

CUYAHOGA COUNTY PROJECT MANAGEMENT

1642 Lakeside Avenue
Cleveland Ohio 44114
Phone (216) 443-6993
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Provider Job No. _____
Subcontract No. _____

Cost Code Allocation _____
Date: _____

PROVIDER AGREEMENT - - SUMMARY

NOTE: This Summary Form does NOT form part of the attached WIND TURBINE PROVIDER AGREEMENT. Only the Provider Agreement will apply in the event of a conflict.

THE COUNTY: County of Cuyahoga, Ohio – Cleveland, OH

PROVIDER: Halus Power Systems – San Leandro, CA

PROVIDER'S WORK: Furnish and install a re-built, 500 kW, Vestas V-39 wind turbine with 60 meter tower as is more specifically set forth in the Scope of Work attached to this Agreement as Appendix A.

PROJECT: Fairgrounds Wind Turbine Project

CONTRACT TERM: 03/22/11-3/21/12

COMPLETION DATE: On or before December 12, 2011, unless extended in accordance with Article 4 hereof.

CONSTRUCTION DRAWINGS: by Turbine supplier/installer

CONTRACT PRICE: \$1,400,000.00 per RFP, including the County's "Owner's Allowance"

PAYMENT: See Article 6 of this Agreement

RETAINED PERCENTAGE: 8% of all billings

ALLOWANCE OVERHEAD & PROFIT: 0% (Already included in Base Bid)

CHANGE ORDER OVERHEAD AND PROFIT: 15%

PAYMENT AND PERFORMANCE BONDS: Required X ; Not Required

PROVIDER AGREEMENT

THIS AGREEMENT (this "Agreement") made and entered as of March 22, 2011 (the "Effective Date"), by and between the County of Cuyahoga, Ohio ("County") with its principal place of business located at 1219 Ontario Street, 4th Floor, Cleveland, Ohio 44113, and Halus Power Systems (the "Provider") with its principal place of business located at 2539 Grant Avenue, San Leandro, California 94579, for the construction project known as the Fairgrounds Wind Turbine Project (hereinafter, "Project"), located at the Cuyahoga County Fairgrounds, 164 Eastland Road, Berea, Ohio 44017, Cuyahoga County, Ohio (the "Project Site"):

WHEREAS, The County of Cuyahoga, Ohio wishes to construct the Project, and,

WHEREAS, The County wishes to enter into a contract with Provider to furnish equipment, material, work, labor, and services for the Provider's Work (as defined in Section 2.1 below) on the Project in accordance with the supporting documents including plans and specifications.

NOW THEREFORE, The County and Provider, in consideration of the following mutual covenants and obligations, hereby agree as set forth below:

ARTICLE 1 CONTRACT DOCUMENTS

1.1 The Contract agreed to and entered into this day between the County and Provider consists of the following: (1) this Agreement; (2) All Contract Modifications, Change Orders, Field Orders and Supplemental Instructions; (3) All plans, specifications, schedules of Provider's Work, and drawings for the Provider's Work on the Project; and (4) together with those documents attached hereto as Appendices A through D, which are incorporated herein by reference. All of the foregoing documents shall be known herein as the "Contract Documents," and together shall constitute the entire contract between the County and Provider, and hereinafter will collectively be referred to as the "Contract".

1.2 All the Contract Documents, whenever possible, will be construed and interpreted in a consistent and harmonious manner. However, in the event there are conflicting or contradicting provisions between this Agreement and any of the terms of the Contract Documents, this Agreement will govern. In the event there are conflicting or contradicting provisions among the other Contract Documents, the most stringent requirement, as determined by the County, will govern.

1.3 Notwithstanding anything contained in the Contract to the contrary, County and Provider have entered into that certain Supplement to Provider Agreement, of even date herewith (the "Supplement"), with the intent of modifying and supplementing certain terms and conditions set forth in the Contract. County and Provider expressly acknowledge and agree that in the event of any conflict or inconsistency between the terms of the Supplement and the Contract, the terms of the Supplement shall control.

ARTICLE 2 PROVIDER'S WORK

2.1 Provider agrees it will provide and furnish all labor, materials, tools, supplies, equipment, services, facilities, supervision, and administration necessary or incidental to properly complete performance of the following work: initial inspection & selection, shipping, rebuilding (as defined elsewhere), installation design, construction (including foundation, cranes, erection, electrical and controls), and commissioning as necessary to provide a fully operational and safe re-built "Wind Turbine" consisting of a 500 kW, Vestas V-39 wind turbine with 60 meter tower on the Project Site, all in accordance with the Scope of Work attached to this Agreement as Appendix A (the foregoing work

collectively referred to herein as "Provider's Work"), together with the one (1) year warranty and regularly scheduled and preventative maintenance coverage set forth in Section H of the Scope of Work attached hereto as Appendix A (the "Initial Warranty and Service Coverage"). (Any reference in the Contract to "work" shall be interpreted to mean "Provider's Work" unless the context clearly requires otherwise). As a condition precedent to the County's execution of this Agreement, the County and Provider shall enter into that certain Extended Warranty Agreement, dated of even date herewith (the "Extended Warranty"), with the intent of providing additional limited warranty coverage to certain major drive train parts of the Wind Turbine following the expiration of the Initial Warranty and Service Coverage.

2.2 Optional Extension of Initial Warranty and Service Coverage. No later than thirty (30) days prior to the expiration of the Initial Warranty and Service Coverage, County may provide written notice to Provider electing to extend the Initial Warranty and Service Coverage for an additional one (1) year period immediately following the expiration of the Initial Warranty and Service Coverage. In such event, the Initial Warranty and Service Coverage shall be extended upon and pursuant to the same terms and conditions presently provided for in Section H of the Scope of Work; provided, however, Provider shall be obligated to conduct only two (2) Project Site Visits during the one (1) year extension period in connection with its provision of regularly scheduled and preventative maintenance services. County shall pay to Provider Thirty-Five Thousand and No/100ths Dollars U.S. (\$35,000.00) for the one (1) year extension of the Initial Warranty and Service Coverage, such amount to be paid to Provider within thirty (30) days of the date County gives its written notice electing to extend the Initial Warranty and Service Coverage.

ARTICLE 3 SCOPE OF WORK

3.1 Provider's Work shall be performed under the direction of the County or the County's Project Manager, and to the satisfaction of the County's Rep and the County. Provider's Work will be performed in strict accordance with the provisions of the Contract.

3.2 All work specified by the Contract will be performed in a skillful and workmanlike manner with materials and equipment which are new or reconditioned/remanufactured and in compliance with the Contract.

ARTICLE 4 PROGRESS, PERFORMANCE AND SCOPE OF WORK, APPENDIX A

4.1 Time.

4.1.1 General. Performance is of the essence for all work specified or required by the Contract. Provider agrees, subject to Sections 4.1.2 and 4.1.3 below, that the performance of all work required by the Contract will be completed within the time periods specified within the schedule of work attached hereto as Appendix D (the "Project Schedule").

4.1.2 Milestones. Provider shall make its best efforts to complete each portion of Provider's Work by the applicable "milestone dates" set forth in the Project Schedule, subject to delays not the fault of Provider. If at any time during the performance of Provider's Work, the County in its sole and absolute discretion determines that the milestone dates set forth in the Project Schedule are either not being or may not be met, then Provider, at the County's request, shall submit to the County for its review and approval a written plan demonstrating how the remaining portion of Provider's Work will be completed in accordance with the Project Schedule. Provider agrees to and shall take such action as may be necessary, to complete Provider's Work in accordance with the Project Schedule.

4.1.3 Completion. Notwithstanding the failure of Provider to meet one or more of the milestone dates set forth in the Project Schedule, Provider shall fully complete Provider's Work on or before December 12, 2011 (the "Completion Date").

4.2 Term. The Contract shall remain in effect from the Effective Date through and including March 21, 2012, unless sooner terminated as provided for in this Supplement (the "Term"). Provider and County acknowledge that the obligations of Provider to provide information and documentation pursuant to the Contract shall extend beyond both the Completion Date and the expiration of the Term to January 31, 2015 for purposes of reporting by the County and monitoring by the US Department of Energy of the results of the EECBG (as defined in the Supplement), and ensuring Provider's obligation, if any, to file any delinquent reports survives the expiration or earlier termination of the Contract and the Supplement.

4.3 Duty to be Bound. The County and Provider will be bound by the Scope of Work, Appendix A. Provider will provide the County with any requested scheduling information for Provider's Work. All subsequent changes thereto will be submitted to Provider no less than ten (10) days in advance of the required performance. Provider's Representative will attend any scheduling meetings prior to or during the prosecution of the work, or any other meetings as directed by the County; provided, however, that Provider's Representative's attendance shall be by telephone if not then working at the Project Site.

4.4 Schedule Changes. Provider recognizes that changes may be made in the Scope of Work, Appendix A and, subject to the change order provisions set forth in this Agreement, agrees to comply with such changes.

4.5 Priority of Work. The County will have the right to reasonably determine and decide the time of commencement, order and priority in which the various portions of Provider's Work will be performed, and all other matters relative to the timely performance and completion of Provider's Work. The County recognizes that the County's determination of the time of commencement, order, and priority in which the various portions of Provider's Work will be performed may adversely impact the Completion Date. The County shall provide Provider with prior written notice of the County's authorization for the commencement of Provider's Work (the "Notice to Proceed").

4.6 Coordination of Work. It is the responsibility of Provider to coordinate its work with all other contractors, subcontractors and suppliers known to Provider so as not to delay, interfere or damage such other contractor's subcontractor's or supplier's work or performance. If Provider should unreasonably fail to fulfill this obligation, then Provider will be directly responsible to the other entity for all damages.

4.7 Performance of Work. Provider will proceed with each and every part of this Contract in a prompt and diligent manner. Provider will perform this Contract at such times, in such order, and in such manner as the County may reasonably direct subject to the County providing Provider with prior written notice of the County's authorization for the commencement of Provider's Work. Provider will commence, continue and complete its performance so as not to delay the County in completion of the Project, and so as insure the completion of the Contract, or any portion thereof, subject to delays not the fault of Provider.

4.8 Sufficient Work Force Requirements. Provider will, from time to time, on demand of the County, give adequate evidence to the County to substantiate the planned performance and progress of the Contract and the various parts thereof. Provider will promptly increase its work force, accelerate its performance, work overtime, work Saturdays, Sundays and holidays, all without additional compensation, if, in the opinion of the County, such work is necessary to maintain proper progress; provided, however, any labor and other costs incurred by Provider to accelerate its performance as may be requested by the County by no fault of Provider shall be subject to the change order provisions of the Contract. Provider will conform to the County's hours of work. No premium time will be acknowledged or paid for such additional hours worked unless pursuant to a written authorization by the County. Provider will neither delay nor adversely affect the performance of the County.

ARTICLE 5 CONTRACT PRICE

5.1 The County agrees to pay Provider for the satisfactory performance of Provider's Work in accordance with the Contract the fixed-price contract amount of One-Million, Four Hundred Thousand and 00/100 U.S. Dollars (\$1,400,000.00) (the "Contract Price"); it being understood, however, that the Contract Price shall be reduced by the unused portion of the Forty Thousand and 00/100 U.S. Dollar (\$40,000.00) "Owner's Allowance" set forth on the Budget attached as Appendix B to the Supplement. The Owner's Allowance shall only be used with the express written consent of the County. Payment of the Contract Price will be made in accordance with Article 6.

ARTICLE 6 PAYMENT

6.1 General Provisions

6.1.1 Deleted.

6.1.2 Deleted.

6.1.3 **Payment Use Restriction.** No payment received by Provider will be used to satisfy or secure any indebtedness other than one owed by Provider to a person furnishing labor or materials for use in performing services for, or the incorporation of materials into, Provider's Work on the Project.

6.1.4 **Indemnification.** Provider agrees to indemnify, defend and hold the County and its agents or sureties harmless against all claims for payment on the part of its subcontractors, materialmen, suppliers, workmen, their unions, and pension plan administrators relating to the Provider's Work on the Project. In the event any action with respect to any claim for payment is commenced against the County or its agents or sureties by any of Provider's subcontractors, materialmen, suppliers, workmen, their unions, or pension plan administrators relating to the Provider's Work on the Project, Provider agrees it will indemnify and hold the County and its agents harmless against any and all damages incurred thereby, including monies paid by the County or its agents to satisfy debts of Provider, together with all interest, attorneys' fees, costs and expenses of any litigation incident thereto. This provision will be read to complement Section 12.1.2 herein. To the extent this provision and 12.1.2 conflict, 12.1.2 will control.

6.1.5 **Payment Use Verification.** The County will have the right at all times to contact Provider's subcontractors and suppliers to ensure same are being paid by Provider for labor or materials furnished for use in performing Provider's Work through the most recent progress payment received by Provider less the rate of retainage applicable to Provider.

6.1.6 **Lien Waivers and Affidavits.** As a condition precedent for payment, Provider will provide, in a form satisfactory to the County, lien or lien waivers and affidavits from Provider, and its subcontractors and suppliers for the completed work stating the amounts received to date from the County, the amount of the draw requested, and an itemization of the specific amounts to be paid to Provider's subcontractors, suppliers and materialmen.

6.1.7 **Provider Payment Failure and Claim Retainage.** In the event the County has reason to believe that labor, material or other obligations incurred in the performance of Provider's Work are not being paid through the most recent progress payment received by Provider less the rate of retainage applicable to Provider, the County will give written notice of such claim to Provider and may take any

steps deemed necessary to insure that any progress payment will be utilized to pay such obligations. If upon receipt of said Notice, Provider does not within three (3) calendar days:

- (a) supply evidence to the satisfaction of the County that the monies owing the claimant through the most recent progress payment received by Provider less the rate of retainage applicable to Provider have been paid; or
- (b) post a bond in the amount specified by the County, indemnifying the County and the County's surety, if any, and the premises from such claims or liens;

The County will have the right to retain out of any payments due or to become due to Provider the amount necessary to protect the County from any and all loss, damage or expense, plus attorneys' fees, arising out of or relating to any such claim until the claim has been satisfied by Provider (collectively referred to herein as "Claim Retainage"). The retainage rights set forth in Section 6.1.8 immediately below shall not be applicable to nor have any affect on the County's rights to Claim Retainage as set forth herein.

6.1.8 Progress Payment Retainage. The County will retain eight percent (8%) of Provider's initial progress payment application. The retainage withheld in accordance with the preceding sentence shall be released to Provider by the County upon the Provider's submission of a subsequent progress payment application, of which the County will retain eight percent (8%) of such subsequent progress payment application. The process set forth in the preceding sentence shall be repeated with each subsequent progress payment application so as to result in retainage only being withheld from Provider's most recent progress payment application. Retainage shall continue to be withheld in accordance with this Section 6.1.8 until completion of Provider's Work and acceptance of Provider's Work by FirstEnergy inspectors, ODOD and DOE inspectors, and the County.

6.1.9 Payment Not Acceptance. Payment to Provider is specifically agreed not to constitute or imply acceptance by the County of any portion of Provider's Work.

6.2 Progress Payments

6.2.1 Application. Provider's progress payment application for work performed in the preceding payment period will be submitted to the County per the terms of this Contract and specifically Articles 6.2.2, 6.2.3, and 6.2.6, for the approval of the County. The County will forward the approved value for payment.

6.2.2 Retainage/Security. The rate of retainage will be as set forth in Article 6.1.8, above. Bonds, if required by the County, will be supplied at Provider's expense. Specific reference for the need for such bonds will be made in the Contract.

6.2.3 Time of Application and Approval of Requisitions. Provider shall submit its requisition for payment for work performed up to and including each Milestone Date (as set forth in the Project Schedule) in a form satisfactory to the County not later than thirty (30) days following Provider's completion of each such Milestone set forth on the Project Schedule in the amount of the Projected Payment identified for the applicable Milestone on the Project Schedule. All progress payment requisitions are subject to audit, and if any doubt as to its validity exists, the right to progress payments may be suspended or denied. Accordingly, Provider shall submit with each requisition, whether such requisition is for work funded by EECBG funds or otherwise, supporting documentation sufficient to evidence and support such requisition. Such documentation may consist of contracts, invoices, vouchers, paid receipts and other documentation as appropriate to evidence completion of the work described in the requisition. County shall be the sole judge of the adequacy of the requisitions. In the event County deems any or all supporting documentation accompanying a requisition insufficient, the County may, in its sole discretion, require further documentation from Provider as may be necessary or useful to

substantiate such requisition. County reserves the right to inspect all work and confirm that the portion of the work covered by each requisition has been completed satisfactorily and that all supporting documentation is in order.

6.2.4 Stored Materials. Unless otherwise provided in the Contract, if approved in advance in writing by the County, applications for progress payments may include requisitions for materials and equipment not incorporated in Provider's Work but delivered and suitably stored at the Project Site or at some other location agreed upon in writing. Approval of applications for payment for such stored items on or off the Project Site will be conditioned upon submission by Provider of bills of sale and applicable insurance or such other documents satisfactory to the County to establish the County's title to such materials and equipment, or otherwise protect the County's interests therein, including transportation to the Project Site. The risk of loss for such materials at all times will remain upon Provider until final acceptance of the Provider's Work on the Project by the County.

6.2.5 Amount and Time of Payment. Progress payments will be made within a reasonable time after receipt by the County of Provider's certified pay application but in no event more than 30 days after receipt; subject, however, to County's right to withhold payment in accordance with Section 6.2.3 hereof or as otherwise allowed for in the Contract.

6.2.6 Unit Price Work. If this Contract anticipates that any portion of Provider's Work will be paid for at an agreed rate per unit or work in place, then Provider agrees the unit prices stated herein will represent full payment for the work covered and that the County will have final determination of the quantity of work to be paid.

