



STATE OF NEW HAMPSHIRE
 OFFICE OF ENERGY AND PLANNING
 107 Pleasant Street, Johnson Hall
 Concord, NH 03301-3834
 Telephone: (603) 271-2155



9B6

MARGARET WOOD HASSAN
 GOVERNOR

Fax: (603) 271-2615

March 13, 2013 |

Her Excellency, Governor Margaret Wood Hassan
 and the Honorable Council
 State House
 Concord, NH 03301

ARRA Funds
Solo Source
 NH RECOVERY
 putting new energy to work

REQUESTED ACTION

Authorize the Office of Energy and Planning (OEP) to amend a **SOLE SOURCE** contract with the Community Development Finance Authority (CDFA) (Vendor # 177292), Concord, NH (Contract #1010677) by increasing the contract by an amount not to exceed \$80,000 from \$8,508,332.00 to \$8,588,332.00, for the Beacon Communities Project, and further to extend the contract completion date from May 31, 2013, to September 30, 2013; effective upon Governor and Executive Council approval. The original contract was approved by Governor and Council on July 14, 2010 (Item #9). 100% Federal Funds – American Recovery and Reinvestment Act.

Funding is available in the following account with the authority to adjust encumbrances in each of the State fiscal years through the Budget Office if needed and justified:

<u>Office of Energy and Planning, Retrofit Ramp-up</u>	<u>FY 2013</u>	<u>FY2014</u>
01-02-02-029910-09240000		
102-500731 Contracts for Program Services	\$50,000.00	\$30,000.00

EXPLANATION

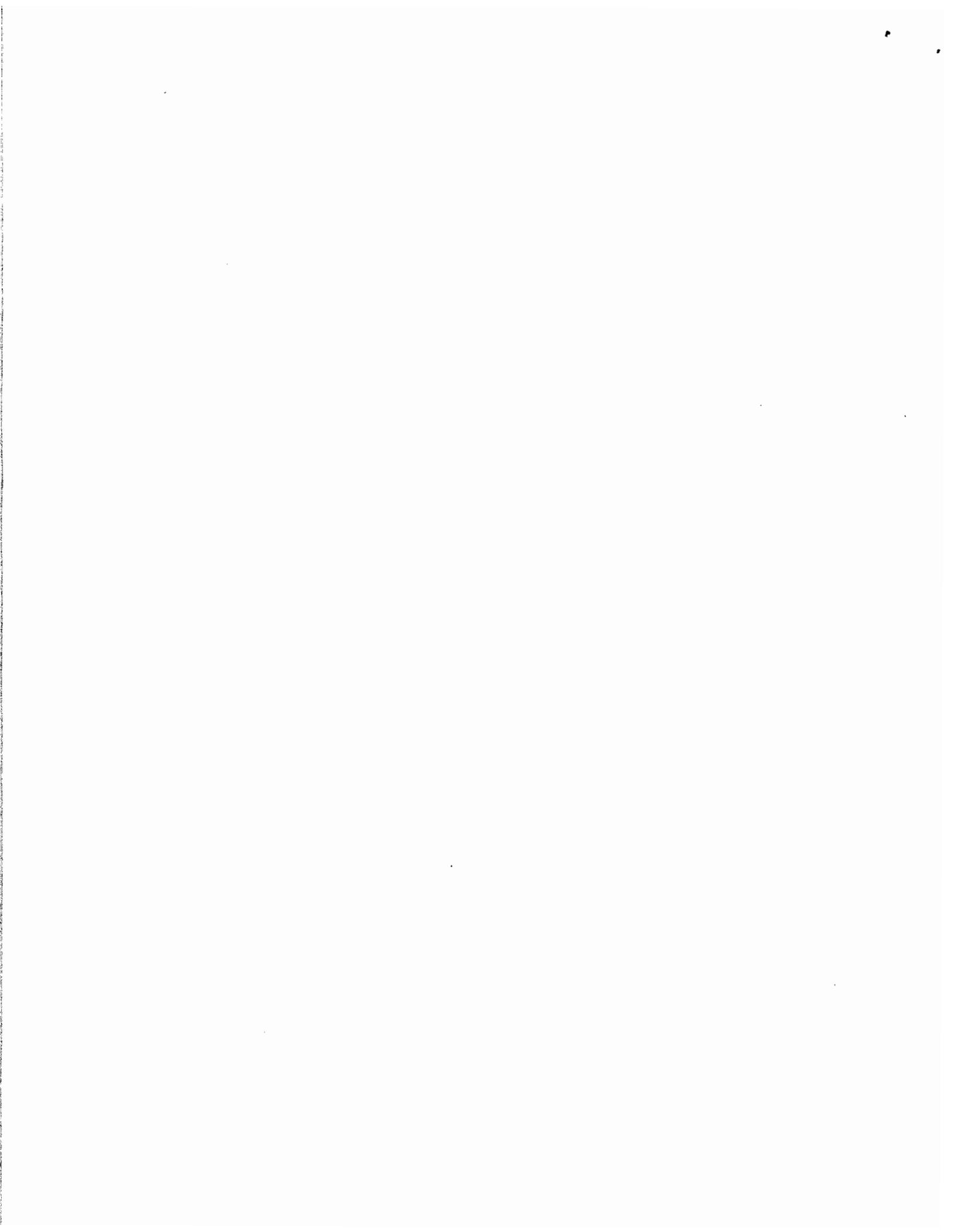
The intent of this amendment is to provide additional funding and time for CDFA to complete its work to implement the Beacon Communities Project, which aims to significantly reduce energy consumption through improvements to buildings across multiple sectors, including residential, commercial, industrial and municipal. The "Beacon" communities participating in this project are Berlin, Nashua and Plymouth. In addition, businesses throughout the state have participated through a competitive process for energy retrofit projects, and program funds were also used to leverage the ratepayer-funded energy efficiency programs administered by the state's utilities. The U.S. Department of Energy has approved the time extension for the program.

