly report (Program Status Report - PSR). These should be submitted no later than fifteen days after the end of each quarter as indicated in each contract. The dates for FY 2009 and 2010 are as follows:

Q1: Covers: October 1 – December 31; Due: Friday, January 15, 2010

Q2: Covers: January 1 – March 31; Due: Thursday, April 15, 2010

Q3: Covers: April 1 – June 30; Due: Thursday, July 15, 2010

Q4: Covers: July 1 – September 30; Due: Friday, October 15, 2010

Occasionally a project will become inactive for a period of time. If this is the case, and there have not been any invoices submitted for activity that quarter, please submit an email indicating the project title and grant number noting “no activity,” in lieu of a quarterly report.

In addition to the Program Status Reports described in this section, all contractors are required to complete a separate quarterly report in compliance with Section 1512 of the ARRA. The Section 1512 Reports shall be submitted in accordance with the instructions provided in Exhibit B, Section II, attached hereto, and incorporated herein by reference.

EXHIBIT B
ARRA SCOPE OF SERVICES

SECTION I: GENERAL PROVISIONS

A. The parties shall be guided by and subject to the provisions of ARRA, ARRA-related legislation, and all Federal and State regulations, directives, guidance and circulars issued for the purpose of implementing the ARRA program (hereinafter “ARRA Obligations”);

B. Because some requirements of the ARRA program lack specificity, particularly with regard to, but not limited to, reporting requirements, funding allocations, timeframes and the like, GEFA shall provide Contractor with specific ARRA requirements as they are issued or are otherwise made available to GEFA by the Federal Government, which requirements shall be binding on the Contractor as a condition of the Contractor’s participation in the ARRA program, and as a condition of receipt of funds under the program, PROVIDED:

1. That such additional requirements shall be issued by GEFA in writing in the form of ARRA program guidance, bulletins and/or directives;
2. That such additional requirements shall be issued by GEFA in the most timely and expeditious manner practicable;
3. That such additional requirements shall be reasonably necessary to satisfy the Contractor’s and GEFA’s ARRA Obligations and to realize the purposes of ARRA;
4. That major and material changes in the ARRA program and/or ARRA requirements which substantially affect the Contractor’s and/or GEFA’s ability to fulfill their ARRA Obligations or otherwise serve to create a substantial hardship on either the Contractor or GEFA shall be subject to an amendment to this Agreement;
5. That the parties’ failure to execute a mutually acceptable amendment, as contemplated in subsection B. 4 above, in a reasonable period of time, given the exigencies of the ARRA program, shall result in this Agreement’s being without force and effect subject only to such provisions contained herein as are intended to survive the Agreement in accordance with the express and implied provisions of applicable Federal and State law; and
6. That upon GEFA’s good faith determination, delivered to the Contractor by written notice, that Agreement between the parties to any necessary amendment as contemplated in subsection B. 4 above, cannot be achieved, then this Agreement shall be “closed out” and the funds disposed in accordance with established GEFA procedure and policy and as required under Federal and State law.

C. The Contractor shall, in accordance with such governing laws, charter, articles, bylaws, ordinances, rules and procedures as are applicable to the Contractor, issue resolutions for the approval of this Agreement which may address the unique nature of ARRA program requirements and ARRA Obligations and which may create provisional or conditional authorizations or approvals that are subject to further elaboration and/or determination as contemplated in subsection B. above., to include, but not limited to grant amounts, and such other provisions which may, during the term of this Agreement, be altered or adjusted as a result of actions by the Federal and State Governments in accordance with ARRA and ARRA Obligations. Should the Contractor be obligated under its own procedure to amend or reissue such resolutions as are contemplated herein, it shall provide a copy of such resolution to GEFA as soon as is practicable.

D. For purposes of ensuring full compliance with ARRA and ARRA Obligations, GEFA may initiate special audits, monitoring visits and requests for ARRA program-related information, which Contractor shall provide and/or accommodate in a timely fashion.