6.3 Final Payment

6.3.1 Application. The following are conditions precedent to final payment to Provider: (1) final completion of Provider's Work, commissioning and acceptance of Provider's Work by FirstEnergy Inspectors, ODOT and DOE inspectors (to the extent that DOE requires inspection), and the County, and (2) upon Provider furnishing evidence of fulfillment of Provider's obligations in accordance with the Contract pursuant to Article 6.3.2. Thereafter, Provider will submit application for final payment. Provider will then be paid within 30 days of the County's receipt of final payment application for the Provider's Work on the Project.

6.3.2 Requirements. Before the County will be required to forward Provider's application for final payment to the County, Provider will submit to the County the following:

- (a) an affidavit that all payrolls, bills for materials and equipment, and other indebtedness connected with the Provider's Work for which the County, its property, or the County's surety might in any way be liable, have been paid or otherwise satisfied through the most recent progress payment received by Provider less the rate of retainage applicable to Provider and will be fully satisfied upon final payment;
- (b) consent of surety to final payment, if required;
- (c) satisfaction of required close-out procedures; and
- (d) other data, if reasonably required by the County, such as receipts, releases, and waivers of liens (unconditional through the most recent progress payment received by Provider and thereafter conditional upon receipt of final payment) to the extent and in such form as may be designated by the County.

Provider's acceptance of the final payment will constitute a waiver of any and all payment claims by Provider relating to Provider's Work through the date of final payment except as may be specifically set forth in any receipt, release, waiver, or other writing delivered to County by Provider in connection therewith, but will in no event relieve Provider of liability for the obligations assumed under this Contract.

6.3.3 Deleted

6.3.4 Withholding Payments. Each progress payment, and the final payment, is subject to the County's withholding an amount reasonably necessary to fully protect and insure itself against any actual liability or damage for which Provider is responsible directly or indirectly relating to the Contract, or the Provider's Work on the Project. The County may require Provider to furnish an affidavit detailing each and every unpaid obligation directly or indirectly relating to that payment under the Contract. The affidavit will include (a) the name of each party, (b) the amount due or to become due, (c) the due dates thereof, and (d) the nature of any offset relating thereto, along with the consent of its surety that payment be made.

6.3.5 If the County deems it necessary, payment may be withheld to insure payment of Provider's unpaid obligations, or the County may demand that each unpaid obligation be paid, and an affidavit be furnished from each party to whom Provider owed the designated amount covered by the particular payment in question.

6.3.6 Prior to final payment Provider will submit from each and every subcontractor and supplier releases (unconditional through the most recent progress payment received by Provider and thereafter conditional upon receipt of final payment) in favor of the County, indicating full payment of all monies due or to become due relating to this Contract. Before any payment is made to Provider, Provider will submit satisfactory proof that the Provider's Work on the Project is free and clear from all liens and claims arising from the Contract.

6.4 The County and Provider hereby expressly acknowledge and agree that the County's surety, if any, is a third party beneficiary of the condition precedent clauses (6.2.5 and 6.2.3), with regard to both the progress payments, as well as final payment. In the event that a claim is asserted by Provider against the surety by way of arbitration, mediation, Federal or State Court action, or through any other forum for resolution of disputes, the Provider agrees that the surety may affirmatively assert the condition precedent payment clauses (6.2.5 and 6.2.3).

ARTICLE 7 CHANGES

7.1 The County may order changes in the scope of the work as defined in Article 3 herein. Provider will not be entitled to, nor will it receive, any increase or upward adjustment in its Contract Price unless said amount and liability are acknowledged, in writing, by the County; otherwise, except as otherwise provided in the Contract, Provider will proceed at its own risk and expense, without recourse against the County.

7.2 No alteration, addition, omission or change will be made in the work, except upon the execution of a written construction change directive and/or change order by the County. Any change or adjustment in the contract price by virtue of a change order will be specifically stated in the change order.

7.3 Prior to the issuance of any change order, the County may require Provider to furnish a detailed itemization showing the difference in value of the work, labor, services, and materials altered, added, omitted or changed by the proposed change order. If an agreement as to a monetary allowance, or other term in the change order, cannot be reached, the County may direct Provider in writing to perform the work under a reservation that the final adjustment in price will be reserved until final completion of the

Provider's Work on the Project. The monetary amount for the performance of any change order will not exceed the allowance set forth in Provider's prior price breakdown.

7.4 The failure of Provider to commence performance of any change order when so directed in writing by the County in accordance with the Contract will constitute a material breach of the Contract.

7.5 Any extension of time needed as a result of a proposed alteration, addition or change in the work will be requested in writing by Provider, prior to the execution of the change order, and will be incorporated therein. There will be no other monetary or time allowance, direct or indirect, to Provider other than what is specifically written in the change order, including, but not limited to, delays, suspensions, escalations, impact or other cost factors.

7.6 Where unit prices are stipulated in the Contract, all adjustments, whether increases or decreases, will be made in accordance with said units. Said units will be deemed to include all general and administrative expenses, overhead, profit, supervision, extended performance cost factors, and all other direct and indirect expenses.

7.7 If the County elects the option to direct the changed work to be done by Provider on a time and material basis, Provider will prepare daily time and material invoices which will be submitted to the County on a daily basis. Said daily time and material invoices will include only direct out-of-pocket material and labor costs with a maximum total mark-up of fifteen percent (15%). The 15% mark-up on time and material invoices is deemed to be full and complete compensation to the Provider for all general and administrative expenses, overhead, supervision, and profit.

7.8 No change order will vary, abrogate, avoid, or otherwise affect the terms, conditions and provisions of the Contract except as specifically set forth in the change order.

7.9 All change orders will be subject to the limits and conditions of the Contract and any other documents incorporated therein.

ARTICLE 8 DELAYS AND EXTENSION OF TIME

8.1 If the progress of Provider's Work is substantially delayed without any fault or responsibility on the part of Provider, then the time for performance of Provider's Work will be extended by a written change order executed by the County in accordance with the Contract, and the Project Schedule will be revised thereafter accordingly; provided, however, the Completion Date shall not be extended beyond January 31, 2012.

8.2 Provider acknowledges the Contract Price is based on the premise that the County is not liable to Provider, absent any actual fraud or intentional tortious act, for any damages or costs due to any delays, acceleration, nonperformance, interference with performance, suspensions, or changes in the performance or sequence of Provider's Work which results in increased overhead, loss of productivity, loss of efficiency, increased total costs or any other damage. Should Provider's performance, in whole or in part, be interfered with or delayed, or be suspended in the commencement, prosecution or completion, for reasons beyond Provider's control, and without any fault or negligence on its part contributing thereto, Provider will be entitled to an extension of time in which to complete its contract so long as Provider notifies the County of such request in writing at least thirty (30) days in advance of the Completion Date; provided, however, the Completion Date shall not be extended beyond January 31, 2012. Notwithstanding the foregoing, in the event that any substantial acceleration or delay in the performance of the Provider's Work is requested by the County, County shall in good faith negotiate a change order with respect to any out-of-pocket costs which Provider can demonstrate it has incurred or will incur as a

result of such acceleration or delay in performance including, without limitation, increased costs of labor or materials, or storage costs.

8.3 The County owes no duty, obligation or liability to the Provider as a result of any delay, interference, suspension, or other event, except as set forth in Article 8.2.

8.4 If Provider should delay or threaten to delay the progress or performance of the Contract, or cause any actual or potential damage or liability to the County, then Provider may be deemed in material breach of the Contract. Provider will be responsible to indemnify and hold the County harmless from all liability or damages as a result thereof, including attorneys' fees.

8.5 Deleted.

8.6 Deleted.

ARTICLE 9 THE COUNTY'S OBLIGATIONS

9.1 Deleted

9.2 Authorized Agent. The County will designate one or more persons who will be the County's authorized representative(s) (a) on the Project Site and (b) off the Project Site. Such authorized representative(s) will be the only person(s) Provider will look to for instructions, approvals, orders or directions on behalf of the County, except in an emergency.

9.3 Storage Allocation. The County will allocate adequate storage areas, if available, for Provider's materials and equipment during the course of Provider's Work. The Provider shall be responsible for adequately securing such provided areas.

9.4 Timely Communications. The County will transmit, with reasonable promptness, all submittals, including but not limited to, shop drawings, models, technical data, transmittals, written approvals, or communications relating to Provider's Work or materials.

9.5 Project Site Access. The County shall make the Project Site accessible to Provider and its agents and subcontractors at all times during the performance of the Contract, except during the following period of time: from and including August 5, 2011 through and including August 17, 2011.

9.6 Soils Report. The County has provided Provider with a soils report for the Project Site and acknowledges that Provider and its subcontractors will rely on the accuracy of the soils report in performing the Provider's Work.

9.7 Location of Installation. The County shall physically identify at the Project Site the location at which the Wind Turbine is to be installed and acknowledges that Provider and its subcontractors will rely on the accuracy of such identification in performing Provider's Work.

9.8 Acceptance. When Provider considers Provider's Work, including commissioning, to be fully complete in accordance with this Agreement, Provider will notify the County that the Provider's Work is fully complete and ready for final inspection (the "Work Completion Notice"). Provider shall use its best efforts to give the County ten (10) business days notice in advance of the date Provider expects to issue the Work Completion Notice. Within ten (10) business days of receipt of the Work Completion Notice, the County shall either: (1) give Provider written notice of the County's acceptance of the Provider's Work (the "Notice of Acceptance") or (2) identify in writing any defects or deficiencies in the Provider's Work that prevent completion. If the County identifies in writing defects or deficiencies in the Provider's

Work that prevent completion, including the basis upon which the County made such determinations, Provider shall promptly correct such defects or deficiencies, and the foregoing notice procedure shall be repeated until the requirements for completion have been met.

ARTICLE 10 PROVIDER'S OBLIGATIONS

10.1 Deleted

10.2 **Responsibilities.** Provider will furnish all of the labor, materials, equipment, and services, including, but not limited to, competent supervision, shop drawings, samples, tools, and scaffolding as are necessary for the proper performance of Provider's Work.

10.3 Provider will provide a list of proposed subcontractors and suppliers within thirty (30) days of subcontract execution, and will be responsible for ordering materials and all other actions as are required to meet the Scope of Work, Appendix A.

10.4 **Temporary Services.** As indicated in Article 3, Provider will furnish all temporary services or facilities necessary to perform Provider's Work. The following common temporary services or facilities are for use of all project personnel and will be furnished as herein below noted:

By the County: None

By Others: None

10.5 Coordination. Provider will:

- (a) cooperate with the County and all others whose work may affect Provider's Work;
- (b) specifically note and advise the County within a reasonable time of any such work which may adversely affect Provider's Work; and
- (c) participate in the preparation of coordination drawings and work schedules in areas of congestion.

10.6 **Provider's Representative.** Provider will have a competent representative at the Project at all times during which work is being performed by Provider at the Project who will have absolute authority to act, in all respects, on behalf of and for Provider. Provider will replace said representative, without additional charge, if reasonably demanded by the County.

10.7 **Notice.** Provider will be deemed to have been placed on notice upon the actual furnishing of notice in writing to Provider's representative, or when three days have elapsed from the date said written notice is forwarded to the Provider's designated principal place of business by U.S. Certified Mail.

10.8 **Provisions of Inspection.** Provider will notify the County when portions of Provider's Work are ready for inspection. The Provider will at all times furnish the County adequate facilities for inspecting materials at the Project Site, or any place where materials under this Contract may be stored in the course of the preparation, process, manufacture or treatment. Provider will furnish to the County in such detail, and as often as required, full written reports of the progress of Provider's Work irrespective of the location of such work.

10.9 Safety and Clean-Up. During Provider's performance of Provider's Work, Provider will follow the County's clean-up and safety directions or as dictated by law or common due-diligence or professional practice, and

- (a) clean up the Project Site daily and dispose of trash; at all times keep the Project premises free from debris and unsafe, disorderly and/or unsightly conditions resulting from Provider's Work; and
- (b) broom clean each work area prior to discontinuing work there.

10.10 If Provider fails to immediately commence compliance with the safety duties required by the Contract or by law, or commence clean-up duties within 24 hours after receiving written notice from the County of noncompliance with paragraph 10.9, the County may implement such safety or clean-up measures without further notice to Provider, and deduct the total cost thereof from any amounts due or to become due to Provider.

10.11 Protection of the Work. During Provider's performance of Provider's Work, Provider will take all necessary precautions to properly protect Provider's Work and the work of others from damage caused by vandalism or Provider's operations. Should Provider directly cause, or permit preventable vandalism to cause damage to the work or property of the County or others, Provider will promptly remedy such damage to the satisfaction of the County, or the County may remedy the damage caused thereby and deduct the reasonable cost thereof from any amounts due or to become due Provider. During Provider's performance of Provider's Work, Provider will have primary responsibility and liability for any damages or losses which may be incurred to Provider's Work.

10.12 Permits, Fees and Licenses. County has obtained all necessary permits, licenses, environmental reviews, or any other items relating to the suitability of the County location where this project will be installed.

10.13 Material, Storage and Approvals. Provider must be prepared, at all times, to prove within commercial norms, the exact quantities and qualities of the materials and equipment purchased, used, or to be used on the Project. If Provider is assigned a storage area for its equipment, material and tools, it will not store any item outside of the designated area. During Provider's performance of Provider's Work, Provider will be responsible for the receipt, delivery, unloading, storage, warehousing, protection, insurance and all other risk of loss relating to any materials or equipment it is to furnish, install, provide, or have provided to it under this Contract.

10.14 If the County furnishes material to Provider, Provider will be obligated to inspect all material and equipment at time of delivery. Provider will be responsible to immediately notify the County, in writing, of any defects or nonconformity in the material or equipment so received or delivered of which it is actually aware. Failure to notify the County will be deemed an acknowledgment and acceptance of the material as being in accordance with this Contract. Provider will be liable for any damages incurred by the County as a result of its failure to so notify the County.

10.15 It is Provider's obligation, upon direction by the County, to take all necessary steps consistent with Provider's Work, including but not limited to delivery of samples, test and reports, guarantees, drawings, manuals, certificates, details, warranties, or inspections, to obtain any and all required approvals necessary or required under the Contract. If the County determines that it will accept nonconforming work, the County will be entitled to a credit for the non-conformity, plus all other costs incurred. Provider will be responsible for all retesting costs required due to defective work or materials.

10.16 During Provider's performance of Provider's Work, Provider will retain title and risk of loss to Provider's Work, at its own expense, fully protect, insure and secure Provider's Work from injury or

damage. Title and risk of loss to Provider's Work shall transfer to the County upon the County giving its Notice of Acceptance to Provider in accordance with Section 9.8 of this Agreement. Any damage caused to Provider's work prior to the County giving the Notice of Acceptance will be promptly corrected and rectified by Provider at its sole expense unless the such damage arises from the County's willful malfeasance.

10.17 Inspection or supervision by the County will not relieve Provider of its obligations herein. Provider will promptly perform any and all punch list work submitted to it by the County. Provider's failure to comply with this paragraph will constitute a material breach of contract.

10.18 Labor Relations. Provider will do whatever is necessary in the prosecution of its work to assure harmonious labor relations on the Project and to prevent strikes or other labor disputes. Provider will fully abide by all labor agreements and jurisdictional decisions presently in force or subsequently executed with or by the County. Provider's failure to comply with the provisions of this Article will constitute a material breach of the Contract.

10.19 Incorporation of Provisions. Provider hereby agrees to incorporate into any subcontracts or purchase orders it has with any other party relative to the Project, all those provisions required by law to be incorporated therein, and all those provisions of the Contract which affect the rights of the County. The Contract will not create a contractual or third-party beneficiary relationship between the County and Provider's subcontractors or suppliers. This Contract will not create a contractual or third-party beneficiary relationship between Provider and the County.

10.20 Layout Responsibility. Subject to the County issuing the Notice to Proceed and its obligations under Article 9 of this Agreement, Provider will be responsible to lay out its work and will be strictly responsible for the accuracy of Provider's Work and for any loss or damage to the County or others by reason of Provider's failure to set out or perform its work correctly.

10.21 Workmanship. Every part of Provider's Work will be executed in strict accordance with the Contract in the most sound, workmanlike, and substantial manner. All workmanship will be of the best of its several kinds. All materials used in Provider's Work will be furnished in ample quantities to facilitate the proper and expeditious execution of Provider's Work, and will be new except such materials as may be expressly provided in the Contract Documents to be otherwise. Provider's failure to comply in any manner with the requirements of this provision will constitute a material breach of the Contract.

10.22 Materials Furnished by Others. In the event the scope of Provider's Work includes the installation of materials or equipment furnished by others, it will be the responsibility of Provider to examine the items so provided, and to handle, store and install the items with such skill and care as to ensure a satisfactory and proper installation. Loss or damage to such items due to acts or omissions of the Provider will constitute a material breach of the Contract, and the amount of such loss or damage will be deducted from amounts due or to become due to Provider from the County.

10.23 Substitutions. No substitutions will be permitted in the work or materials specified by the Contract to be provided by Provider unless permitted by the Contract or approved in writing by the County. In the event the Contract permits a substitution, Provider will first obtain approval for the substitution in writing from the County. Provider will indemnify the County for any increased costs incurred by the County as a result of any substitution, whether or not Provider has obtained approval thereof.

10.24 Use of the County's Equipment. Provider, its agents, employees, subcontractors or suppliers will not use the County's equipment without the express written permission of the County.

10.25 Should Provider, or any of its agents, employees, suppliers or subcontractors utilize any machinery, equipment, tools, scaffolding, hoists, lifts or similar items owned, leased or under the control of the County, Provider will be liable to the County for any loss or damage (including personal injury or death) which may arise from such use, and will indemnify the County for all damages sustained as a result thereof, including attorney's fees, except where such loss or damage will be found to have been due solely to the negligence of the County's employees operating such equipment.

10.26 Privity. Until the final completion of the Project, Provider hereby agrees not to perform any work directly for the County, or any tenants thereof, or deal directly with any County representatives in connection with the Project, unless otherwise directed or permitted in writing in advance by the County. All work for this Project performed by Provider will be processed and handled exclusively under this Contract.