In the event that Federal Funds are no longer available, General Funds will not be requested to support this program.

Respectfully requested,

Meredith A. Hatfield
 Director
 Office of Energy and Planning

MAH/KPC
 Attachments





NHRECOVERY
putting new hampshire to work



OFFICE OF ENERGY AND PLANNING

SUBJECT: CONTRACT WITH THE COMMUNITY FINANCE AUTHORITY

AMENDMENT

This Amendment dated March 12, 2013, is between the State of New Hampshire, Office of Energy and Planning, 107 Pleasant St., Concord, Merrimack County, NH 03301 (hereinafter referred to as the "State") and the Community Development Finance Authority (CDFA), 14 Dixon Ave. Concord, NH 03301(hereinafter referred to as the "Contractor").

Pursuant to an Agreement (hereinafter referred to as the "Agreement"), Contract Number 1010677, as approved by Governor and Council on July 14, 2010 (Item #9) , the Contractor has agreed to provide certain Services, per the terms and conditions specified in the Agreement and in consideration of payment by the State of certain sums as specified therein.

WHEREAS, The State and the Contractor have agreed to amend the Agreement in certain respects;

NOW THEREFORE, in consideration of the foregoing and of the covenants and conditions in the Agreement as set forth herein, the parties agree to the following:

1. **Amendment and Modification of Agreement.** The Agreement is amended and modified as follows:

A) Amend Contract completion date by striking the current contract ending date of May 31, 2013, and inserting September 30, 2013, wherever it occurs.

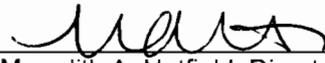
B) Amend price limitation by striking \$8,508,332 and inserting \$8,588,332 wherever it occurs.

2. **Continuance of Agreement.** Except as specifically amended and modified by the Terms and Conditions of this Amendment, obligations of the parties hereunder shall remain in full force and effect in accordance with the terms and conditions set forth in the Agreement as it existed immediately prior to this Amendment.

IN WITNESS WHEREOF, the parties have hereunto set their hands as of the day and year first above written.