E. In the event that Contractor fails to assist and cooperate with GEFA in its oversight functions as provided in subsection D., or should GEFA determine Contractor has not met its obligations under this Agreement, the following may occur:

1. GEFA may issue a written, detailed finding and directive, advising Contractor of its failure to meet its obligations, which directive shall specify a time certain within a reasonable period of time, given the urgency and time constraints associated with ARRA, in which Contractor must be in full compliance with the directive;
2. Should Contractor's fail to comply with the finding and directive in accordance with subsection E. 1 above, GEFA may suspend ARRA program payments to Contractor as provided herein until such time as Contractor is in compliance;
3. Should Contractor dispute GEFA's finding, Contractor shall within 15 days of receipt of the finding deliver a written rebuttal to GEFA which GEFA shall evaluate and respond to within ten days, stating whether the finding shall be revoked, amended or enforced;
4. Any suspension of ARRA payments as provided in subsection E. 2 above shall be conditioned upon GEFA providing the Federal funding agency with copies of its finding(s) and directive(s) together with Contractor's rebuttal(s);
5. Should the Federal funding agency have or be willing to conduct an investigative or review process, the payment suspension shall be in force until such time as the Federal funding agency affirms or recommends or compels reversal of GEFA's finding(s);
6. Contract status and payment obligations disputes which are not resolved to the mutual satisfaction of the parties through the procedures specified in subsections E. 1) to 5) above, shall be resolved in accordance with procedures established for the standard (non-ARRA) GEFA programs under applicable Federal and State law, provided GEFA may, at its option, withhold ARRA program payments until final resolution of the matter as provided in this subsection.

F. The Contractor shall, to the extent practical and feasible, include in all informational materials made available to the general public, including but not limited to newsletters, bulletins, fliers, advertisements, forms and signs, the following phrase: “This project, program or service is funded in whole or in part by the American Recovery and Reinvestment Act of 2009 in cooperation with the Georgia Environmental Facilities Authority.”

F. Separate Accounting

Contractor shall 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. Recovery Act funds can be used in conjunction with other funding sources as necessary to complete projects, but tracking and reporting must be separate to meet the reporting requirements of the Recovery Act and OMB Guidance.

G. Quarterly Reporting

The Contractor should report the following metrics, as applicable, quarterly to GEFA (jobs created and retained apply to all activities):

1. Jobs Created
 - Number
 - Type
 - Duration
2. Jobs Retained
 - Number
 - Type
 - Duration
3. Building Codes and Standards
 - Name of new code adopted
 - Name of old code replaced
 - Percentage of new construction in state covered by new code
4. Building Retrofits
 - Number of buildings retrofitted, by sector
 - Square footage of buildings retrofitted, by sector
5. Clean Energy Policy
 - Number of state alternative energy plans developed
 - Number of state renewable portfolio standards established
 - Number of state interconnection standards established
6. Building Energy Audits

- Number of audits performed, by sector
 - Floor space audited, by sector
 - Auditor's projection of energy savings, by sector
7. Energy Efficiency Rating and Labeling
- Types of energy consuming devices for which energy-efficiency rating and labeling systems were endorsed by the State government, schools, or institutional procurement
 - Number of units purchased, by type (e.g., vehicles, office equipment, HVAC equipment, streetlights, exit signs)
8. Industrial Retrofit Support
- Number of buildings retrofitted, by industry type
 - Square footage of buildings retrofitted, by industry sector
9. Loans, Grants, and Incentives
- Number and monetary value of loans given
 - Number and monetary value of grants given
 - Number and monetary value of incentives provided
10. Renewable Energy Market Development
- Number and size of solar energy systems installed
 - Number and size of wind energy systems installed
 - Number and size of other renewable energy systems installed
11. Tax Credits
- Monetary value of tax credits given, by sector
12. Technical Assistance
- Number of contacts in which energy efficiency or renewable energy measures were recommended, by sector
13. Transportation
- Number of alternative fuel vehicles purchased
 - Number of conventional vehicles converted to alternative fuel use
 - Number of new alternative refueling stations emplaced
 - Number of new carpools and vanpools formed
 - Number of energy-efficient traffic signals installed
 - Number of street lane-miles for which synchronized traffic signals were installed
14. Workshops, Training, and Education
- Number and type of workshops, training, and education sessions held
 - Number of people attending workshops, training, and education sessions