10.27 Warranty. Provider warrants Provider's Work to the extent covered by the Initial Warranty and Service Coverage and Extended Warranty, and agrees to satisfy such warranty obligations without cost to the County, unless otherwise provided for in either the Initial Warranty and Service Coverage or Extended Warranty.

10.28 Review of Records. Provider will allow the County's or the County's representatives to inspect all payroll records, materials invoices, books of account and other records pertinent to the Provider's Work and the requirements of the Contract or the Supplement.

10.29 Drawings. Notwithstanding the County's physical identification of the Project Site in accordance with Section 9.7 of this Agreement, Provider acknowledges that the exactness of grades, elevations, dimensions, or locations given on any Drawings issued by the County's Architect or Engineer are not guaranteed by the Architect, Engineer or the County. The Provider will, therefore, satisfy itself as to the accuracy of all grades, elevations, dimensions and locations. In all cases of interconnection of Provider's Work with existing or other work, Provider will verify at the Project Site all dimensions relating to such existing or other work. Any errors due to the Provider's failure to so verify all such grades, elevations, locations or dimensions will be promptly rectified by the Provider without any additional cost to the County.

ARTICLE 11 RECOURSE OF THE COUNTY

11.1.1 Failure of Performance. Should Provider fail to perform in strict accordance with the Contract, or should Provider become insolvent, fail to supply enough properly skilled workers, proper materials, maintain the Scope of Work, Appendix A, or fail to make prompt payments for its workers, subcontractors, or suppliers, or should Provider disregard laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, or should Provider be unable to or fail to pay its obligations as they mature, or in any other respect fail, in the opinion of the County, to properly prosecute and perform any part of its work, fail to exert its best performance efforts, or be involved in labor disputes, then in such event it will constitute a material breach by Provider of the Contract.

11.1.2 In the event of a breach of the Contract by Provider, the County will hand deliver, telefax or forward by U.S. Certified Mail to Provider a written notice of default. Should Provider within three (3) days after receipt of written notice of default fail to commence and continue satisfactory correction of such default with diligence and promptness, then the County, without prejudice to any of its rights or remedies, will have the right to any or all of the following remedies:

- (a) supply such number of workers and quantity of materials, equipment and other facilities as the County deems necessary for the completion of Provider's Work, or any part thereof

which Provider has failed to complete or perform after the aforesaid notice, and charge the cost thereof to Provider, who will be liable for the payment of same including reasonable overhead, profit and attorneys' fees;

- (b) contract with one or more additional providers to perform such part of Provider's Work as the County will determine will provide the most expeditious completion of Provider's Work and charge the cost thereof to Provider, who will be liable for the payment of same, including reasonable overhead, profit and attorneys' fees;
- (c) withhold payment of any monies due Provider pending corrective action to the extent required by and to the satisfaction of the County;
- (d) in the event of an emergency affecting the safety of persons or property, the County may proceed as above without notice;
- (e) terminate this Contract.

11.1.3 Termination by the County. If Provider fails within three (3) days of receipt of the notice issued under Article 11.1.2 to commence and satisfactorily continue correction of default with diligence and promptness, then the County may, in lieu of, or in addition to, the remedies provided in Article 11.1.2, terminate this Contract and assume any or all of Provider's subcontracts and purchase orders which Provider previously entered, for the County's discretionary acceptance. All costs incurred by the County in so performing Provider's Work, including reasonable overhead, profit, and attorneys' fees, will be deducted from any remaining amounts due or to become due to Provider. In addition to other damages that may be incurred by the County, Provider will be liable for the payment of any amount by which such expense may exceed the unpaid balance of the Contract price.

11.1.4 Use of Provider's Equipment. If the County performs work under this Article or sublets such work to be so performed, the County or the persons to whom work has been sublet will have the right, in furtherance of such performance, to take and use all of the materials, implements, equipment, appliances or tools furnished by, belonging or delivered to Provider and located on the Project Site, or other designated storage locations.

11.2 Bankruptcy

11.2.1 Termination Absent Cure. Upon the filing of any Petition for Bankruptcy by Provider, the appointment of a receiver for Provider, or upon Provider making an assignment for the benefit of creditors, the County may terminate this Contract upon providing Provider three (3) days written notice by hand delivery or U.S. certified mail, unless Provider, its surety, or the trustee:

- (a) promptly cures all defaults;
- (b) provides adequate assurances of future performance;
- (c) compensates the County for actual pecuniary loss resulting from such defaults; and
- (d) assumes the obligations of the Provider under this Contract within the statutory time limits.

11.2.2 Interim Remedies. If Provider is not performing in accordance with the Scope of Work, Appendix A upon the expiration of the three (3) day notice period, the County, while awaiting the decision of Provider or its trustee to reject or to accept this Contract and provide adequate assurance of its

ability to perform hereunder, may avail itself of such remedies under this Article as are reasonably necessary to maintain the Scope of Work, Appendix A.

11.2.3 The County may offset against any sums due or to become due to Provider all costs incurred in pursuing any of the remedies provided hereunder, including, but not limited to, reasonable overhead, profit and attorneys' fees.

11.2.4 Provider will be liable for the payment of any amount by which such expense may exceed the unpaid balance of the Contract Price.

11.3 Suspension by the County. Should the County suspend the Contract or any part of the Contract which includes Provider's Work, the County will so notify Provider in writing immediately by U.S. certified mail and upon receipt of said notice, Provider will immediately suspend Provider's Work.

11.4 Termination by the County. Should the County terminate the Contract or any part of the Contract which includes Provider's Work, the County will so notify Provider in writing immediately by U.S. certified mail and upon receipt of said notice, this Contract will also be terminated and Provider will immediately stop Provider's work.

ARTICLE 12 INSURANCE AND INDEMNIFICATION

12.1.1 Provider's Performance. The County (including its affiliates, parents, subsidiaries, officers, directors or employees) will not be liable for any loss or casualty incurred or caused by Provider except for any loss or casualty arising from the County's willful malfeasance. Provider will maintain full and complete insurance for its work until the County gives Notice of Acceptance to Provider in accordance with Section 9.8 of this Agreement. Provider retains title to and assumes all risk of loss for all of its work until the County gives Notice of Acceptance to Provider regardless of whether Provider had previously been paid for such work except for any loss arising from the County's willful malfeasance. The County is not responsible to provide any protective service for Provider's benefit, and is not liable for any loss or damage to Provider's Work prior to the County giving Notice of Acceptance to Provider unless such loss or damage to Provider's Work arises from the County's willful malfeasance.

12.1.2 Indemnification Provider will indemnify, defend and hold harmless the County and its officers, directors, partners, agents, sureties and employees from and against any and all demands, claims, suits, causes of action, losses, penalties, liabilities, costs, damages, attorneys' fees, and expenses of any nature arising out of or resulting from Provider's performance of the Provider's Work, including those claims relating to its subcontractors, suppliers or employees, or by reason of any claim or dispute of any person or entity for damages from any cause directly or indirectly relating to any action or failure to act by Provider arising out of or resulting from Provider's performance of the Provider's Work, its representatives, employees, subcontractors, or suppliers. Notwithstanding anything contained in this Section 12.1.2 to the contrary, if the claim or cause of action is the result of the County's breach of this Agreement or the sole negligence of the County, Provider will have no obligation to defend, indemnify and hold harmless the County.

12.2 This indemnity will not be construed to negate, or abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in Article 12.

12.3 Deleted.

12.4 No Limitation Upon Liability. In any and all claims against the County, the County (including affiliates, parents and subsidiaries) and other contractors, suppliers, or subcontractors, or any of their

agents or employees, by any employees of Provider, anyone directly or indirectly employed by Provider or anyone for whose acts Provider may be liable, the indemnification obligation under Article 12 will not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for Provider under any workers' compensation acts, disability benefits acts or other employee benefit acts.

12.5 Compliance with Laws. Provider agrees to be bound, and at its own cost, comply with all federal, state and local laws, ordinances and regulations (hereinafter collectively referred to as "law") applicable to Provider's Work including, but not limited to, equal employment opportunity, minority business enterprise, women's business enterprise, disadvantaged business enterprise, safety and all other laws which the County must comply with according to the Contract. Provider will be liable to the County and the County for all loss, cost and expense attributable to any acts of commission or omission by Provider, its employees and agents resulting from the failure to fully comply with any laws, including, but not limited to fines, penalties or corrective measures.

12.6 Patents. Except as otherwise provided by the Contract, Provider will pay all royalties and license fees which may be due on the inclusion of any patented materials in Provider's Work. Provider will defend all suits for claims for infringement of any patent rights arising solely out of Provider's Work, which may be brought against the County, and will be liable to the County for all loss, including all costs, expenses and attorneys' fees. In connection therewith, Provider shall have the right, at its election and cost, to either: (i) procure for County the right to continue using any infringing item; (ii) replace any infringing item with a non-infringing item; (iii) modify any infringing item so it becomes non-infringing.

12.7 Indemnity Compensation. The Provider agrees to protect, defend, indemnify and hold the County of Cuyahoga, Ohio, its officers, employees and agents, free, clear and harmless from and against any and all losses, penalties, damages, settlements, costs of liabilities of every kind and nature arising out of or in connection with any acts or omissions of the Provider in connection with the Provider's Work, negligent or otherwise, and its employees officers, agents, or independent contractors.

12.8 Insurance. As part of Provider's overall obligation to protect others, and obligation to indemnify under this Contract, Provider will at his own expense purchase and maintain in a company or companies lawfully authorized to do business in the State in which the Project is located and in companies satisfactory to the County, the insurance coverage required in this Contract. Such insurance will be maintained until final acceptance of the Project and will protect the Provider from claims set forth below which may arise out of or result from the Provider's operations under the Contract and for which the County may be legally liable, whether such operations be by the Provider or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable.

The Provider will maintain, or cause its subcontractor(s) to maintain, as the case may be, at a minimum the insurance listed in Appendix B and shall include the County as an additional insured where applicable. Proof that Provider's subcontractors are carrying the proper insurance must be submitted by Provider to the County within thirty (30) days of subcontract execution.

12.9 Certificates. Certificates of insurance acceptable to the County will be delivered to the County prior to the commencement of Provider's Work. The County may withhold payment until acceptable certificates have been provided. These Certificates (and/or if requested in writing by the County certified copies of the insurance policies) will contain a provision that coverage afforded under the policies will not be cancelled, non-renewed, materially changed or allowed to expire until at least 30 days prior written notice has been given to the County. The cancellation wording included in the certificate of insurance must be modified to read substantially as follows:

"Should any of the above described policies be cancelled, non-renewed or materially changed before the expiration date thereof, the Company will give 30 days written notice to the Certificate Holder named hereon."

12.10 Additional Insured & Waiver of Subrogation: All policies of insurance except Workers' Compensation will name the County as an Additional Insured, and the certificates of insurance must attach copies of the actual endorsements adding the County as an additional insured. All policies of insurance including Workers' Compensation will waive all rights of subrogation in favor of the County, and will be primary and noncontributory. Failure to comply with this requirement will constitute a material breach of this Contract, entitling the County to terminate this Contract for cause.

12.11 Failure to Maintain Insurance. In the event the Provider fails to maintain any of the insurance coverage required under this Contract, it will constitute a material breach of this Contract entitling the County at its option to purchase such coverage and charge the cost thereof to the Provider, plus all incidental expenses and damages arising therefrom and/or terminate this Contract for cause.

12.12 No Limitation of Liability. Compliance with the Contract's insurance requirements will not relieve the Provider from liability under any portion of the Contract, or act as a limitation of the Provider's liability.

ARTICLE 13 CLAIMS-LIQUIDATING AGREEMENT

13.1 Claims Relating to the County. Notice of claims will be given by Provider to the County, or by County to Provider, as the case may be, within thirty (30) days of the beginning of the event for which such claim is to be made, otherwise, such claims will be deemed waived; provided, however, that the foregoing claim period shall not commence until Provider or County, as the case may be, actually becomes aware of the existence of the subject event and claim. This notice provisions takes precedence over any other notice provisions provided by or in the Contract.

ARTICLE 14 CONTRACT INTERPRETATION

14.1 Inconsistencies and Omissions. Should Provider become aware of any inconsistencies or omissions in the Contract Documents, Provider will endeavor to so notify the County in writing within three (3) working days of the Provider's discovery thereof. Upon receipt of said notice, the County will within a reasonable period of time instruct Provider as to the measures to be taken and the Provider will comply with the County's instructions. Failure to provide such notice will bar any complaints by Provider concerning inconsistencies or omissions in the Contract.

14.2 Law and Effect. This Contract will be governed by the laws of the State of Ohio. Provider hereby submits to the jurisdiction of the State of Ohio.

14.3 Severability and Waiver. The partial or complete invalidity of any one or more provisions of the Contract will not affect the validity or continuing force and effect of any other provision. The failure of either party hereto to insist, in any one or more instances, upon the performance of any of the terms, covenants or conditions of this Contract, or to exercise any right herein, will not be construed as a waiver or relinquishment of such term, covenant, condition or right as respects further performance.

14.4 Titles. The titles given to the Articles of this Contract are for ease of reference only and will not be relied upon or cited for any other purpose.

14.5 Entire Agreement. This Contract is solely for the benefit of the signatories hereto. This Contract will neither confer any third party rights, nor will the County incur any third party liability or responsibility by virtue of this Contract. This Contract represents the entire and integrated agreement between the parties hereto and supersedes all prior negotiations, representations, or agreements, either written or oral. Notwithstanding anything contained in the Contract to the contrary, County and Provider have entered into the Supplement with the intent of modifying and supplementing certain terms and conditions set forth in the Contract. County and Provider expressly acknowledge and agree that in the event of any conflict or inconsistency between the terms of the Supplement and the Contract, the terms of the Supplement shall control.

ARTICLE 15 MISCELLANEOUS PROVISIONS

15.1 Taxes, Charges, etc. Provider will be responsible for, and will pay any and all taxes, contributions, or fees imposed directly or indirectly on account of its work, labor, material and services required under or relating to this Contract. At no time will there be any increase or escalation in the Contract Price on account of any such charge. Provider will, on demand, substantiate that all taxes and other charges are being properly paid.

15.2 Sublet and Assignment. Provider will not assign or sublet this Contract or any part or interest therein, or any money due or to become due without the County's prior written consent. If the County consents to an assignment of the Contract, such assignment will be subject to and subordinated to all labor preferences and other liabilities, actual or potential, as may be imposed on the County due to any obligation or liability of Provider.

15.3 Bonds. Provider will, as part of the Contract, furnish to the County fully and duly executed performance and payment bonds insuring completion of Provider's Work, issued by a surety company acceptable to the County and in such format as is also satisfactory to the County; it being understood, however, that such bonds shall not include any performance or payment obligations with respect to the Initial Warranty and Service Coverage and the Extended Warranty. If such performance and payment bonds are not furnished with this Contract, the County may, at any time prior to or during performance of this Contract, demand that Provider obtain and furnish same. The cost of any bond required by the County will be paid for by Provider. Provider's failure to deliver satisfactory bonds within ten (10) business days after a demand by the County will constitute a material breach of this Contract.

15.4 Oral Modifications. The Contract may not be changed, modified, altered, or terminated orally. The Contract supersedes all prior oral, verbal or written representations made by the County.

15.5 Damages. Provider will be responsible and liable for all costs disbursements, and expenses including attorney's fees, incurred by the County (a) as a result of the County's pursuing any extra, change, addition, claim or dispute against any other party on behalf of Provider if permitted under the Contract; or (b) as a result of Provider's breach of any term or condition of this Contract; or (c) as a result of the County's having to defend or take part in any action or proceeding which directly or indirectly relates to acts or omissions of Provider or its subcontractors or suppliers.

15.6 Attorney's Fees In the event any arbitration or litigation arises between the County and Provider over the provisions of the Contract, the work contracted for, the payment thereof, or otherwise, the prevailing party will be entitled to recover all costs and expenses incurred in such litigation, including but not limited to court costs, attorney's fees, and expert witness fees, arising before, during, or after trial, including any costs, attorney's fees, or expenses incurred in any appeal therefrom.

15.7 Deleted.

15.8 Cancellation. The County, by written notice executed by an Officer to Provider, will have the right to terminate and cancel this Contract, without the Provider being at fault, for any cause or for its own convenience, and require that Provider immediately stop work. In such event, the County must pay Provider for the value of the work actually performed, any of its out-of-pocket cancellation fees to subcontractors and suppliers, and any non-recoverable bond costs, but will not pay anticipated profits or any other penalties or damages to Provider.

15.9 Deleted.

15.10 Waiver of Jury Trial. Provider hereby waives its right to a trial by jury in any and all disputes or claims arising out of or in relation to the Contract Documents or the Supplement. Provider agrees to make this condition a part of each contract for materials, supplies, labor or equipment entered into by Provider in regard to the work.

15.11 Notices. All written notices as provided for herein will be deemed served if deposited with the U.S. Postal Service, certified, return receipt requested, or such private overnight mail service providing a receipt of delivery, addressed to the County and Provider as follows:

The County: Director of Development
County of Cuyahoga, Ohio
c/o Department of Development
Reserve Square
1701 East 12 Street, 1st Floor
Cleveland, OH 44114

With a copy to: Nick Willis
County of Cuyahoga, Ohio
c/o Department of Public Works
Construction Division
2100 Superior Viaduct
Cleveland OH 44113

Provider: Louis Rigaud
Halus Power Systems
2539 Grant Avenue
San Leandro, California 94579

15.12 Non-Discrimination - Equal Employment Opportunity. In connection with the Project,

15.12.1 The Provider will not discriminate against any employees or applicants for employment because of race, creed, color, sex or national origin. The Provider will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color, sex, national origin or age. Such action will include, but are not limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; lay-off or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Provider will post notices setting forth the provisions of this nondiscrimination clause in conspicuous places, available to employees and applicants for employment.

15.12.2 The Provider will in all solicitations or advertisements for employees placed by or on behalf of the Provider, state that all qualified applicants will receive consideration for employment without regard to race, creed, color, sex, national origin or age.