STATE OF NEW HAMPSHIRE

Office of Energy and Planning

By: 
Meredith A. Hatfield, Director

Contractor Initials LSB
Date 3/11/13

Community Development Finance Authority

By: Katharine Bogle Shields
Katharine Bogle Shields, Executive Director

State of New Hampshire
County of Merrimack

On this day of March 21, 2013, before me, Theresa Upstill, the undersigned officer, personally appeared Katharine Bogle Shields, who acknowledged himself to be the Executive Director of Comm. Development Finance Authority, a corporation, and that he, as such Executive Director, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the corporation by himself as Executive Director.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Theresa Upstill
Notary Public/Justice of the Peace



My Commission expires: July 11, 2017

Approved as to form, execution and substance:

OFFICE OF THE ATTORNEY GENERAL

By: [Signature]
Assistant Attorney General

Date: 3-21-13

I hereby certify that the foregoing contract was approved by the Governor and Council of the State of New Hampshire at their meeting on _____.

OFFICE OF THE SECRETARY OF STATE

By: _____

Title: _____

Contractor Initials KB
Date 3/21/13

CERTIFICATE

I, Brian Hoffman, Secretary/Treasurer of the Community Development Finance Authority do hereby certify that: (1) I am the duly elected and acting Chair of the Community Development Finance Authority, a New Hampshire non-profit corporation and public authority ("The Corporation"); I am familiar with the minute books of the Corporation (3) I am duly authorized to issue certificates with respect to the contents of such books; (4) the following are true, accurate and complete copies of the resolutions adopted by the Board of Directors of the Corporation at a meeting of the said Board of Directors held on the 11th day of September, 2012, which meeting was duly held in accordance with New Hampshire law and the by-laws of the Corporation.

Resolved: That this Corporation authorize Executive Director, Katharine Bogle Shields, and in her absence the Chief Financial Officer, Thaddeus Kuchinski, on behalf of this Corporation to take any and all such actions and to execute, acknowledge and deliver for and on behalf of this Corporation any and all documents, agreements and other instruments (and any amendments, revisions or modifications thereto) as he/she may deem necessary, desirable or appropriate, in the negotiation and execution of any and all contractual obligations and letter agreements.

Resolved: That the signature of the Executive Director or Chief Financial Officer of this Corporation affixed to any instrument or document described in or contemplated by these resolutions shall be conclusive evidence of the authority of said officers to bind this Corporation thereby:

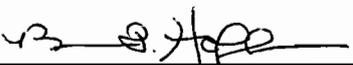
Resolved: That the Corporation shall be bound by any decision made by a State of New Hampshire court, or any agreement entered into by the individuals authorized above.

(5) the foregoing resolutions have not been revoked, annulled, or amended in any manner whatsoever, and remain in full force and in effect as of the date hereof:

(6) the following person(s) have been duly appointed to and now occupy the Office(s) indicated below:

Katharine Bogle Shields, Executive Director
Thaddeus Kuchinski, Chief Financial Officer

IN WITNESS WHEREOF, I have hereunto set my hand as the Secretary/Treasurer of the Corporation this 1st day of March 2013.



Brian Hoffman, Secretary/Treasurer

State of New Hampshire Department of State

I, William M. Gardner, Secretary of State of the State of New Hampshire, do hereby certify that COMMUNITY DEVELOPMENT FINANCE AUTHORITY was established, and made a body corporate and politic effective July 1, 1983 under the laws of 1983 Chapter 162-L, and as provided in the repeal and reenactment of Chapter 162-L, Laws of 1991 effective June 28, 1991.



In TESTIMONY WHEREOF, I hereto set my hand and cause to be affixed the Seal of the State of New Hampshire, this 1st day of March, A.D. 2013

A handwritten signature in cursive script, appearing to read "William M. Gardner".

William M. Gardner
Secretary of State



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
3/1/2013

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER A. B. Gile, Inc. PO Box 66 Hanover, NH 03755	CONTACT NAME: PHONE (A/C, No, Ext): (603) 643-4540 FAX (A/C, No): (603) 643-6382 E-MAIL ADDRESS:
	INSURER(S) AFFORDING COVERAGE NAIC # INSURER A: Peerless Ins Co. 24198 INSURER B: INSURER C: INSURER D: INSURER E: INSURER F:
INSURED New Hampshire Community Development Finance Authority 14 Dixon Ave Suite 102 Concord, NH 03301	THE AGGREGATE LIMITS SHOWN ARE THOSE THAT EXISTED AT THE TIME THE POLICY WAS ISSUED AND MAY OR MAY NOT BE THE ACTUAL LIMIT REMAINING IN FORCE.