H. Annual Reporting

The Contractor should report the following metrics annually to GEFA:

1. Energy Savings (kilowatt-hour [kWh] equivalents)
 - Annual reduction in natural gas consumption (mmcf)
 - Annual reduction in electricity consumption (megawatt-hour [MWh])
 - Annual reduction in electricity demand (megawatts [MW])
2. Annual reduction in fuel oil consumption (gallons)
 - Annual reduction in propane consumption (gallons)
 - Annual reduction in gasoline and diesel fuel consumption (gallons)
3. Renewable Energy Capacity and Generation
 - Amount of wind-powered electric generating capacity installed (MW)
 - Amount of electricity generated from wind systems (MWh)
 - Amount of photovoltaic generating capacity installed (MW)
 - Amount of electricity generated from photovoltaic systems (MWh)
 - Amount of electric generating capacity from other renewable sources installed (MW)
 - Amount of electricity generated from other renewable sources (MWh)
4. Emissions Reductions (tons of CO₂ equivalents)
 - GHG
 - Criteria air pollutants

EXHIBIT B
ARRA SCOPE OF SERVICES

SECTION II: SECTION 1512 REPORTING REQUIREMENTS: AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009.

A. Section 1512 of the Recovery Act requires reports on the use of Recovery Act funding by GEFA no later than the 10th day after the end of each calendar quarter (beginning the quarter ending September 30, 2009) and for the Federal agency providing those funds to make the reports publicly available no later than the 30th day after the end of that quarter.

B. GEFA is responsible for reporting the information required by Section 1512 of the Act and as provided in any Guidance on the Act, including the Federal Funding Accountability and Transparency Act (FFATA) data elements for the contractors of GEFA required under 1512(c)(4). In addition, GEFA must report three additional data elements associated with any vendors receiving funds from GEFA for any payments greater than \$25,000. Specifically, GEFA must report the identity of the vendor by reporting the D-U-N-S number, the amount of the payment, and a description of what was obtained in exchange for the payment. If the vendor does not have a D-U-N-S number, then the name and zip code of the vendor’s headquarters will be used for identification. Vendors, as defined in the guidance, are not required to obtain a D-U-N-S number.

C. Contractor shall no later than the 5th day after the end of each calendar quarter beginning the quarter ending December 31, 2009), provide GEFA with a report on the use of Recovery Act funding, in accordance with Section 1512 of the Act and as provided in any Guidance on the Act. The report shall cover the contract period of August 1, 2009 through March 31, 2012 and is due:

Quarter Ending	Report Due
December 31, 2009	January 5, 2009
March 31, 2010	April 5, 2010
June 30, 2010	July 5, 2010
September 30, 2010	October 5, 2010
December 31, 2010	January 5, 2011
March 31, 2011	April 5, 2011
June 30, 2011	July 5, 2011
September 30, 2011	October 5, 2011
December 31, 2011	January 5, 2012
March 31, 2012	April 5, 2012

- a. General Requirements. The Contractor report to GEFA shall include the following:
 - 1. Total amount of funds received, and of that, the amount spent on projects and activities;
 - 2. A list of those projects and activities funded by name to include:
 - (a) Description;
 - (b) Completion status; and
 - (c) Estimates on jobs created or retained.
 - 3. Details on sub-awards and other payments.

b. FFATA Data Elements. The Contractor report to GEFA shall also include the FFATA data elements required under Section 1512(c)(4) for payments from GEFA to Contractor. In addition, the Contractor shall report one data element associated with any vendors receiving funds from the Contractor. Specifically, the Contractor must report, for any payments greater than \$25,000, the identity of the vendor by reporting the D-U-N-S number, if available, or otherwise the name and zip code of the vendor’s headquarters. Vendors are not required to obtain a D-U-N-S number.