15.13 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. The signatures to this Agreement need not all be on a single copy of this Agreement, and may be facsimiles rather than originals, and shall be fully as effective as though all signatures were originals on the same copy.

ARTICLE 16 ELECTRONIC LANGUAGE

By entering into this contract I agree on behalf of the contracting or submitting business entity, its officers, employees, subcontractors, subgrantees, agents or assigns, to conduct this transaction by electronic means by agreeing that all documents requiring county signatures may be executed by electronic means, and that the electronic signatures affixed by the County to said documents shall have the same legal effect as if that signature was manually affixed to a paper version of the document. I also agree on behalf of the aforementioned entities and persons, to be bound by the provisions of chapters 304 and 1306 of the Ohio Revised Code as they pertain to electronic transactions, and to comply with the electronic signature policy of Cuyahoga County.

[Remainder of this page intentionally left blank; signature page immediately follows]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

Provider:

The County:

HALUS POWER SYSTEMS

COUNTY OF CUYAHOGA, OHIO

By: 

By: 

Name:

Louis R. Moore

Edward FitzGerald, County Executive

Its:

Principal

Approved as to form by
William D. Mason, Prosecuting
Attorney for Cuyahoga County

By: _____

Assistant County Prosecutor

ATTACHMENTS:

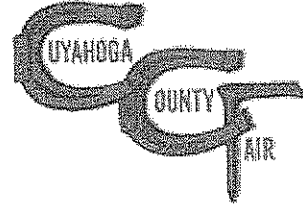
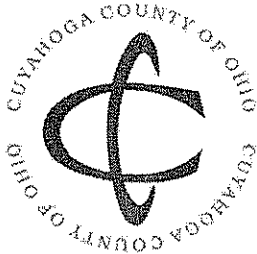
Appendix A - Scope of Work

Appendix B - Provider Insurance Documents

Appendix C - Request for Payment

Appendix D - Project Schedule

Appendix A, Scope of Work



Cuyahoga County Fairgrounds

Scope of Work for Wind Turbine Supply and Installation

Wind Turbine Specifications and Other Provider Requirements

A.1 Scope

This document shall identify those items included in the Scope of Work (SOW) provided by Halus Power Systems (Provider) covered by this agreement for the supply and installation of the Cuyahoga County Fairgrounds Wind Turbine Project for Cuyahoga County (Owner). Halus shall provide one (1) fully remanufactured and fully operational wind turbine system including blades, nacelle, tower, control system, utility interconnection system, turbine and tower installation and balance of plant installation, commissioning and documentation to provide a fully functioning and cost effectively maintainable system upon installation and commissioning that meets or exceeds the original manufactures specifications and performance as provided for in the Type-Approval of Vestas V39 (Approval Number A-1000-2 rev.2) issued January 6, 1997, as well as the most current industry and regulatory standards.

This SOW includes the following items:

- One (1) remanufactured and fully operational Vestas V-39 500 kW wind turbine ("Wind Turbine").
- Matching steel tubular tower including original 40 meter tower and new tower base extension to achieve installed hub height of 60 meters. Tower inner works and matching paint for new tower extension are included. All items to fully integrate the new tower extension to the original tower are included.
- Custom cold weather package and internet monitoring and control system
- Attached original equipment specification from original manufacturer, Appendix A.
- Summary of remanufacturing processes detailed in this document.
- Supply and installation of Wind Turbine foundation and related engineering. All foundation parts including embedment rings and bolt templates are included.
- Supply and installation of electrical wiring from Wind Turbine to existing electrical system approximately 500 straight feet away. Electrical run from Wind Turbine to Owner supplied electrical grid includes trenching through gravel and/or soil only not over or under any roads, culverts, waterways, parking lots, pavement, concrete, asphalt, or any other obstructions that would impede a standard trencher. Horizontal boring or horizontal directional drilling if needed to be supplied by others.
- Shipping, unloading, ground assembly, erection of Wind Turbine. All required labor, rigging, and material handling equipment is included. During site construction, delivery, assembly and erection of Wind Turbine, Owner will make site available to Halus and its agents without interruption from dawn to dusk 7 days a week.

A.2 Standards

All materials and work will meet or exceed current professional standards for similar work.

The Wind Turbine, its related components and processes shall comply with the most current following and other industry and regulatory standards typical of the "utility scale" wind turbine industry.

- National Electrical Code (NEC) NFPA 70.
- IEEE1547

A.3 Design Objective

The Wind Turbine Project and implementation thereof by the Provider shall be designed to maximize performance and minimize the life cycle cost of energy from the Wind Turbine while meeting the requirements of this specification.

B.1.1 Project Schedule

The Project Schedule attached to the Agreement as Appendix D outlines all the major project benchmarks, critical paths and due dates necessary to complete the overall Project including commissioning as to provide the owner a fully installed and operational Wind Turbine system by December 12, 2011.

The Provider will update and provide to the Owner the Project Schedule no less than once every two (2) weeks or at any time a major schedule change is necessary.

It is the Provider's responsibility to coordinate the overall Project Schedule with all subcontractors and project stakeholders in order to facilitate the Project's smooth completion.

B.1.2 Payment Schedule

Deleted.

B.1.4 Documentation

No later than thirty (30) days prior to commissioning of the Wind Turbine, the Provider shall provide at a minimum the following documentation in the following areas. All documentation must be bound and organized with an index. The Provider shall provide no less than three (3) hard copies and one (1) PDF copy to the Owner. All documents must be in English. While partial and/or staggered submissions will be appreciated for verification, this deliverable will only be considered met when the complete and organized documentation packages are submitted to the Owner:

1. Historic / Original Manufactures' Documents:
 - Wind Turbine specifications and drawings

- Wind Turbine performance specifications
 - including a tabular 1 to 20 mps power curve with 1 mps steps (should include assumptions such as elevation or air density)
 - Tower specifications and drawings
 - Site-specific electrical interconnect drawings and specifications
 - Site-specific foundation drawings and specifications
 - Original installation site descriptions
2. Refurbishment Documentation:
- Inspection reports for all key components and subsystems for nacelle, rotor, blades, tower, controls, etc.
 - Credentials of inspection team
 - Refurbishment team contacts and qualifications
 - Listing of all refurbished components with refurbishing entities contact information and related warranties
 - Verification and listing of any model and serials numbers for components
3. Installation:
- Installation procedures
 - Recommended order and processes for key activities
 - Weights and rigging protocols for crane lifts
 - Bolt and fastener specifications, torque values and torquing procedures for all components
 - Critical component alignment procedures
 - Detailed wiring diagrams
 - Punch and check lists
 - Safety procedures
 - Fluid and lubricant specifications and procedures
4. Commissioning:
- Commissioning procedures and punch list for due diligence inspections
 - Safety protocols
 - Power-up procedures
 - Controls programming and adjustment
 - Instrumentation validation
 - Performance validation
5. Routine Maintenance:
- Detailed routine and preventative inspection and maintenance procedures:
 - Monthly
 - Yearly
 - Other as specified by the original manufacture or refurbishing entities
 - Drawings or photos of processes
 - Detailed listing of all consumables:
 - Specifications
 - Amounts
 - Sources
 - Costs

6. Predicted Maintenance:

- Listing of expected major maintenance or service events:
 - Related requirements:
 - Personnel
 - Equipment
 - Procedures
 - Components
 - Product sources, costs and lead-times (special attention is to be given to items that have historically failed in the Wind Turbine system such as, but not limited to, slip control, gearboxes and generators)
 - Expected intervals or dates as documented by world product experience under similar conditions.

7. As-Built and Installed Documentation

- A complete, full and verified documentation set for all of the above reflecting what was actually supplied and installed.

8. Operations Documentation

- (3) Three Copies of the Original Manufacturer Manual will be supplied

B.1.5 Other Documentation

B.1.5.1 Project Progress and Details Documentation for Regulatory or Funder Requests

The Provider will support the Owner in providing Project Progress and Details Documentation for Regulatory or Funder reporting, permits or other requests as necessary to complete the project as a deliverable of this Contract.

B.1.5.2 Specifications Variances from Original Manufacturer Specifications

All component specifications for the provided Wind Turbine or subcomponents thereof that vary from the original manufactures specifications shall be provided by the Provider and approved by the Owner in writing prior to Project delivery. The original manufacture's specifications as provided by the Provider are attached hereto and made part of this Contract.

B.1.5.3 Acoustic Noise Requirements

Original manufacturer noise data is attached, Appendix A.

B.1.5.4 Certification and Electrical Protection

The Wind Turbine original international certifications are attached hereto and made part of this Contract. Additionally, a Beckwith relay, mounting equipment next to the controller, and configuration according to utility and or local permitting requirements is included in this SOW to comply with the USA standard, IEEE 1547.

B.1.5.6 Permitting Related Documentation

The Provider shall provide any and all documentation required for permitting of the Project such as but not limited to:

- Ohio licensed engineer stamped structural engineering drawings and specifications
- Electrical drawings and specifications sufficient for local permitting and inspections
- Other documents as necessary for the satisfactory permitting and completion of the Project.

The Owner shall provide the Provider access to relevant existing site documents as practically available to aid in the creation of the above.

B.1.5.7 Photo and Video Documentation

The Provider shall provide to the Owner as a deliverable of this contract detailed photo and or video documentation of the key project refurbishment, delivery, installation and commissioning benchmarks. Extra care should be given to providing documentation of as-built/as installed systems that cannot be easily viewed in a completed installation such as inside gear-boxes, buried foundations, rebar configurations, buried conduit, hidden connections, etc.

C.1 Detailed Project Requirements

C1.1 Control and Monitoring System

The Wind Turbine shall include remote monitoring and control capability with real-time access to information. At a minimum the interface shall allow the owner to communicate with the Wind Turbine as well as allow direct access to the data for Owner or public dissemination. Items to be monitored include at least the following:

- Main controls and monitoring via display at ground level
- Diagnostics hand held controller
- Data Information Display:
 - Wind Turbine state (e.g., running, stopped, paused)
 - Fault codes and history
 - Availability
 - Electrical: (kWh, kW, kVAR, PF, Hz, V, A) (positive & negative as applicable)
 - Mechanical: (blade pitch, yaw direction, brake activation, hydraulic pressures, temperature, and vibration)
 - Environmental: (wind speed, direction, temperature)
 - System temperatures
 - Fluid temperatures included with original Wind Turbine
 - Others as listed in this Specification and Contract
 - Cumulative and historic data for the above
- Remote control and fault reset capability

- Control: Remote and local emergency stop and lock-out
- User definable automated stops (vibration, temperature, etc.)
- Control: Ability to start, stop, pause
- Control: Ability from inside the nacelle
- Local override and lockout of remote control
- Remote Monitoring of the Wind Turbine:
 - Provide data acquisition system capability including but not limited to monitoring status of all protective devices and safety trips, all metered values, and all monitoring/control exercised at the local service facility, including emergency and remote stop
 - Real-time access to be provided via fiber, RS485, TCP/IP, or wireless.
 - Provide the ability to integrate the Wind Turbine into a system for public and educational use and monitoring
- Monitoring & Safety Trips
 - Control and safety circuits shall be de-energized-to-trip & energized to-operate
 - Monitoring, alarm & trip set points (at a minimum)
 - Generator temperature
 - Generator over heating
 - Gear bearing temperatures
 - Gear oil temperature
 - Nacelle temperature
 - Vibration
 - Electric motor temperature alarm
 - Brake caliper temperature alarm
 - Emergency brake
 - Hydraulic pressures
 - Hydraulic valve function
 - Power cable twist
 - Shaft speeds
 - Cut-out speed exceeded

C.1.1 Wind Turbine General Electrical Requirements

The design of the Wind Turbine electrical system shall minimize hazards to people, and minimize damage to the Wind Turbine, Owner, and utility electrical systems in the event of a fault condition during operation, parking, and maintenance under all site-specific environmental conditions. The combined designs of the Wind Turbine electrical system and delivery system shall ensure that the Wind Turbine is maintained in a safe state under normal and extreme utility system conditions, and in conjunction with the Utility Interconnection Agreements.

C.1.3 Lightning Protection

Engineering and as-installed documentation of and for the Wind Turbine grounding system and lightning protection shall be provided as a deliverable of this Contract.

C.1.6 Finishes

All material not naturally corrosion resistant shall be treated or finished to protect surface/functional integrity under the ambient conditions at the Owner's site identified in this Contract. Refinishing by the Owner shall not be required for a minimum of ten years. All Wind Turbine external surfaces, including the tower, shall be off-white in color.

C.1.7 Federal Aviation Administration Lighting

Provider shall provide U.S. Federal Aviation Administration (FAA) required aeronautical safety lighting to meet the requirements of the attached FAA Determination Letter approving an overall height (blade tip) height of 295 feet.

D.1 Other Included Accessories

- Internal tower ladders and platforms
- Tower and nacelle lighting
- Space heaters in switchgear cabinet
- Control power for internal loads, including controls, lights, and receptacles from the base.
- 120VAC service power receptacles at the tower base and in the nacelle
- Environmental sensors
 - Ambient temperature
 - Wind speed
 - Wind Direction
- Tower door lock
- Service panel locks

F.1 Refurbishment of the Wind Turbine

The Provider shall provide documentation that clearly describes the refurbishment process that will be used to bring the Wind Turbine into like new condition.

At a minimum, refurbishment will include:

1. Blades
 - Disassemble, test and inspect all blade components
 - Repair structural and/or cosmetic damage to blades
 - Insure weight and balance of blades individually and as a set
 - Replace hub-to-nacelle and blade-to-hub fasteners
 - Surface prep, re-coat surface and polish blades
 - Add leading edge material to blades
 - Test and verify blade pitch system and rebuild and replace parts as necessary
 - Document verification of matched blade set.

2. Gearbox

- Gearbox overhaul and parts replacement as necessary such that only gears, pinions and other parts in new or excellent condition are redeployed. Shim tensioning as necessary. All interior parts cleaned prior to replacement of oil.
- Disassemble, test and inspect complete gear unit
- Inspect all gears for wear, pitting, and abrasion
- Furnish and install new gears/pinions if less than excellent condition
- Furnish and install all new bearings
- Recondition/replace shafts where necessary
- Recondition or replace auxiliary pumps as required
- Furnish and install new gaskets
- Furnish and install new filters
- Furnish and install new gear oil
- Gearbox cover bolts replaced
- Secondary testing and replacement of Gear Oil after loaded run-in testing and post-run cleaning

3. Hydraulic (Brake/Blade Pitch) system

- Replace or overhaul calipers using parts from the original manufacturer. Install new brake pads and seal and pin kits on all calipers
- Meg test brake pump motor and replace if out of spec
- Pressure test and re-charge brake accumulators with nitrogen
- Flush, re-charge with new fluid and bleed brake system
- Replace all hydraulic hoses
- Brake sensor and motor wiring replaced
- Brake Junction box, compression connectors replaced
- Replace all wiring for brake sensors, from nacelle to controller
- Replace all brake pads and turn or replace al contact surfaces
- Replace all wipers, seals, bearings and other wear parts in pitch assembly

4. Generator

- Disassemble, test and inspect complete generator to meet or exceed original manufactures specifications
- Steam clean all parts
- Dip, bake and balance stator and related parts
- Furnish and install new bearings
- Assemble, test and paint
- Load test complete unit

5. Other Electric

- No-load test complete reassembled nacelle
- Document all components with pictures
- Replace Compression fittings as required
- Inspect and replace all worn grounding wires

6. Other Components

- Clean all components

- Repair/replace as required
- Inspect and recondition cable twist as necessary
- Inspect and replace yaw gears as necessary
- Inspect and recondition hub as required
- Inspect and recondition blade pitch system as required
- Add or replace emergency stop buttons in nacelle and at the base of the tower

7. Tower

- Mechanical and chemical surface prep prior to coating application
- platforms, and tower components surface prepped and coated as needed
- Tower lighting inspected and replaced as needed
- Tower safety and lift points inspected and repaired or replaced as needed

8. High Speed Shaft

- Replace high speed shaft bolts and reapply Loctite
- Inspect, repair or replace as necessary and repack with grease
- Re-align high speed shaft with gear and generator surfaces according to manufacturer tolerances
- Dynamically balance shaft
- Replacement low and high speed sensors

9. Main Shaft

- Main shaft purged of old grease, cleaned , inspected and repaired or replaced as necessary
- Replace bearings as needed
- Gas pressure automatic grease cups added to main shaft grease fitting

10. Controller

- Upgrades from original configuration include web-based control system and cold weather package
- Test functioning of ground and nacelle controllers with nacelle in Halus facility prior to shipping

11. Yaw motor/gear mechanism

- Overhaul using approved parts supplied by original manufacturer
- Sand blast and apply new coatings
- Replace yaw gear as needed
- Overhaul or replace cable twist system
- Replace seals and bearings
- Test and run assembled yaw gear set under load

12. Web Based control and monitoring

- RF (radio frequency) or functional equivalent monitoring for real-time Wind Turbine production and error data. Internet connection required within 750 feet line of sight of Wind Turbine. Internet supplied by others.

13. Bolts and Fasteners

- Most structural fasteners replaced with new fasteners equal to or exceeding strength class and size of original bolts.

- Treat or finish all exposed metal or other environmentally affected materials including exposed bolts and fasteners with an industrial finish to prevent corrosion or deterioration.

14. Coatings - Overview

- High solids multi-component industrial finishes applied to all surfaces where hot dipped galvanizing not possible or practical.
- Only finishes equal to or greater in quality, performance, specification and durability to those used in new MW class wind –turbines will be used.
- Mechanical and chemical surface preparation prior to application of coating includes a combination of sanding, sand-blasting, solvent cleaning, solvent-based water high pressure washing and solvent etching.

G.1 Secondary Inspections

- G.1.3 The Provider will make available the Project for independent review, inspection and certification by any Owner designated individual or entity. While the Owner may have this right, all obligations to meet the specifications of the Contract, find issues or to correct issues found lie solely with the Provider.