COVERAGES **CERTIFICATE NUMBER:** **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC			CBP8159008	5/26/2012	5/26/2013	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 250,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ Excluded GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000
A	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS			CBP8159008	5/26/2012	5/26/2013	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (PER ACCIDENT) \$
A	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED <input checked="" type="checkbox"/> RETENTION \$			CU8152910	5/26/2012	5/26/2013	EACH OCCURRENCE \$ 3,000,000 AGGREGATE \$ 3,000,000
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N	N/A	WC8284916	5/26/2012	5/26/2013	<input checked="" type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> OTHER E.L. EACH ACCIDENT \$ 500,000 E.L. DISEASE - EA EMPLOYEE \$ 500,000 E.L. DISEASE - POLICY LIMIT \$ 500,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)
Workers Compensation Covered States - 3.A. Part One - NH; 3.C. Part Three - All States Except ND,OH,WA,WV,WY and States designated in Item 3.A. No Excluded Officers.

EVIDENCE OF INSURANCE

CERTIFICATE HOLDER

CANCELLATION

State of New Hampshire Office of Energy & Planning Attn: Wendy Gilman 107 Pleasant Street Concord, NH 03301	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE
---	---

RECEIVED

MAR 06 2013

**OFFICE OF ENERGY
AND PLANNING**



John H. Lynch
Governor

**STATE OF NEW HAMPSHIRE
OFFICE OF ENERGY AND PLANNING**

4 Chenell Dr.
Concord, NH 03301-8519
Telephone: (603) 271-2155
Fax (603) 271-2615



June 22, 2010



His Excellency, Governor John H. Lynch
and the Honorable Council
State House
Concord, NH 03301

Approval by the Governor
and Council on 7/14/10
Agenda Item 9
P01010677

REQUESTED ACTION

The Office of Energy and Planning (OEP) respectfully requests authorization to enter into a **SOLE SOURCE** contract with the Community Development Finance Authority (CDFA), (Vendor #177292), Concord, NH in the amount of \$8,508,332, for work to be accomplished as part of the American Recovery and Reinvestment Act – Energy Efficiency and Conservation Block Grant’s Retrofit Ramp-up Program (Retrofit Ramp-up), effective upon Governor and Council approval through May 31, 2013. 100% Federal Funds (ARRA-Retrofit Ramp-up). Retrofit-Ramp-up funding will assist the state to begin implementing the Beacon Communities Project, a project developed by the Energy Efficiency and Sustainable Energy Board.

Funding is available in the following account, Office of Energy & Planning, Retrofit Ramp-up, with the authority to adjust encumbrances in each of the State fiscal years through the Budget Office if needed and justified:

	<u>FY 2011</u>	<u>FY 2012</u>	<u>FY 2013</u>
01-02-02-029910-0924			
102-500731 Contracts for Program Services	\$4,254,166	\$2,552,500	\$1,701,666

EXPLANATION

The intent of this Contract is to provide funding to CDFA to begin implementing the Beacon Communities Project that was inspired through the work of the Energy Efficiency and Sustainable Energy Board. The Beacon Communities Project intends to implement a community driven program aimed at massive energy reductions through the retrofitting of buildings across multiple sectors, including residential, commercial, industrial and municipal. The project intends to accomplish these goals by creating innovative financing mechanisms, engaging community outreach and strengthening NH’s workforce capacity for energy efficiency improvements. Funding for this contract is from the American Recovery and Reinvestment Act, per a proposal OEP submitted to a competitive solicitation

from the federal Department of Energy. The proposal was submitted on December 14, 2009, announced by DOE on April 21, 2010, and award issued on June 1, 2010.

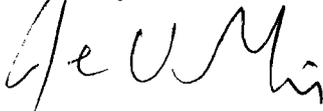
This project is part of an integrated approach to a clean energy economy in New Hampshire. It is designed to meet several goals of the state's Climate Action Plan and it will be implemented through a partnership between OEP and the CDFA. Utilizing CDFA's vast experience in financing community development, they will serve as the prime implementer of the Beacon Communities Project. CDFA, with oversight by OEP, will ensure that financial and programmatic reporting requirements are met. An advisory council of energy leaders from the public and private sectors will be formed to advise OEP and CDFA on project direction.