The specific data elements to be reported by GEFA and Contractor are included in the data dictionary contained in the *Recipient Reporting Data Model*. This document will be published on OMB’s website and www.Recovery.gov as supplemental materials to the January 22, 2009 Guidance. Below are the basic reporting requirements to be reported on prime recipients, recipient vendors, sub-recipients, and sub-recipient vendors. Administrative costs are excluded from the reporting requirements. The basic reporting requirements below may contain multiple data elements as defined in the data dictionary.

Prime Recipient/GEFA

- 1. Federal Funding Agency Name**
- 2. Award identification**
- 3. Recipient D-U-N-S**
- 4. Parent D-U-N-S**
- 5. Recipient CCR information**
- 6. CFDA number, if applicable**
- 7. Recipient account number**
- 8. Project/grant period**
- 9. Award type, date, description, and amount**
- 10. Amount of Federal Recovery Act funds expended to projects/activities**
- 11. Activity code and description**
- 12. Project description and status**
- 13. Job creation narrative and number**
- 14. Infrastructure expenditures and rationale, if applicable**
- 15. Recipient primary place of performance**
- 16. Recipient area of benefit**

- 17. Recipient officer names and compensation (Top 5)**
- 18. Total number and amount of small sub-awards; less than \$25,000**

Recipient Vendor

- 1. D-U-N-S or Name and zip code of Headquarters (HQ)**
- 2. Expenditure amount**
- 3. Expenditure description**

Sub-Recipient/Contractor (also referred to as FFATA Data Elements)

- 1. Sub-recipient D-U-N-S**
- 2. Sub-recipient CCR information**
- 3. Sub-recipient type**
- 4. Amount received by sub-recipient**
- 5. Amount awarded to sub-recipient**
- 6. Sub-award date**
- 7. Sub-award period**
- 8. Sub-recipient place of performance**
- 9. Sub-recipient area of benefit**
- 10. Sub-recipient officer names and compensation (Top 5)**

Sub-Recipient Vendor

D-U-N-S or Name and zip code of HQ

c. Jobs Creation Estimates. The Contractor shall report to GEFA jobs estimates for each project or activity, as required by Section 1512(c)3(D) of the Recovery Act. The final detailed reporting requirements for recipients of grants, cooperative agreements, loans and contracts along with data entry instructions will be posted on www.FederalReporting.gov as explained in federal agency award terms/clauses.

The points below provide an overview of the key requirements and supplemental guidance on reporting the employment impact of the Recovery Act funded work.

- Prime recipients are required to report an estimate of jobs directly created or retained by project and activity or contract. Recipients will be required to report an aggregate number for the cumulative jobs created or retained for the quarter in a separate numeric field. Recipients will also be asked to provide a narrative description of the employment impact. While no change is being made to the actual information required to be reported, the clarification that this information will be collected in two separate fields – one numeric and a text field for the narrative – is an update from previous Recovery Act guidance.
- A job created is a new position created and filled or an existing unfilled position that is filled as a result of the Recovery Act; a job retained is an existing position that would not have been continued to be filled were it not for Recovery Act funding. A job cannot be counted as both created and retained. Also, only compensated employment in the United States or outlying areas should be counted. See 74 FR 14824 for definitions.
- The estimate of the number of jobs required by the Recovery Act should be expressed as “full-time equivalents” (FTE), which is calculated as total hours worked in jobs created or retained divided by the number of hours in a full-time schedule, as defined by the

recipient (see Section 5.3 for more information). The FTE estimates must be reported cumulatively each calendar quarter.

- Recipients of grants, cooperative agreements, and loans must include in the aggregate number and their narrative description an estimate of jobs created and retained on projects and activities managed by their funding recipients. This clarification is a change from previous guidance, based on comments received on the Federal Register notice and stakeholder input. For additional guidance on providing these estimates see Section 5.4. Recipients should not attempt to report on the employment impact on materials suppliers and central service providers (so-called “indirect” jobs) or on the local community (“induced” jobs). Employees who are not directly charged to Recovery Act supported projects/activities, who, nonetheless, provide critical indirect support, e.g., clerical/administrative staff preparing reports, institutional review board staff members, departmental administrators, are NOT counted as jobs created/retained. Recipients report only direct jobs because they may not have sufficient insight or consistent methodologies for reporting indirect or induced jobs. The Council of Economic Advisers is developing a macro-economic methodology to account for the overall employment impact of the Recovery Act.
- The narrative should include a brief description of the types of jobs created or retained. This description may rely on job titles, broader labor categories, or the recipient’s existing practice for describing jobs as long as the terms used are widely understood and describe the general nature of the work.
- Recipients will report for all projects and activities or federally awarded contracts regardless of whether they are funded in whole or in part by the Recovery Act, but should report only on the jobs and funding attributable to an award under the Recovery Act.