H. Initial Warranty and Service Coverage

Warranty

- H.1.1 Manufacturer Warranties. All manufacturer warranties for the Wind Turbine and all related components, parts and equipment shall be enforced by the Provider for a period of ONE (1) YEAR from the date set forth in subparagraph H.1.3 and thereafter passed on to the Owner to the extent permitted thereunder. Documentation for all said warranties shall be considered a Provider deliverable of this Contract.
- H.1.2 Standard Limited Warranty. The Provider warrants the Wind Turbine (including both the turbine and tower), and all other related components, parts and equipment provided by the Provider against defects in materials and workmanship under normal use for a period of ONE (1) YEAR from the date set forth in subparagraph H.1.3 regardless of whether or not the manufacturer warranty for such component, part or piece of equipment is permitted to be transferred to Owner. The foregoing warranty is limited to the Owner and is non-assignable.
- H.1.3 Commencement of Warranty Period. The warranty period shall commence on startup of the Wind Turbine or if it does not operate per original manufacturer specifications in Pause or Run mode, then after thirty (30) days of continuous successful Wind Turbine operation at the Owner's site.
- H.1.4 Repair or Replacement of Warranted Part. Subject to the requirements and limitations set forth in this Article H, if a warranted part is found to be defective during the warranty period and the Owner has notified the Provider in writing of

such defect during the warranty period and no later than thirty (30) days of the Owner having actually become aware of such defect, the Provider shall promptly either repair or replace said part (the decision to repair or replace said part to be at Provider's election), and provide and furnish all labor, materials, tools, supplies, equipment, services, facilities, supervision, and administration necessary or incidental to properly bring the full Wind Turbine system back to full operation at the Provider's sole expense.

- H.1.5 Parts Supply. The Provider shall maintain good relationships with parts suppliers or maintain its own parts supply during the warranty period as to facilitate prompt replacement of defective warranted parts.
- H.1.6 Written Action Plan. Within five (5) business days of receiving notice of a warranty issue from the Owner, the Provider will provide the Owner a written action plan with estimated timeframes to correct any warranty issue.
- H.1.7 Warranty Limitations. The warranty obligations of the Provider do not extend to any warranted part that is damaged by the negligent acts or omissions of any person other than the Provider or its subcontractors, by faults relating to the electrical system that the Wind Turbine is connected to, including but not limited to voltage, current and frequency ranges outside those specified in manufacturer (Vestas) product manual, or by force majeure (including but not limited to hail, ice, lightning, earthquakes, wind in excess of operating ranges specified in manufacturer (Vestas) product manual, hurricanes, tornados, or volcanic eruptions). Additionally, the warranty obligations of the Provider do not extend to any warranted part that is not maintained and operated in accordance with all instructions, practices and procedures of which the Owner has been advised in writing by the Provider, nor to normal wear or any alteration, repair or replacement made without the prior written approval of the Provider or contrary to written instructions from the Provider.
- H.1.8. NO IMPLIED WARRANTIES; EXCLUSIVE REMEDY. THE EXPRESS WARRANTIES SET FORTH IN THIS WARRANTY ARE IN LIEU OF ALL OTHER WARRANTIES, WHETHER ORAL OR IMPLIED BY LAW, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, EACH OF WHICH ARE HEREBY DISCLAIMED.

Regularly Scheduled and Preventative Maintenance

- H.2.1 For ONE (1) YEAR from the date set forth in subparagraph H.1.3 above, Provider shall perform regularly scheduled and preventative maintenance on the Wind Turbine (including both the turbine and tower), and all other related components, parts and equipment in accordance with the Original Manufacturer Manual (to be provided to Owner pursuant to Section B.1.4 of this Scope of Work), all other installation and operating manuals and specifications, and best industry practices (collectively the "First Year Maintenance Services"). The First Year Maintenance Services shall be carried out through a minimum of four (4) in-person Project Site visit conducted by Provider utilizing only qualified technicians and consultants. Provider shall provide and furnish all labor, materials, tools, supplies, equipment, services, facilities, supervision, and

administration necessary or incidental to provide the First Year Maintenance Services and ensure continuous successful Wind Turbine operation at the Project Site in accordance with the Original Manufacturer Manual. Project Site visits made in accordance with the Provider's provision of the First Year Maintenance Services shall be made at intervals of time common in the industry and as provided for the in Original Manufacturer Manual. Owner shall be provided at least ten (10) business days advanced notice of any such Project Site visits.

Appendix B, Provider Insurance Documents

The Provider will maintain, and ensure that any of its subcontractors maintain, at a minimum, the following insurance:

- (a) Workers' Compensation as required by the State in which Provider's Work is to be performed; it being understood, however, based upon Provider's Work, Provider shall not be obligated to purchase Workers' Compensation coverage in the State of Ohio. Provider's subcontractors, however, shall be required to carry Workers' Compensation coverage as required by the State of Ohio.

Employer's Liability with limits of \$500,000 each accident, \$500,000 Disease, each employee and \$500,000 Disease, policy limit.

USL&H and Maritime Coverage (Jones Act) will be maintained if applicable.

- (b) Comprehensive General Liability including Products & Completed Operations; Broad Form Property Damage; XCU; Explosion, Collapse and Underground (as applicable) and Contractual Liability with minimum limits of \$1,000,000 per occurrence, \$2,000,000 aggregate, except that heavy lifting contractors are to maintain \$2,000,000 per occurrence, \$2,000,000 aggregate.

Products & Completed Operations to be maintained for a minimum of three years after final payment.

- (c) Business Auto Insurance for all owned, hired, and non-owned vehicles with minimum limits of \$1,000,000 combined single limit.
- (d) Marine Insurance (if applicable) Hull, Collision, Tower's Liability at the Full Value of Each Vessel, Protection and Indemnity \$1,000,000 per occurrence.
- (e) Pollution Liability If work contemplated under the Contract includes the handling, transportation or disposal of pollutants, then Pollution Insurance with limits of not less than \$2,000,000 per occurrence must be maintained.

Appendix C, Request for Payment

Provided by Cuyahoga County

Sample Below

APPLICATION AND CERTIFICATION FOR PAYMENT

TO OWNER:

PROJECT:

AIA DOCUMENT G702
APPLICATION
NO:

PAGE
ONE
OF

PAGES

Distribution to:
OWNER
OWNER'S REPRESENTATIVE
CONTRACTOR

FROM CONTRACTOR:

VIA OWNER'S REP:

The Renaissance Group
5281 Euclid Chardon Road
Kirtland, Ohio 44094

PERIOD TO:

PROJECT NOS:

CONTRACT
DATE:

CONTRACT FOR:

CONTRACTOR'S APPLICATION FOR PAYMENT

Application is made for payment, as shown below, in connection with the Contract.
Continuation Sheet, AIA Document G703, is attached.

The undersigned Contractor certifies that to the best of the Contractor's knowledge,
information and belief the Work covered by this Application for Payment has been
completed in accordance with the Contract Documents, that all amounts have been paid by
the Contractor for Work for which previous Certificates for Payment were issued and
payments received from the Owner, and that current payment shown herein is now due.

1. ORIGINAL CONTRACT SUM \$ _____
2. Not change by Change Orders \$ _____
3. CONTRACT SUM TO DATE (Line 1 + 2) \$ _____
4. TOTAL COMPLETED & STORED TO \$ _____
- DATE (Column G on G703)
5. RETAINAGE:
 - a. % of Completed Work \$ _____
(Column D + E on G703)
 - b. % of Stored Material \$ _____
(Column F on G703)Total Retainage (Lines 5a + 5b or
Total in Column I of G703) \$ _____ 0.00
6. TOTAL EARNED LESS RETAINAGE \$ _____
(Line 4 Less Line 5 Total)
7. LESS PREVIOUS CERTIFICATES FOR
PAYMENT (Line 6 from prior Certificate) \$ _____
8. CURRENT PAYMENT DUE \$ _____
9. BALANCE TO FINISH, INCLUDING RETAINAGE \$ _____
(Line 3 less Line 6)

CONTRACTOR: Parker Hamilton Corporation

By: _____ Date: _____

State of: _____ County of: _____
Subscribed and sworn to before me this _____ day of _____
Notary Public:
My Commission expires: _____

OWNER'S REPRESENTATIVE CERTIFICATE FOR PAYMENT

In accordance with the Contract Documents, based on on-site observations and the data
comprising the application, the Architect certifies to the Owner that to the best of the
Architect's knowledge, information and belief the Work has progressed as indicated,
the quality of the Work is in accordance with the Contract Documents, and the Contractor
is entitled to payment of the AMOUNT CERTIFIED.

AMOUNT CERTIFIED \$ _____

(Attach explanation if amount certified differs from the amount applied. Initial all figures on this
Application and on the Continuation Sheet that are changed to conform with the amount certified.)
ARCHITECT:

By: _____ Date: _____

This Certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the
Contractor named herein. Issuance, payment and acceptance of payment are without

prejudice to any rights of the Owner or Contractor under this Contract.

CHANGE ORDER SUMMARY	ADDITIONS	DEDUCTIONS
Total changes approved in previous months by Owner		
Total approved this Month		
TOTALS	\$0.00	\$0.00
NET CHANGES by Change Order	\$0.00	

AIA DOCUMENT G702 - APPLICATION AND CERTIFICATION FOR PAYMENT - 1992 EDITION - AIA - ©1992

THE AMERICAN INSTITUTE OF ARCHITECTS, 1735 NEW YORK AVE., N.W., WASHINGTON, DC 20006-5292

Appendix D, Project Schedule

Schedule of Work

Item No.	Provider's Work ("Milestones")	Projected Payment	Milestone Date	Projected Date
1.	Award approved by Cuyahoga County Council	N/A		April 20, 2011
2.	Notice to Proceed issued	N/A	Date Notice to Proceed is issued (" <u>Notice Date</u> ")	April 27, 2011
3.	Engineering and turbine release	\$50,000	Notice Date + 2 weeks	May 10, 2011
4.	Performance bond	\$50,000	Notice Date + 1 month	May 31, 2011
5.	Turbine received at Halus and ready for inspection	\$350,000	Notice Date + 2.5 months	July 5, 2011
6.	Foundation completed and cured	\$200,000	Notice Date + 6 months	October 31, 2011
7.	Electrical ninety percent (90%) completed	\$150,000	Notice Date + 6 months	October 31, 2011
8.	Turbine rebuilt and delivered to project site	\$250,000	Notice Date + 6 months	October 31, 2011
9.	Tower extension delivered to project site	\$200,000	Notice Date + 6 months	October 31, 2011
10.	Turbine commissioned and online	\$110,000	Notice Date + 7.5 months	December 12, 2011
11.	Owner's Allowance (to be used only with the express written consent of the County)	\$40,000	N/A	N/A
	Totals:	\$1,400,000		

SUPPLEMENT TO PROVIDER AGREEMENT

THIS SUPPLEMENT TO PROVIDER AGREEMENT (this "Supplement") is made as of March 22, 2011 (the "Effective Date"), by and between **COUNTY OF CUYAHOGA, OHIO**, a county and political subdivision of the State of Ohio ("County") and **HALUS POWER SYSTEMS**, a sole proprietor ("Provider").

WHEREAS, County is authorized and empowered by Ohio Revised Code ("Revised Code") Section 307.07 to accept grants of money to be held, used, and applied only for the purpose for which they are made from the United States government or any agency thereof;

WHEREAS, County, pursuant to that certain Assistance Agreement ("Assistance Agreement") by and between County and the U.S. Department of Energy ("USDOE"), has been awarded funding in the form of an Energy Efficiency and Conservation Block Grant (the "EECBG") by the USDOE under the Energy Efficiency and Conservation Block Grant Program (the "Program") to develop and implement County's Energy Efficiency & Conservation Strategy ("EEC&S") in order to reduce fossil fuel emissions; reduce total energy use of eligible entities; and improve energy efficiency in the building sector, the transportation section, and other appropriate sectors, along with creating jobs;

WHEREAS, the EECBG was awarded to County under Catalog of Federal Domestic Assistance Number DE-EE0000708;

WHEREAS, in furtherance of County's EEC&S, County and Provider entered into that certain Provider Agreement (the "Agreement") dated of even date herewith for the sale and installation of a fully operational and safe re-built 500 kW Vestas V-39 wind turbine with 60 meter tower (the "Project");

WHEREAS, the Project is funded in part by the EECBG and therefore subject to certain requirements as set forth in the Assistance Agreement; and

WHEREAS, County and Provider wish to supplement and modify the Agreement in the manner and upon the terms set forth in this Supplement in order to fully comply with the terms and conditions of the Assistance Agreement and any other applicable requirements of the Program.

NOW, THEREFORE, in consideration of the mutual representations, warranties, covenants and agreements herein contained, the receipt and sufficiency of which is hereby acknowledged, the parties hereto, intending to be legally bound, hereby agree as follows:

ARTICLE I

1.1 **Supplement to Agreement.** County and Provider hereby supplement and modify the Agreement as set forth in Article II of this Supplement.

ARTICLE II

2.1 **General.** Funding for the Agreement has been provided through the American Recovery and Reinvestment Act of 2009 ("ARRA"), and is subject to the reporting and operational requirements of ARRA. Provider and all of its subcontractors are subject to audit by appropriate federal and state entities.

2.2 **Agreement Deadlines.**

(a) **Project Completion.** Provider shall undertake and complete Provider's Work (as defined in the Agreement) in accordance with this Supplement and the Agreement on or before December 12, 2011 (the "Completion Date").

(b) **Term of Agreement.** The Agreement shall be in effect from the Effective Date through and including March 21, 2012, unless sooner terminated as provided for in this Supplement (the "Term"). Provider and County acknowledge that the obligations of Provider to provide information and documentation pursuant to this Supplement and the Contract shall extend beyond both the Completion Date and the expiration of the Term to January 31, 2015 (the period from the Effective Date to and including January 31, 2015 shall be defined as the "Compliance Period") for purposes of reporting by the County and monitoring by the USDOE of the results of the EECBG, and ensuring Provider's obligation, if any, to file any delinquent reports survives the expiration or earlier termination of the Agreement and this Supplement.

2.3 **Payments.**

(a) **Draw Requests.** Provider shall submit to County, during the course of completing the Project, requisitions for payment in accordance with the sources and uses attached hereto as Appendix B (the "Budget") and the procedures set forth in Articles 6 and 7 of the Agreement to the extent such procedures do not conflict with this Supplement (notwithstanding references to the "Budget" herein, County shall pay Provider the fixed-price contract amount of \$1,400,000 in accordance with and subject to the Agreement and this Supplement). Any modifications to the sources and uses set forth in the Budget must be approved in writing by County. Requisitions for payment submitted by Provider for any portion of the Project funded by EECBG funds, as such portions have been identified by County and set forth in the Budget, shall consist only of payment requests for those portions of the Project so identified by the County. Provider shall specify on each such requisition for payment the line item(s) on the Budget that corresponds to the work for which payment is being requested. Provider shall further submit with each requisition for payment, whether such requisition is for work funded by EECBG funds or otherwise, supporting documentation sufficient to evidence and support such requisition. Such documentation may consist of contracts, invoices, vouchers, paid receipts and other documentation as appropriate to evidence completion of the work described in the requisition for payment. County shall be the sole judge of the adequacy of such requisitions and shall satisfy itself as to whether such requisitions meet the requirements of the SEP Grant and EECBG, including, without limitation, that the activities for which payment is requested are eligible for those programs. In the event County deems any or all supporting documentation accompanying a requisition for payment insufficient, County may, in its sole discretion, require further documentation from Provider as may be necessary or useful to substantiate such requisition for payment. County reserves the right to inspect all work and confirm that the portion of the work covered by each requisition for payment has been completed satisfactorily and that all supporting documentation is in order. If the requisition for payment has been completed to the County's satisfaction, all supporting documentation is in order, and the County has performed any inspections as it has so desired, then

the County shall process as promptly as possible such requisition for payment in accordance with the payment provisions of the Agreement, but subject to the other provisions of this Section 2.3.

(b) Special Condition to Disbursement. Subject to any applicable notice or cure periods, County shall not be obligated to make payments of disputed amounts to Provider under the Agreement at any point during the Term in which Provider fails to comply in part or in whole with any of the terms and conditions set forth in the Agreement or this Supplement. In addition, County shall not be obligated to make payments of amounts that are not in dispute if Provider fails to comply with any of the terms and conditions set forth in the Agreement or this Supplement in any material respect. For purposes of this subparagraph, the term "material respect" shall mean any failure by Provider to comply with any (x) of the terms and conditions set forth in the Agreement or this Supplement, or (y) Program rule, requirement or regulation, whether set forth in the Supplemental Terms and Conditions attached hereto as Appendix A or elsewhere.

(c) Time Restrictions. Under the Program, all funds awarded to County under the EECBG must be expended within thirty-six (36) months of September 28, 2009 (*i.e.*, the effective date of the EECBG). Accordingly, any payments for which County is obligated to make to Provider for activities eligible for reimbursement under the Program and pursuant to Articles 5, 6 and 7 to the Agreement shall be first paid using funds provided by the EECBG. County shall not be obligated to make any payments out of EECBG funds to Provider following the expiration of the thirty-six (36) month term discussed herein.

(d) Liquidated Damages. As set forth in the Budget, the Project is being paid for by the County through the use of certain grant monies, namely a \$1,008,514.00 SEP Grant and \$391,486.00 of its EECBG funds. The County may not be allowed to use or may be required to return such monies in the event (i) all or part of the Project is not completed by the Completion Date, or (ii) requisitions for all or part of the Contract Price (as defined in the Agreement) have not been submitted to the County by Provider in accordance with Section 2.3(a) of this Supplement on or before (x) February 28, 2012, in the case of requisitions to paid for with the SEP Grant, and (y) August 31, 2012, in the case of requisitions to paid for with the EECBG. The Provider acknowledges that the County will have suffered a compensable financial loss if and only if (a) the County is not allowed to use or is required to return all or any part of the SEP Grant or EECBG, (b) one or more of the events set forth in the preceding sentence occurs, and (c) the occurrence of such event or events is the direct and sole result of the acts or omissions of the Provider. The compensable financial loss referenced in the preceding sentence suffered by the County, if any, will be equal to that amount of the SEP Grant and/or EECBG that the County was not allowed to use or required to return, and such amount shall be deducted from the Contract Price. For purposes of this paragraph, "acts or omissions of the Provider" shall not include accidents, theft, vandalism, or an act of God or other force majeure, whether occurring in Germany, in transit from Germany to the Provider's San Leandro, California facility ("Provider's Facility"), at Provider's Facility, at the Project Site, or while in transit from Provider's Facility to the Project Site, that directly and solely cause damage, destruction, or other loss of the turbine and/or the tower extension and/or delays in the remanufacturing or shipping thereof to the Project Site.

(e) Owner's Allowance. The Contract Price shall be reduced by the unused portion of the \$40,000.00 "Owner's Allowance" set forth on the Budget. The Owner's Allowance shall only be used with the express written consent of the County.

2.4. Compliance with Federal Requirements.

(a) General. Provider shall comply with all USDOE requirements for the Program that are applicable to Provider with respect to Provider's Work in connection with the Project, as USDOE may clarify or change those requirements from time to time, whether such requirements are set forth in Appendix A attached hereto, or elsewhere. Provider shall comply with federal prevailing wage laws (Davis-Bacon and related acts) with respect to any construction activities on the Project and respond to County in a timely manner as to all reporting requirements associated with ARRA funding. Further, the Agreement and this Supplement, shall be subject to any applicable additional rules, requirements, modifications or clarifications the federal government may institute regarding ARRA funds.

(b) Buy American and Substantial Transformation. Notwithstanding anything to the contrary contained in the Agreement, this Supplement, or any of the appendices attached hereto, the County, along with USDOE and the State of Ohio Energy Resources Division, have determined that the Project may be evaluated against the requirements for "Substantial Transformation," an alternative compliance pathway to the Buy American requirements of the Program, and in connection therewith, the County acknowledges that it has not relied on any representation of Provider other than the Scope of Work attached to the Agreement as Appendix A. Upon evaluation of the Project, including the Scope of Work set forth in the Agreement, against "Guidance on Manufactured Goods and Substantial Transformation for Financial Assistance Awards" issued by USDOE effective May 24, 2010, it was determined by the County and the State of Ohio Energy Resources Division, with the knowledge of USDOE, that the Project constitutes a substantial transformation and therefore does comply with the Buy American requirements of the Program. In that regard, the Provider shall ensure that all information and documentation supporting the Scope of Work be retained during the Compliance Period for audit purposes. Such information and documentation shall include, but is not limited to, all records and documentation as to the following: (i) the disassembly/reassembly of the Wind Turbine in the United States, (ii) hardware purchased in the United States for the repurposing of the Wind Turbine, (iii) labor hired to do the necessary repurposing work in connection with the Project, (iv) the time necessary to complete the Project, and (v) any other information or documentation the County may request to substantiate the determination of substantial transformation. Copies of the foregoing information and documentation shall be provided to the County not later than thirty (30) days following completion of the Project, or at any earlier time if so requested by the County.

2.5. Supplemental Terms and Conditions. The Agreement shall incorporate by reference the terms set forth in Appendix A, Supplemental Terms and Conditions. In the event of any conflict or inconsistency between any provision in Appendix A and any provision in the Agreement, the provisions in Appendix A shall control.

2.6. Reporting. The EECBG, which is being used to fund a portion of the Project, imposes certain reporting requirements on County. Accordingly, Provider agrees, within five (5) business days following a request by County to provide information necessary and sufficient for County to comply with such reporting requirements. The County's request to Provider shall specifically identify the information necessary and sufficient to comply with the foregoing reporting

requirements. Failure by Provider to comply with the terms of this section may, at County's election, result in the withholding of payments due Provider or, subject to the notice requirement and cure periods set forth in Section 2.11(b) hereof, termination of the Agreement.

2.7. Audit Standards; Records Maintenance and Access.

(a) Audit Standards. Provider acknowledges that the Agreement involves the use of federal funds and as such is subject to audit by the agency of the United States government granting funds to County for purposes of performing the Project. Provider also acknowledges that the Project will be subject to fiscal and compliance audits in accordance with Generally Accepted Auditing Standards as promulgated by OMB Circulars A-87, A-102, A-110, A-122, or A-133 (whichever is applicable), and United States Government Accountability Office Guidelines for Financial and Compliance Audits of Federally Assisted Programs. Provider agrees to comply with information requests by County to the extent necessary for County to achieve compliance with the audit standards of this Section 2.7.

(b) Maintenance of Records. At all times on or before the date which is three (3) years after (i) the Completion Date, or (ii) any earlier termination date (as provided in Section 2.11 of this Article II), whichever is later, Provider shall establish and maintain its records regarding the Agreement, this Supplement, the EECBG funds and the Project, including, but not limited to, financial reports, documentation of expenditures of EECBG funds, job creation and retention statistics, and all other information pertaining to Provider's performance of its obligations under the Agreement and this Supplement. Notwithstanding the foregoing, the following record types shall be subject to the retention periods indicated for each: (i) real property and equipment records shall be retained for three (3) years from the date of the disposition or replacement or transfer of the real property or equipment; (ii) if Provider is required to report program income after the period of grant support, records concerning such income shall be retained for three (3) years after the end of Provider's fiscal year in which the income is earned; and (iii) indirect cost rate computations or proposals, cost allocation plans, and any similar accounting computations of the rate at which a particular group of costs is chargeable shall be retained for three (3) years after (A) the date of submission to the federal government for negotiation if the computation or proposal is negotiated or (B) the end of the fiscal year (or other accounting period) covered by the computation or proposal if not submitted to the federal government for negotiation. If any audit, dispute, litigation, or negotiation is pending when the applicable retention period would otherwise expire, Provider shall maintain such records as may be relevant to such matter until it is finally resolved.

(c) Inspection and Copying. At any time during normal business hours and upon not less than twenty-four (24) hours prior written notice, Provider shall make available to County, its agents and other appropriate State and federal agencies or officials (including, without limitation, the Comptroller General of the United States, USDOE, or any of their authorized representatives) all books and records containing information regarding this Agreement, the EECBG funds, and the Project which are in the possession or control of Provider. County, its agents and other appropriate State and federal agencies and officials may, at their sole cost and expense, review, audit and make excerpts, copies, or transcripts of such books and records. Provider shall also make available for interview by County, its agents and other appropriate State and federal agencies or officials those directors, officers, employees and agents of Provider who may have information regarding the EECBG funds and any transaction involving the EECBG funds. County shall use reasonable efforts to conduct any such inspection of books and records in such a manner as not to interfere

unreasonably with the normal business operations of Provider. Provider shall, at its own cost and expense, segregate records to be made available for inspection pursuant to this Section 2.7(c) from Provider's other records of operation. Provider shall also cause each of its subcontractors paid with EECBG funds to make its books and records available for inspection and copying to the same extent and in the same manner as described in this paragraph for Provider. Notwithstanding the expiration of the Term, the obligations of Provider under Section 2.7 hereof and the rights of County and other state and federal officials to access records shall continue as long as pertinent records are retained pursuant to Section 2.7(b) hereof.

2.8. **Property and Equipment Purchases.** The Agreement is subject to any applicable property recapture requirement that may be imposed by federal law, regulation or Program guideline. If Provider defaults in the performance of the terms and conditions of the Agreement or this Supplement and/or the Agreement or this Supplement is terminated for default or non-performance, property and equipment acquired with EECBG funds may be subject to recapture and Provider may be required to transfer all Provider's right, title and interest in such property and equipment to County. Provider shall provide for the security and safekeeping of all property and equipment obtained with EECBG funds (directly or by reimbursement of costs).

2.9. **Adherence to State and Federal Laws and Regulations.**

(a) **General.** Provider shall comply with all applicable federal, state, and local laws in the performance of Provider's obligations under the Agreement and this Supplement, the completion of the Project and the operation of the Project as long as Provider has any obligation to County under the Agreement or this Supplement. Without limiting the generality of such obligation, Provider shall pay or cause to be paid all unemployment compensation, insurance premiums, workers' compensation premiums, income tax withholding, social security withhold, and any and all other taxes or payroll deductions required for all employees engaged by Provider in connection with the Project, and Provider shall comply with all applicable environmental, zoning, planning and building laws, and regulations, and all permit requirements applicable to the Project. In the event of any conflict or inconsistency between federal statutes and regulations and the terms and conditions of the Agreement, this Supplement or the underlying federal award to County, County will seek guidance from USDOE.

(b) **Conflict of Interest.** No personnel of Provider, subcontractor of Provider or personnel of any such subcontractor, and no public official who exercises any functions or responsibilities in connection with the review or approval of any work completed under the Agreement, shall, prior to the completion of such work, voluntarily or involuntarily acquire any personal interest, direct or indirect, which is incompatible or in conflict with the discharge or fulfillment of his or her functions or responsibilities with respect to the completion of the work contemplated under the Agreement. Any such person who, prior to or after the execution of the Agreement, acquires any personal interest, involuntarily or voluntarily, shall immediately disclose his interest to County in writing. Thereafter, such person shall not participate in any action affecting the work under the Agreement unless County determines that, in light of the personal interest disclosed, his or her participation in any such action would not be contrary to the public interest.

(c) **No Contingency Fees.** Provider represents and warrants to County that Provider has not employed or retained any person or entity to solicit or secure the Agreement upon an agreement

or understanding for a commission, percentage, brokerage, or contingent fee. If such representation proves to be false, County shall have the right to rescind the Agreement and this Supplement without liability or, in its discretion, to recover the full amount of such commission, percentage, brokerage, or contingent fee, or to seek such other remedies as may be legally available for the breach.

(d) Outstanding Liabilities. Provider represents and warrants to County that as of the date that the Agreement and this Supplement is executed by Provider, Provider does not owe: (1) any delinquent taxes to the State of Ohio or a political subdivision of the State of Ohio; (2) any moneys to the State of Ohio or a state agency for the administration or enforcement of any environmental laws of the State of Ohio; and (3) any other moneys to the State of Ohio, a state agency or a political subdivision of the State of Ohio that are past due, whether or not the amounts owed are being contested in a court of law.

(e) Falsification of Information. Provider represents and warrants to County that Provider has made no false statements to County or any of its employees or agents in the process of obtaining the work set forth in the Agreement.

(f) Declaration Regarding Material Assistance/Non-assistance to a Terrorist Organization. If applicable, Provider must certify compliance with Ohio Revised Code § 2909.33.

(g) Equal Employment Opportunity. Provider shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, disability, age, military status or ancestry. Provider shall ensure that applicants for employment are considered for employment, and that employees are treated during employment, without regard to their race, religion, color, sex, national origin, disability, age, military status or ancestry. Provider shall incorporate the requirements of this paragraph in all of its contracts for any work to be performed as part of the Project (other than subcontracts for standard commercial supplies or raw materials), and Provider shall require all of its subcontractors to incorporate such requirements in all subcontracts for such work. Provider agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination provision. Provider will, in all solicitations or advertisements for employment positions, expressly indicate that applications placed for consideration of employment will be reviewed without regard to the race, religion, color, sex, national origin, disability, age, military status or ancestry of the applicant. Any prohibition against discrimination on the basis of age under the Age Discrimination Act of 1975 or with respect to an otherwise qualified disabled individual as provided in Section 504 of the Rehabilitation Act of 1973 shall also apply to any program or activity funded in whole or in part with the EECBG funds.

(h) Prevailing Wage and Labor Standards. All laborers and mechanics employed by Provider or its subcontractors on any such construction work (as defined in 29 C.F.R. part 5) that is part of the Project shall be paid in accordance with the Davis-Bacon Act and related laws, 40 U.S.C. 276a to 276a-5, as amended, the wages that have been determined by the U.S. Secretary of Labor to be the wages prevailing for the corresponding classes of laborers and mechanics employed on project(s) of a character similar to the contract work in the civil subdivision of the state wherein the work is to be performed. In addition, all laborers and mechanics employed by Provider and its subcontractors on such construction work shall be paid overtime compensation in accordance with the provisions of the Contract Work Hours and Safety Standards Act, 40 U.S.C. 327 to 333. Provider shall require that all of its subcontractors and their respective subcontractors shall comply

with all regulations issued pursuant to these acts and with other applicable federal and state laws and regulations. In the event that construction work to be undertaken on the Project is not subject to the application of the Davis-Bacon Act and related laws, and neither the federal government nor any of its agencies prescribes predetermined minimum wages to be paid to mechanics and laborers to be employed in such construction work, Provider shall comply with the provisions of Ohio Revised Code Sections 4115.03 to 4115.16, inclusive, as applicable, with respect to the payment of all mechanics and laborers employed in such construction work.

(i) Lobbying Restriction. Provider shall not expend any EECBG funds, directly or indirectly, to influence congressional action on any legislation or appropriation matters 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.

2.10. Insurance. Provider shall maintain liability and installation floater insurance to cover actionable legal claims for liability or loss which are the result of injury to or death of any person or damage to property (including property of County) in connection with the Project.

2.11. Termination.

(a) Reasons for Suspension or Termination. County may suspend or terminate the Agreement or this Supplement in whole or in part under any of the following circumstances: (i) Provider fails, after receiving written notice from County and an opportunity to cure as set forth in Section 2.11(b) hereof, to comply with the terms and conditions of the Agreement or this Supplement, including any Program rules and requirements incorporated into the Agreement or this Supplement; (ii) County determines that Provider cannot or will not take the necessary action to bring Provider into compliance with applicable requirements of 10 C.F.R. part 600, with the requirements of any applicable Program statute or rule, or with any other term or condition of the Agreement or this Supplement within the time allowed by the Agreement or this Supplement or otherwise approved by County; (iii) Provider ceases to exist or becomes legally incapable of performing its responsibilities under the Agreement or this Supplement; (iv) Provider fails, after receiving written notice from County and an opportunity to cure as set forth in Section 2.11(b) hereof, to comply with any reporting requirements including, but not limited to, the reporting provisions of the Agreement or this Supplement, or (v) for any of the allowable reasons set forth in Article 11 of the Agreement. In the event the Agreement or this Supplement is terminated as a result of cancellation of the EECBG by USDOE, the County shall have no liability to Provider for costs incurred, future costs, or damages as to that portion of the Project funded by the EECBG, to the extent that such termination was caused in whole or in any material respect by Provider.

(b) Procedure. If County has a basis to suspend or terminate the Agreement or this Supplement as provided in paragraphs (a) or (f) of this Section 2.11, County shall notify Provider in writing (the "Notice") sent by certified mail or commercial delivery. The Notice shall state in reasonable detail the basis for the action and sections of the statutes, rules, regulations or contractual obligations that Provider is charged with violating, if any. Provider shall be given thirty (30) days from the date the Notice is mailed to cure any such violations, unless a shorter time period for cure is provided for in the Agreement, in which case the shorter time period shall apply.

(c) Failure of Notice Delivery. When any notice of intent to terminate sent by certified mail is returned because of inability to deliver, the notice required shall be sent by ordinary mail evidenced by a certificate of mailing to Provider's designated representative.

(d) Partial Termination. County and Provider may agree to a partial termination of the Agreement or this Supplement, in which event County and Provider shall, in writing, specify the nature and extent of the partial termination.

(e) Effect of Termination. Within sixty (60) days after termination of the Agreement or this Supplement for the reasons identified in paragraph (a) of this Section 2.11, Provider shall provide County with a closeout report ("Closure Report") setting forth the total expenditures by Provider under the Agreement and this Supplement, as well as the status of the Project at the time of termination. In addition, Provider shall surrender all reports, documents, and other materials required to be assembled and prepared pursuant to the Agreement and this Supplement, which shall become the property of County. Upon review of the Closeout Report, County shall determine whether or not Provider shall be required to refund any portion of the EECBG funds. The refund decision will be within the sole discretion of County. Notwithstanding any of the provisions of this Section 2.11, the (i) Provider shall not be relieved of its responsibility for damages sustained by County by virtue of any breach of contract by Provider, (ii) County may withhold any reimbursement to Provider for the purpose of set-off until such time as the exact amount of damages due County from Provider is agreed upon or otherwise determined, and (iii) County may exercise any and all rights and remedies available to the County pursuant to this Supplement and the Agreement.

(f) Termination for Convenience of County. County may suspend or terminate the Agreement and this Supplement in whole or, from time to time, in part, if County determines that a suspension or termination of the Agreement and this Supplement is in the County's interest. Upon receipt of Notice that County has terminated or suspended the Agreement and this Supplement, Provider shall, unless the Notice directs otherwise, immediately discontinue the work and placing of orders for services, materials, facilities and supplies in connection with the Project. Upon such termination, Provider shall be entitled to payment only as follows: (1) the amount due Provider for that portion of Provider's Work (as defined in the Agreement) that has been performed through and including the date the Agreement and this Supplement were terminated for the convenience of the County, as supported by evidence satisfactory to County; plus, (2) such other costs actually incurred by Provider as are permitted by the Agreement and this Supplement and approved by the County. There shall be deducted from such sums as provided in this subparagraph the amount of any payments made to Provider prior to the date of the termination of the Agreement and this Supplement. Notwithstanding anything contained in this Section 2.11(f) or elsewhere in this Supplement or in the Agreement to the contrary, in no event shall the total sum paid by County to Provider pursuant to the Agreement and this Supplement exceed the Contract Price (as defined in the Agreement), subject to increases or decreases based upon change orders approved in accordance with the Agreement. Provider shall not be entitled to any claim or claim of lien against County for any additional compensation or damages in the event of such termination and payment.

ARTICLE III

3.1. Inconsistency. County and Provider each agree that, in the event of any conflict or inconsistency between the terms of this Supplement and the Agreement, the terms of this Supplement shall control.