Recipients must include an estimate of jobs created and retained on projects and activities managed by their funding recipients in their aggregate number and their narrative description. This information will be provided for each project and activity funded by the Recovery Act. The clarification that recipients must report jobs estimates for all sub-awarded funds is an update from previous guidance.

EXHIBIT B
ARRA SCOPE OF SERVICES

SECTION III. WAGE RATE REQUIREMENTS, BUY AMERICAN PROVISIONS, INSPECTION OF RECORDS: AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009

A. WAGE RATE REQUIREMENTS UNDER SECTION 1606 OF THE RECOVERY ACT

1. Section 1606 of the Recovery Act requires that all laborers and mechanics employed by contractors and subcontractors on projects funded directly by or assisted in whole or in part by and through the Federal Government pursuant to the Recovery Act shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code (Davis-Bacon Act).

2. Pursuant to Reorganization Plan No. 14 and the Copeland Act, 40 U.S.C. 3145, the Department of Labor has issued regulations at 29 C.F.R. parts 1, 3, and 5 to implement the Davis-Bacon and related Acts. Regulations in 29 C.F.R. 5.5 instruct agencies concerning application of the standard Davis-Bacon contract clauses set forth in that section.

3. Contractor shall comply with the wage rate requirements under Section 1606 of the ARRA, and shall require its contractors and subcontractors to pay laborers and mechanics employed on ARRA-assisted construction at least the Davis-Bacon prevailing wages. Contractor shall cause the standard Davis-Bacon contract clauses found in 29 C.F.R. 5.5(a) to be incorporated in any resultant covered contracts that are in excess of \$2,000 for construction, alteration or repair (including painting and decorating).

B. BUY AMERICAN

1. None of the funds provided under this Agreement derived from the American Recovery and Reinvestment Act, Pub. L. 111-5, may be used 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.

2. Subsection 1 shall not apply in any case or category of cases in which the head of the Federal department or agency (grantor) finds that –

- a. applying subsection 1 would be inconsistent with the public interest;
- b. iron, steel, and the relevant manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or
- c. inclusion of iron, steel and manufactured goods produced in the United States will increase the cost of the overall project by more than 25 percent.

3. If the head of a Federal department or agency determines that it is necessary to

waive the application of subsection 1 based on a finding under subsection 2, the head of the department or agency shall publish in the Federal Register a detailed written justification as to why the provision is being waived.

4. This section shall be applied in a manner consistent with United States obligations under international agreements.

5. Implementation of this provision should follow the forthcoming requirements in the Federal Acquisition Regulation or as otherwise identified by the Contracting Officer.

C. AUTHORITY OF U.S. COMPTROLLER GENERAL

1. Pursuant to Section 902 of the ARRA, the U.S. Comptroller General and his representatives shall have the authority to:

(a) examine any records of the Contractor or any of its subcontractors, or any State or local agency administering such contract, that directly pertain to, and involve transactions relating to, the contract or subcontract; and

(b) interview any officer or employee of the contractor or any of its subcontractors, or of any State or local government agency administering the contract, regarding such transactions.

2. Contractor shall cause the provision in subsection C.1, or a similar provision to be a part of all contracts entered into by Contractor concerning the Project.