3.2. **Resolution of Conflicting Conditions.** Any apparent inconsistency between Federal statutes and regulations and the terms and conditions contained in the Agreement and this Supplement shall be referred by County to the USDOE Award Administrator for guidance.

3.3. **Notice.** Any notice or report required or permitted to be given under the Agreement or this Supplement shall be deemed to have been sufficiently given for all purposes if mailed by first class certified or registered mail or sent by commercial delivery to the following addresses of the parties or to such other address as either party may hereafter furnish by written notice to the other party.

If to County: County of Cuyahoga, Ohio
c/o Department of Development
Reserve Square
1701 East 12 Street, 1st Floor
Cleveland, OH 44114
Attention: Director of Development

With a copy to: Nick Willis
County of Cuyahoga, Ohio
c/o Department of Public Works
Construction Division
2100 Superior Viaduct
Cleveland OH 44113
Attention: Nick Willis

If to Provider: Halus Power Systems
2539 Grant Avenue
San Leandro, California 94579
Attention: Louis Rigaud

3.4 **Severability.** Whenever possible, each provision of this Supplement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement is held to be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provisions of this Supplement.

3.5 **Amendments.** This Supplement may not be amended or modified except upon such terms as both parties may agree in a writing executed by authorized representatives of each party.

3.6 **Forbearance Not a Waiver.** No act of forbearance or failure to insist on the prompt performance by Provider of its obligations under this Supplement, either express or implied, shall be construed as a waiver by County of any of its rights under this Supplement or applicable law.

3.7 **Pronouns.** The use of any gender pronoun shall be deemed to include the other gender, and the use of any singular noun or verb shall be deemed to include the plural, and vice versa, whenever the context so requires.

3.8 **Headings.** Section headings contained in this Supplement are inserted for convenience only and shall not be used in construing this Supplement.

3.9 **Counterparts.** This Supplement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. The signatures to this Supplement need not all be on a single copy of this Supplement, and may be facsimiles rather than originals, and shall be fully as effective as though all signatures were originals on the same copy.

3.10. **Effect.** County and Provider further agree that, except as specifically supplemented or modified by this Supplement, the Agreement remains in full force and effect.

[Remainder of this page intentionally left blank]

IN WITNESS WHEREOF, the parties hereto have caused this Supplement to be executed as of the day and year first above written.

BY ENTERING INTO THIS SUPPLEMENT, YOU AGREE ON BEHALF OF THE PROVIDER, ITS OFFICERS, EMPLOYEES, SUBCONTRACTORS, SUBGRANTEES, AGENTS OR ASSIGNS, TO CONDUCT THIS TRANSACTION BY ELECTRONIC MEANS BY AGREEING THAT ALL DOCUMENTS REQUIRING COUNTY SIGNATURES MAY BE EXECUTED BY ELECTRONIC MEANS, AND THAT THE ELECTRONIC SIGNATURES AFFIXED BY THE COUNTY TO SAID DOCUMENTS SHALL HAVE THE SAME LEGAL EFFECT AS IF THAT SIGNATURE WAS MANUALLY AFFIXED TO A PAPER VERSION OF THE DOCUMENT. YOU ALSO AGREE ON BEHALF OF THE AFOREMENTIONED ENTITIES AND PERSONS, TO BE BOUND BY THE PROVISIONS OF CHAPTERS 304 AND 1306 OF THE OHIO REVISED CODE AS THEY PERTAIN TO ELECTRONIC TRANSACTIONS, AND TO COMPLY WITH THE ELECTRONIC SIGNATURE POLICY OF COUNTY.

PROVIDER:

HALUS POWER SYSTEMS, a sole proprietorship

By: 

Name: Louis R. Gaud

Its: Principal

COUNTY:

COUNTY OF CUYAHOGA, OHIO, a county and political subdivision of the State of Ohio

By: _____

Edward FitzGerald, County Executive

Approved as to form by
William D. Mason, Prosecuting
Attorney for Cuyahoga County

By: _____

Assistant County Prosecutor

Appendix A Supplemental Terms and Conditions
Appendix B Budget

Appendix A

SUPPLEMENTAL TERMS AND CONDITIONS

Section I. SPECIAL TERMS AND CONDITIONS:

1. STATEMENT OF FEDERAL STEWARDSHIP

DOE will exercise normal Federal stewardship in overseeing the project activities performed under the EECBG. Stewardship activities include, but are not limited to, conducting site visits; reviewing performance and financial reports; providing technical assistance and/or temporary intervention in unusual circumstances to correct deficiencies which develop during the Project; assuring compliance with terms and conditions; and reviewing technical performance after Project completion to ensure that the award objectives have been accomplished.

2. SITE VISITS

DOE's authorized representatives have the right to make site visits at reasonable times to review Project accomplishments and management control systems and to provide technical assistance, if required. All site visits and evaluations must be performed in a manner that does not unduly interfere with or delay the Project.

3. PUBLICATIONS

- a. You are encouraged to publish or otherwise make publicly available the results of the work conducted under the award.
- b. An acknowledgment of USDOE support and a disclaimer must appear in the publication of any material, whether copyrighted or not, based on or developed under this Project, as follows:

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

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

4. FEDERAL, STATE, AND MUNICIPAL REQUIREMENTS

You must obtain any required permits and comply with applicable federal, state, and municipal laws; codes, and regulations for work performed under the EECBG.

5. NATIONAL ENVIRONMENTAL POLICY ACT (NEPA) REQUIREMENTS

You are restricted from taking any action using Federal funds, which would have an adverse effect on the environment or limit the choice of reasonable alternatives prior to DOE providing either a NEPA clearance or a final NEPA decision regarding the Project. County will notify Provider in writing in the event NEPA clearance has not been obtained or a final NEPA decision regarding the Project has not been made. This restriction does not preclude Provider from: (1) purchasing any necessary equipment, supplies or related materials; or (2) conducting assessments, studies and other administrative work related to the Project.

6. HISTORIC PRESERVATION

Prior to the expenditure of Federal funds to alter any structure or site, the County is required to comply with the requirements of Section 106 of the National Historic Preservation Act (NHPA), consistent with DOE's 2009 letter of delegation of authority regarding the NHPA. Section 106 applies to historic properties that are listed in or eligible for listing in the National Register of Historic Places. Section 110(k) of the NHPA applies to USDOE funded activities. Provider shall avoid taking any action that results in an adverse effect to historic properties pending compliance with Section 106.

7. WASTE STREAM

Prior to the expenditure of EECBG funds to dispose of sanitary or hazardous waste, the County is required to provide documentation to USDOE demonstrating that it has prepared a disposal plan for sanitary or hazardous waste generated by the Project. Sanitary or hazardous waste includes, but is not limited to, old light bulbs, lead ballasts, piping, roofing material, discarded equipment, debris, asbestos, etc. At County's request, Provider shall submit to County documentation sufficient to allow County to obtain written approval from USDOE of the proposed plan to dispose of the sanitary or hazardous waste.

8. BUY AMERICAN REQUIREMENT

a. Buy American.

(1) Products: Pursuant to Section 1605 of ARRA, all steel, iron, and/or manufactured goods used in the Project must be produced in the United States.

(2) Exception: The requirement set forth in clause (1) of this paragraph shall not apply if and only if the appropriate federal agency determines one of the following:

(a) The application of the requirement in clause (1) of this paragraph would be inconsistent with the public interest;

(b) That (i) the cost of domestic iron, steel, and/or manufactured goods would be unreasonable; or (ii) an insufficient amount of steel, iron, or relevant manufactured goods were produced and reasonably available in the United States; or (ii) that the steel, iron, or relevant manufactured goods is not produced in the United States. The cost of domestic iron, steel and/or manufactured goods will be considered unreasonable when the cumulative costs of such material will increase the overall cost of the project by more than twenty-five percent (25%).

Provider and its subcontractors must comply with the above requirement unless the County obtains a waiver from the appropriate federal agency stating that at least one of the above-referenced exceptions applies. Provider or its subcontractors shall notify the County immediately and shall cooperate with the County if the County determines it will seek an exception to the Buy American requirements by appealing to the appropriate federal agency pursuant to rules and regulations in 2CFR Part 176, Federal Register Volume 74, No 77 (April 23, 2009). The Buy American requirements shall be performed in a manner consistent with United States obligations under international agreements.

Refer to the Buy American Addendum to this Appendix A for additional provisions that apply to any ARRA-funded construction, alteration, maintenance or repair of a public building or public work.

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

a. Section 1606 of the Recovery Act requires that all laborers and mechanics employed by Provider and its subcontractors on the Project shall 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 in accordance with subchapter IV of chapter 31 of title 40, United States Code (Davis-Bacon Act). In addition, Provider and its subcontractors shall pay all laborers and mechanics overtime compensation in accordance with the provisions of the "Contract Work Hours and Safety Standards Act," 40 U.S.C. §§ 327 to 333. Provider and its subcontractors shall comply with all regulations issued pursuant to the above-referenced Acts and with all applicable federal and state laws and regulations.

b. Refer to the Davis Bacon Act and Contract Work Hours and Safety Standards Act Addendum to this Appendix A for additional provisions that apply to any ARRA-funded construction activities.

10. EQUAL EMPLOYMENT OPPORTUNITIES

(a). Equal Employment Opportunities.

- (i) *Compliance with Federal Laws.* In addition to the County's equal employment opportunity requirements set forth in the Supplement, Provider shall comply, and Provider shall obtain the agreement of each of its subcontractors to comply, with all of the following federal laws pertaining to civil rights and anti-discrimination:

Title VI & Title VII of Civil Rights Act of 1964
Equal Pay Act of 1962

Age Discrimination in Employment Act of 1967
Title IX of Educational Amendments of 1972
Section 504 of the Rehabilitation Act of 1973
Age Discrimination Act of 1975
Title I & Title V of Americans with Disabilities Act of 1990
Fair Housing Act
Fair Credit Reporting Act
Equal Educational Opportunities Act
Uniform Relocation Act

Failure by Provider to comply with these laws shall constitute a breach of a material obligation of Provider and may result in termination of the Agreement and the Supplement.

- (ii) *Implementation Plan for Small and Disadvantaged Businesses.* Provider shall also demonstrate to the County that when Provider is hiring subcontractors, Provider shall, in accordance with 10 CFR 600.236(e), take the necessary affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms are used when possible to work on the Project. Affirmative steps include: (i) placing qualified small and minority businesses and women's business enterprises on solicitation lists; (ii) assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources; (iii) dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, and women's business enterprises; (iv) establishing delivery schedules, where the requirement permits, which encourage participation by small and minority business, and women's business enterprises; and (v) using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce. Provider shall provide to County, for County's review and approval, information about Provider's outreach to minority firms, women's business enterprises, and labor surplus area firms. Until such information is reviewed and approved by County, Provider shall not permit any subcontractor to commence work on the Project.
- (iii) *Implementation Plan for Small Business Enterprises.* It is the policy of County to promote full and equal access in contracting and procurement opportunities for all businesses in Cuyahoga County. The Board of Cuyahoga County Commissioners enacted the Small Business Enterprise (SBE) Program to ameliorate the effects of past and present arbitrary barriers that Small Business Enterprises have had in contracting with County. Provider agrees that, whenever it makes purchases or enters into a contract that uses either (i) EECBG funds, or (ii) other funds pursuant to the Agreement for field construction work at the Project Site (as defined in the Agreement), it will make its best efforts to meet the following goal in the utilization of small business enterprises (SBE) in the total contract award for the Project: 30%. Evidence of the Provider's good faith effort must be submitted if the goal of 30% is not met. Compliance with the SBE goal is encouraged pursuant to Board of Cuyahoga County Commissioners' Resolution Number 000981 dated February 29, 2000. The County Office of Procurement and Diversity must certify SBE's in order

to be eligible for meeting the SBE participation goal. Contact (216) 443-7230 for application for certification or to obtain a list of certified SBE's.

(b) Job Postings. Provider shall post all jobs created by Provider resulting from the award of the Agreement and Supplement and the use of ARRA funds on www.ohiomeansjobs.com. Provider shall also require each of its subcontractors to post all jobs created by the subcontractor resulting from the award of the Agreement and Supplement and the use of ARRA funds on www.ohiomeansjobs.com. "Jobs created" are those positions created and filled or previously existing unfilled positions that are retained as a result of ARRA funding.

11. ADDITIONAL FEDERAL REQUIREMENTS

To the extent not otherwise already required by the Supplement, Provider shall comply with the requirements of Appendix B to Subpart D of 10 C.F.R. part 600, which are incorporated by reference in this Appendix A to the Supplement.

BUY AMERICAN ADDENDUM

REQUIRED USE OF AMERICAN IRON, STEEL, AND MANUFACTURED GOODS

ALTERNATIVE 1: The following provisions apply to any award of ARRA funds for construction, alteration, maintenance, or repair of a public building or public work with a total project value estimated at less than \$7,443,000.

(a) Definitions. As used in this award term and condition—

(1) *Manufactured good* means a good brought to the construction site for incorporation into the building or work that has been –

(i) Processed into a specific form and shape; or

(ii) Combined with other raw material to create a material that has different properties than the properties of the individual raw materials.

(2) *Public building* and *public work* means a public building of, and a public work of, a governmental entity (the United States; the District of Columbia; commonwealths, territories, and minor outlying islands of the United States; State and local governments; and multi-State, regional, or interstate entities which have governmental functions). These buildings and works may include, without limitation, bridges, dams, plants, highways, parkways, streets, subways, tunnels, sewers, mains, power lines, pumping stations, heavy generators, railways, airports, terminals, docks, piers, wharves, ways, lighthouses, buoys, jetties, breakwaters, levees, and canals, and the construction, alteration, maintenance, or repair of such buildings and works.

(3) *Steel* means an alloy that includes at least 50 percent iron, between .02 and 2 percent carbon, and may include other elements.

(b) *Domestic preference.*

(1) This award term and condition implements Section 1605 of the American Recovery and Reinvestment Act of 2009 (Recovery Act) (Pub. L. 111--5), by requiring that all iron, steel, and manufactured goods used in the project are produced in the United States except as provided in paragraph (b)(3) and (b)(4) of this section and condition.

(2) This requirement does not apply to the material listed by the Federal Government as follows: Certain items have already been determined to be domestically nonavailable on a class basis. They are listed at: 48 C.F.R. 25.104 (a). If a request for a waiver includes such items, the applicant should indicate which items are on the list in the request.

(3) The award official may add other iron, steel, and/or manufactured goods to the list in paragraph (b)(2) of this section and condition if the Federal Government determines that—

(i) The cost of the domestic iron, steel, and/or manufactured goods would be unreasonable. The cost of domestic iron, steel, or manufactured goods used in the project is unreasonable when the cumulative cost of such material will increase the cost of the overall project by more than 25 percent;

(ii) The iron, steel, and/or manufactured good is not produced, or manufactured in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or

(iii) The application of the restriction of section 1605 of the Recovery Act would be inconsistent with the public interest.

(c) *Request for determination of inapplicability of Section 1605 of the Recovery Act.*

(1)(i) *General:* Any recipient request to use foreign iron, steel, and/or manufactured goods in accordance with paragraph (b)(3) of this section shall include adequate information for Federal Government evaluation of the request, including—

- (A) A description of the foreign and domestic construction materials, iron, steel, and/or manufactured goods;
- (B) Unit of measure;
- (C) Quantity;
- (D) Cost;
- (E) Price/Time of delivery or availability;
- (F) Location of construction project;
- (G) Name and address of the proposed supplier;
- (H) A detailed justification for use of foreign construction materials, iron, steel, and/or manufactured goods, cited in accordance with paragraph (b)(3) of this section; and
- (I) Assistance recipient made good faith effort to solicit bids for domestic construction materials/manufactured goods as demonstrated by language in requests for proposals, contracts, and communications with prime contractor.

(ii) *Unreasonable Cost:* This section lists categories of information required for waivers based on unreasonable cost of domestic construction materials or manufactured goods. The cost of domestic iron, steel, and/or manufactured goods used in the project is unreasonable when the cumulative cost of such material will increase the overall cost of the project by more than 25 percent. If an applicant is requesting a waiver based on unreasonable cost of domestic construction materials or manufactured goods, the request should include the following information. If an item on this list is not relevant to the request, please explain the reason for this in the request.

- (A) A reasonable survey of the market and a completed cost comparison table in the format in paragraph (d) of this section;
- (B) Relevant excerpts from the bid documents used by the contractors to complete the price comparison table; and
- (C) Supporting documentation indicating the contractor made a reasonable survey of the market, such as a description of the process for identifying suppliers and a list on contacted suppliers.

The cost of iron, steel, and/or manufactured goods material shall include all delivery costs to the construction site and any applicable duty.

(iii) *Nonavailability:* Nonavailability means that the iron, steel, and/or manufactured good is not

produced or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality. A request based on nonavailability shall include the following documentation to demonstrate the available quantity and quality of the material for which the waiver is requested. If an item on the list is not relevant to the request, please explain the reason for this in the request:

- (A) Supplier information or pricing information from a reputable supplier of domestic supplies indicating availability/delivery date for materials;
- (B) Documentation of assistance recipient's effort to find available domestic sources such as a description of the process for identifying suppliers and a list of contacted suppliers;
- (C) Project schedule (timeline);
- (D) Relevant excerpts from project plans, qualifications, and permits indicating the required quantity and quality of construction materials; and
- (E) Statement from the prime contractor confirming the non-availability of domestic construction materials from which the waiver is sought.

(iv) *Late Requests*: Any recipient request for a determination submitted after Recovery Act funds have been obligated for a project for construction, alteration, maintenance, or repair shall explain why the recipient could not reasonably foresee the need for such determination and could not have requested the determination before the funds were obligated. If the recipient does not submit a satisfactory explanation, the award official need not make a determination.

(2) If the Federal Government determines after funds have been obligated for a project for construction, alteration, maintenance, or repair that an exception to section 1605 of the Recovery Act applies, the award official will amend the award to allow use of the foreign iron, steel, and/or relevant manufactured goods. When the basis for the exception is nonavailability or public interest, the amended award shall reflect adjustment of the award amount, redistribution of budgeted funds, and/or other actions taken to cover costs associated with acquiring or using the foreign iron, steel, and/or relevant manufactured goods. When the basis for the exception is the unreasonable cost of the domestic iron, steel, or manufactured goods, the award official shall adjust the award amount or redistribute budgeted funds by at least the differential established in 2 CFR 176.110(a).

(3) Unless the Federal Government determines that an exception to section 1605 of the Recovery Act applies, use of foreign iron, steel, and/or manufactured goods is noncompliant with section 1605 of the American Recovery and Reinvestment Act.

(d) *Data*. To permit evaluation of requests under paragraph (b) of this section based on unreasonable cost, the Recipient shall include the following information and any applicable supporting data based on the survey of suppliers:

Foreign and Domestic Items Cost Comparison

Description	Unit of measure	Quantity	Cost (dollars)*
<i>Item 1:</i>			
Foreign steel, iron, or manufactured good			
Domestic steel, iron, or manufactured good			
<i>Item 2:</i>			
Foreign steel, iron, or manufactured good			
Domestic steel, iron, or manufactured good			

[List name, address, telephone number, email address, and contact for suppliers surveyed. Attach copy of response; if oral, attach summary.]

[Include other applicable supporting information.]

*[*Include all delivery costs to the construction site.]*

ALTERNATIVE 2: The following provisions apply to any award of ARRA funds for construction, alteration, maintenance, or repair of a public building or public work with a total project value over \$7,443,000 that involves iron, steel, and/or manufactured goods materials covered under international agreements.

(a) *Definitions.* As used in this award term and condition—

Designated country – (1) A World Trade Organization Government Procurement Agreement country (Aruba, Austria, Belgium, Bulgaria, Canada, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea (Republic of), Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, and United Kingdom;

(2) A Free Trade Agreement (FTA) country (Australia, Bahrain, Canada, Chile, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Israel, Mexico, Morocco, Nicaragua, Oman, Peru, or Singapore); or

(3) A United States-European Communities Exchange of Letters (May 15, 1995) country: Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovak Republic, Slovenia, Spain, Sweden, and United Kingdom.

Designated country iron, steel, and/or manufactured goods – (1) Is wholly the growth, product, or manufacture of a designated country; or

(2) In the case of a manufactured good that consist in whole or in part of materials from another country, has been substantially transformed in a designated country into a new and different manufactured good distinct from the materials from which it was transformed.

Domestic iron, steel, and/or manufactured good – (1) Is wholly the growth, product, or manufacture of the United States; or

(2) In the case of a manufactured good that consists in whole or in part of materials from another country, has been substantially transformed in the United States into a new and different manufactured good distinct from the materials from which it was transformed. There is no requirement with regard to the origin of components or subcomponents in manufactured goods or products, as long as the manufacture of the goods occurs in the United States.

Foreign iron, steel, and/or manufactured good means iron, steel and/or manufactured good that is not domestic or designated country iron, steel, and/or manufactured good.

Manufactured good means a good brought to the construction site for incorporation into the building or work that has been—

(1) Processed into a specific form and shape; or

(2) Combined with other raw material to create a material that has different properties than the properties of the individual raw materials.

Public building and public work means a public building of, and a public work of, a governmental entity (the United States; the District of Columbia; commonwealths, territories, and minor outlying islands of the United States; State and local governments; and multi-State, regional, or interstate entities which have governmental functions). These buildings and works may include, without limitation, bridges, dams, plants, highways, parkways, streets, subways, tunnels, sewers, mains, power lines, pumping stations, heavy generators, railways, airports, terminals, docks, piers, wharves, ways, lighthouses, buoys, jetties, breakwaters, levees, and canals, and the construction, alteration, maintenance, or repair of such buildings and works.

Steel means an alloy that includes at least 50 percent iron, between .02 and 2 percent carbon, and may include other elements.

(b) *Iron, steel, and manufactured goods.* (1) The award term and condition described in this section implements—

(i) Section 1605(a) of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5) (Recovery

Act), by requiring that all iron, steel, and manufactured goods used in the project are produced in the

United States; and

(ii) Section 1605(d), which requires application of the Buy American requirement in a manner consistent with U.S. obligations under international agreements. The restrictions of section 1605 of the Recovery Act do not apply to designated country iron, steel, and/or manufactured goods. The Buy American requirement in section 1605 shall not be applied where the iron, steel or manufactured goods used in the project are from a Party to an international agreement that obligates the recipient to treat the goods and services of that Party the same as domestic goods and services. This obligation shall only apply to projects with an estimated value of \$7,443,000 or more.

(2) The recipient shall use only domestic or designated country iron, steel, and manufactured goods in performing the work funded in whole or part with this award, except as provided in paragraphs (b)(3) and (b)(4) of this section.

(3) The requirement in paragraph (b)(2) of this section does not apply to the iron, steel, and manufactured goods listed by the Federal Government as follows: Certain items have already been determined to be domestically nonavailable on a class basis. They are listed at: 48 C.F.R. 25.104 (a). If a request for a waiver includes such items, the applicant should indicate which items are on the list in the request.

(4) The award official may add other iron, steel, and manufactured goods to the list in paragraph (b)(3) of this section if the Federal Government determines that—

(i) The cost of domestic iron, steel, and/or manufactured goods would be unreasonable. The cost of domestic iron, steel, and/or manufactured goods used in the project is unreasonable when the cumulative cost of such material will increase the overall cost of the project by more than 25 percent;

(ii) The iron, steel, and/or manufactured good is not produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality; or

(iii) The application of the restriction of section 1605 of the Recovery Act would be inconsistent with the public interest.

(c) *Request for determination of inapplicability of section 1605 of the Recovery Act or the Buy American Act.*

(1)(i) *General:* Any recipient request to use foreign iron, steel, and/or manufactured goods in accordance with paragraph (b)(4) of this section shall include adequate information for Federal Government evaluation of the request, including—

- (A) A description of the foreign and domestic construction materials, iron, steel, and/or manufactured goods;
- (B) Unit of measure;
- (C) Quantity;
- (D) Cost;
- (E) Price/Time of delivery or availability;
- (F) Location of construction project;

- (G) Name and address of the proposed supplier;
- (H) A detailed justification for use of foreign construction materials, iron, steel, and/or manufactured goods cited in accordance with paragraph (b)(4) of this section; and;
- (I) Assistance recipient made good faith effort to solicit bids for domestic construction materials/manufactured goods as demonstrated by language in requests for proposals, contracts, and communications with prime contractor.

(ii) *Unreasonable Cost*: This section lists categories of information required for waivers based on unreasonable cost of domestic construction materials or manufactured goods. The cost of domestic iron, steel, and/or manufactured goods used in the project is unreasonable when the cumulative cost of such material will increase the overall cost of the project by more than 25 percent. If an applicant is requesting a waiver based on unreasonable cost of domestic construction materials or manufactured goods, the request should include the following information. If an item on this list is not relevant to the request, please explain the reason for this in the request.

- (A) A reasonable survey of the market and a completed cost comparison table in the format in paragraph (d) of this section;
- (B) Relevant excerpts from the bid documents used by the contractors to complete the price comparison table; and
- (C) Supporting documentation indicating the contractor made a reasonable survey of the market, such as a description of the process for identifying suppliers and a list on contacted suppliers.

The cost of iron, steel, or manufactured goods shall include all delivery costs to the construction site and any applicable duty.

(iii) *Nonavailability*: Nonavailability means that the iron, steel, and/or manufactured good is not produced or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality. A request based on nonavailability shall include the following documentation to demonstrate the available quantity and quality of the material for which the waiver is requested. If an item on the list is not relevant to the request, please explain the reason for this in the request:

- (A) Supplier information or pricing information from a reputable supplier of domestic supplies indicating availability/delivery date for materials;
- (B) Documentation of assistance recipient's effort to find available domestic sources such as a description of the process for identifying suppliers and a list of contacted suppliers;
- (C) Project schedule (timeline);
- (D) Relevant excerpts from project plans, qualifications, and permits indicating the required quantity and quality of construction materials; and
- (E) Statement from the prime contractor confirming the non-availability of domestic construction materials from which the waiver is sought.

(iv) *Late Requests*: Any recipient request for a determination submitted after Recovery Act funds have been obligated for a project for construction, alteration, maintenance, or repair shall explain why the recipient could not reasonably foresee the need for such determination and could not have requested the determination before the funds were obligated. If the recipient does not submit a satisfactory explanation, the award official need not make a determination.

(2) If the Federal Government determines after funds have been obligated for a project for construction, alteration, maintenance, or repair that an exception to section 1605 of the Recovery Act applies, the award official will amend the award to allow use of the foreign iron, steel, and/or relevant manufactured goods. When the basis for the exception is nonavailability or public interest, the amended award shall reflect adjustment of the award amount, redistribution of budgeted funds, and/or other appropriate actions taken to cover costs associated with acquiring or using the foreign iron, steel, and/or relevant manufactured goods. When the basis for the exception is the unreasonable cost of the domestic iron, steel, or manufactured goods, the award official shall adjust the award amount or redistribute budgeted funds, as appropriate, by at least the differential established in 2 CFR 176.110(a).

(3) Unless the Federal Government determines that an exception to section 1605 of the Recovery Act applies, use of foreign iron, steel, and/or manufactured goods other than designated country iron, steel, and/or manufactured goods is noncompliant with the applicable Act.

(d) *Data.* To permit evaluation of requests under paragraph (b) of this section based on unreasonable cost, the applicant shall include the following information and any applicable supporting data based on the survey of suppliers:

Foreign and Domestic Items Cost Comparison

Description	Unit of measure	Quantity	Cost (dollars)*
<i>Item 1:</i>			
Foreign steel, iron, or manufactured good			
Domestic steel, iron, or manufactured good			
<i>Item 2:</i>			
Foreign steel, iron, or manufactured good			
Domestic steel, iron, or manufactured good			

[List name, address, telephone number, email address, and contact for suppliers surveyed. Attach copy of response; if oral, attach summary.]

[Include other applicable supporting information.]

*[*Include all delivery costs to the construction site.]*

DAVIS BACON ACT AND CONTRACT WORK HOURS AND SAFETY STANDARDS

ADDENDUM

Definitions: For purposes of this Addendum, Davis Bacon Act and Contract Work Hours and Safety Standards Act, the following definitions are applicable:

- (1) "Award" means any grant, cooperative agreement or technology investment agreement made with Recovery Act funds by the Department of Energy (DOE) to a Recipient. Such Award must require compliance with the labor standards clauses and wage rate requirements of the Davis-Bacon Act (DBA) for work performed by all laborers and mechanics employed by Recipients (other than a unit of State or local government whose own employees perform the construction) Subrecipients, Contractors and subcontractors.
- (2) "Contractor" means an entity that enters into a Contract. For purposes of these clauses, Contractor shall include (as applicable) prime contractors, Recipients, Subrecipients, and Recipients' or Subrecipients' contractors, subcontractors, and lower-tier subcontractors. "Contractor" does not mean a unit of State or local government where construction is performed by its own employees.
- (3) "Contract" means a contract executed by a Recipient, Subrecipient, prime contractor or any tier subcontractor for construction, alteration, or repair. It may also mean (as applicable) (i) financial assistance instruments such as grants, cooperative agreements, technology investment agreements, and loans; and, (ii) Sub-awards, contracts and subcontracts issued under financial assistance agreements. "Contract" does not mean a financial assistance instrument with a unit of State or local government where construction is performed by its own employees.
- (4) "Contracting Officer" means the DOE official authorized to execute an Award on behalf of DOE and who is responsible for the business management and non-program aspects of the financial assistance process.
- (5) "Recipient" means any entity other than an individual that receives an Award of Federal funds in the form of a grant, cooperative agreement or technology investment agreement directly from the Federal Government and is financially accountable for the use of any DOE funds or property, and is legally responsible for carrying out the terms and conditions of the program and Award.
- (6) "Subaward" means an award of financial assistance in the form of money, or property in lieu of money, made under an award by a Recipient to an eligible Subrecipient or by a Subrecipient to a lower- tier subrecipient. The term includes financial assistance when provided by any legal agreement, even if the agreement is called a contract, but does not include the Recipient's procurement of goods and services to carry out the program nor does it include any form of assistance which is excluded from the definition of "Award" above.

(7) "Subrecipient" means a non-Federal entity that expends Federal funds received from a Recipient to carry out a Federal program, but does not include an individual that is a beneficiary of such a program.

(a) Davis Bacon Act

(1) Minimum wages.

(i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in § 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: *Provided*, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii)(~~1.~~) The Contracting Officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the Contract shall be classified in conformance with the wage determination. The Contracting Officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the Contracting Officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the Contracting Officer to the Administrator of the Wage and Hour Division, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.

(C) In the event the Contractor, the laborers or mechanics to be employed in the classification or their representatives, and the Contracting Officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the Contracting Officer shall refer the questions, including the views of all interested parties and the recommendation of the Contracting Officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii)(B) or (C) of this section, shall be paid to all workers performing work in the classification under this Contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the Contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, *Provided*, That the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(2) Withholding. The Department of Energy or the Recipient or Subrecipient shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the Contractor under this Contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Contractor or any subcontractor the full amount of wages required by the Contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the Contract, the Department of Energy, Recipient, or Subrecipient, may, after written notice to the Contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) Payrolls and basic records.

(i) Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii) (A) The Contractor shall submit weekly for each week in which any Contract work is performed a copy of all payrolls to the Department of Energy if the agency is a party to the Contract, but if the agency is not such a party, the Contractor will submit the payrolls to the Recipient or Subrecipient (as applicable), applicant, sponsor, or owner, as the case may be, for transmission to the Department of Energy. The payrolls submitted shall set out accurately and

completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime Contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the Department of Energy if the agency is a party to the Contract, but if the agency is not such a party, the Contractor will submit them to the Recipient or Subrecipient (as applicable), applicant, sponsor, or owner, as the case may be, for transmission to the Department of Energy, the Contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the sponsoring government agency (or the Recipient or Subrecipient (as applicable), applicant, sponsor, or owner).

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the Contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be provided under § 5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under § 5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the Contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the Contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for

submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the Contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 3729 of title 31 of the United States Code.

(iii) The Contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the Department of Energy or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the Contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) Apprentices and trainees--

(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a Contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship

program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended and 29 CFR part 30.

(5) Compliance with Copeland Act requirements. The Contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this Contract.

(6) Contracts and Subcontracts. The Recipient, Subrecipient, the Recipient's and Subrecipient's contractors and subcontractor shall insert in any Contracts the clauses

contained herein in (a)(1) through (10) and such other clauses as the Department of Energy may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The Recipient shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of the paragraphs in this clause.

(7) Contract termination: debarment. A breach of the Contract clauses in 29 CFR 5.5 may be grounds for termination of the Contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this Contract.

(9) Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this Contract shall not be subject to the general disputes clause of this Contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the Recipient, Subrecipient, the Contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(10) Certification of eligibility.

(i) By entering into this Contract, the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this Contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

(b) Contract Work Hours and Safety Standards Act. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

(1) Overtime requirements. No Contractor or subcontractor contracting for any part of the Contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (b)(1) of this section the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.

(3) Withholding for unpaid wages and liquidated damages. The Department of Energy or the Recipient or Subrecipient shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any other Federal contract with the same prime Contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.

(4) Contracts and Subcontracts. The Recipient, Subrecipient, and Recipient's and Subrecipient's contractor or subcontractor shall insert in any Contracts, the clauses set forth in paragraph (b)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The Recipient shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (b)(1) through (4) of this section.

(5) The Contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the Contract for all laborers and mechanics, including guards and watchmen, working on the Contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. The records to be maintained under this paragraph shall be made available by the Contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the Department of Energy and the Department of Labor, and the Contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

Rates of Wages -Prior Approval for Proceeding with Davis-Bacon Construction Activities

If the County determines at any time that any construction, alteration, or repair activity as defined by 29 CFR 5.2(j) (<http://cfr.vlex.com/vid/5-2-definitions-19681309>) will be performed during the course of the Project, the County shall request approval from the Contracting Officer prior to commencing such work. If the Contracting Officer concurs with the County's determination, the Contractor must receive Contracting Officer approval to proceed with such activity, and must

comply with all applicable Davis-Bacon requirements, prior to commencing such work. A modification to the Assistance Agreement which incorporates the appropriate Davis-Bacon wage rate determination(s) will constitute the Contracting Officer's approval to proceed.

Appendix B

BUDGET

<u>Sources</u>		<u>TOTAL</u>		
ARRA-SEP-10-35 Grant (partial)		\$ 1,008,514.00		
DOE/EECBG		\$ 391,486.00		
Total Sources:		\$ 1,400,000.00		
<u>Uses</u>		<u>TOTAL</u>	<u>ARRA-SEP-10-35 Grant</u>	<u>DOE/EECBG</u>
Halus Contract				
Engineering and turbine release		\$ 50,000.00	\$ 50,000.00	
Performance bond		\$ 50,000.00	\$ 50,000.00	
Turbine received at Halus and ready for inspection		\$ 350,000.00	\$ 350,000.00	
Foundation completed and cured		\$ 200,000.00	\$ 200,000.00	
Electrical ninety percent (90%) completed		\$ 150,000.00	\$ 150,000.00	
Turbine rebuilt and delivered to project site		\$ 250,000.00	\$ 58,514.00	\$191,486.00
Tower extension delivered to project site		\$ 200,000.00	\$ -	\$200,000.00
Turbine commissioned and online		\$ 110,000.00	\$ 110,000.00	
Owner's Allowance		\$ 40,000.00	\$ 40,000.00	
Total Uses:		\$ 1,400,000.00	\$ 1,008,514.00	\$391,486.00