D. AUTHORITY OF FEDERAL INSPECTOR GENERAL

1. Pursuant to Section 1515(b) of the ARRA, any representative of an appropriate inspector general appointed under section 3 or 8G of the Inspector General Act of 1978 (5 U.S.C. App.), shall have the authority to:

(a) 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 relating to, the contract, subcontract, grant, or subgrant; and

(b) interview any officer or employee of the contractor, subcontractors, grantee, subgrantee, or any state or local government agency administering the contract, regarding such transactions.

2. Contractor shall cause the provision in subsection D.1, or a similar provision to be a part of all contracts entered into by Contractor concerning the Project.

EXHIBIT B
ARRA REQUIREMENTS

SECTION IV. ADDITIONAL PROVISIONS: AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009

A. ADMINISTRATIVE REQUIREMENTS

For all Contractors, administrative requirements of the awards will be governed by Section 1512 of the American Recovery and Reinvestment Act of 2009.

B. CENTRAL CONTRACTOR REGISTRATION (CCR)

1. As required under the Recovery Act, Contractor must have a Dun and Bradstreet Universal Numbering System (DUNS) number (www.dnb.com) (or update its existing DUNS record), and register with the Central Contractor Registration (CCR; www.ccr.gov). (ARRA § 1512, ARRA § 1609)
2. Contractor must maintain active and current registrations in the Central Contractor Registration (www.ccr.gov) at all times during which it has active federal awards funded with Recovery Act funds.

C. PRESERVATION OF OPEN COMPETITION AND GOVERNMENT NEUTRALITY TOWARDS CONTRACTORS' LABOR RELATIONS ON FEDERALLY FUNDED CONSTRUCTION PROJECTS

1. Unless in conflict with the State of Georgia or local laws, Contractor must ensure that bid specifications, project agreements, or other controlling documents in construction contracts awarded pursuant to this agreement, or pursuant to a subaward to this agreement, do not:
 - a. 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 other related construction project(s); or
 - b. Otherwise discriminate against bidders, offerors, Contractors, or subcontractors for becoming or refusing to become or remain signatories or otherwise to adhere to agreements with one or more labor organizations, on the same or other related construction project(s).
2. 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.
3. Nothing in this provision prohibits bidders, offerors, Contractors, or subcontractors from voluntarily entering into agreements with labor organizations.

D. PROCUREMENT

All funds under this Agreement expended through a subcontract for personal services or

goods shall be fully subject to open and free competition as directed by OMB Circulars A-102 and A-110. Contractor may not rely on prior contractual relationships with a subcontractor as the sole justification a subcontract awarded with ARRA funds. Contractor must fully implement all procurement procedures and requirements pursuant to Subsection C.

E. WHISTLEBLOWERS PROTECTION

Contractor acknowledges and agrees to the following obligations and proscriptions with respect to whistleblower protection contemplated under the provisions of ARRA as well as the associated policies and guidelines of the Federal Government concerning implementation of ARRA. Contractor further agrees to fully inform GEFA in writing in a timely fashion of any circumstance or incident related to the matters covered in this section.

Prohibition on Reprisals: An employee of any non-Federal employer receiving covered funds under the Recovery Act 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;
- Gross waste of covered funds;
- Substantial and specific danger to public health or safety related to the implementation or use of covered funds;
- Abuse of authority related to the implementation or use of covered funds; or
- 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 Recovery Act shall post notice of the rights and remedies as required therein. See www.Recovery.gov.

F. PROHIBITED USE OF FUNDS

Pursuant to the Recovery Act, Section 1604, Restrictions, Contractor shall not use Recovery Act funds to support or benefit projects or activities for casinos or other gambling establishments, aquariums, zoos, golf courses, or swimming pools.

G. INFORMATION IN SUPPORT OF RECOVERY ACT REPORTING

Contractor is responsible for maintaining and may be required to submit backup documentation for all expenditures of funds under the Recovery Act including such items as timecards and invoices. Contractor shall provide copies of backup documentation at the request of the Contracting Officer or designee.

H. FALSE CLAIMS ACT

Contractor shall promptly refer to GEFA for transmission to the DOE or other appropriate Inspector General any credible evidence that a principal, employee, agent, contractor, subgrantee, 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.

EXHIBIT C
SCHEDULE OF HOURLY RATES