Strict reporting requirements will allow progress to be tracked by the public as well as by oversight agencies, and reported to the NH Office of Economic Stimulus, the Federal Department of Energy, and the US Office of Management and Budget.

This contract is sole source because CDFA was stipulated to receive these funds in OEP's successful proposal submitted to the US Department of Energy. Acceptance of the grant is contingent upon condition of the grantor that OEP contract with the referenced agency for execution of the project.

In the event that Federal Funds are no longer available, General Funds will not be requested to support this program.

Sincerely,



Joanne O. Morin
Director
Office of Energy and Planning

JOM/ES
Attachments

Subject: Community Development Finance Authority – ARRA- EECBG- Retrofit Ramp-Up Program



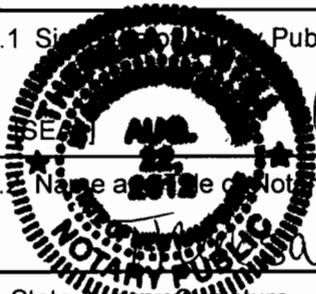
AGREEMENT

The State of New Hampshire and the Contractor hereby mutually agree as follows:

GENERAL PROVISIONS

1. IDENTIFICATION.

1.1 State Agency Name Office of Energy and Planning		1.2 State Agency Address 4 Chenell Drive Concord, New Hampshire 03301	
1.3 Contractor Name Community Development Finance Authority		1.4 Contractor Address 14 Dixon Avenue, Suite 102, Concord NH 03301	
1.5 Contractor Phone No. 603-226-2170	1.6 Account Number 01-02-02-029910-0924 Cls 102 Job # 02RRRRUA	1.7 Completion Date May 31, 2013	1.8 Price Limitation \$8,508,332.00
1.9 Contracting Officer for State Agency Eric Steltzer, Energy Policy Analyst		1.10 State Agency Telephone Number (603) 271-2155	
1.11 Contractor Signature <i>Katharine Bogle Shields</i>		1.12 Name and Title of Contractor Signatory Katharine Bogle Shields, Executive Director	
1.13 Acknowledgment: State of <u>New Hampshire</u> County of <u>Merrimack</u> On <u>June 22, 2010</u> , before the undersigned officer, personally appeared the person identified in block 1.12., or satisfactorily proven to be the person whose name is signed in block 1.11., and acknowledged that s/he executed this document in the capacity indicated in block 1.12.			
1.13.1 Signature of Notary Public or Justice of the Peace <i>Theresa Upstill</i>			
1.13. Name and Title of Notary Public or Justice of the Peace <i>Theresa Upstill, Administrative Assistant</i>			
1.14 State Agency Signature <i>Joanne O. Morin</i>		1.15 Name and Title of State Agency Signatory Joanne O. Morin, Director Office of Energy and Planning	
1.16 Approval by the N.H. Department of Administration, Division of Personnel (if applicable) By: _____ Director, On: _____			
1.17 Approval by Attorney General (Form, Substance and Execution) By: <i>Edith Evon Mulholland</i> On: <u>June 23, 2010</u>			
1.18 Approval by the Governor and Executive Council By: <i>David Scanlon</i> On: <u>July 14, 2010</u> <i>Deputy Secretary of State</i>			



Contractor Initials: *KBS*
Date: *6/24/10*

2. EMPLOYMENT OF CONTRACTOR/SERVICES TO BE PERFORMED. The State of New Hampshire, acting through the agency identified in block 1.1 ("State"), engages contractor identified in block 1.3 ("Contractor") to perform, and the Contractor shall perform, the work or sale of goods, or both, identified and more particularly described in the attached EXHIBIT A which is incorporated herein by reference ("Services").

3. EFFECTIVE DATE/COMPLETION OF SERVICES.

3.1 Notwithstanding any provision of this Agreement to the contrary, and subject to the approval of the Governor and Executive Council of the State of New Hampshire, this Agreement, and all obligations of the parties hereunder, shall not become effective until the date the Governor and Executive Council approve this Agreement ("Effective Date").

3.2 If the Contractor commences the Services prior to the Effective Date, all Services performed by the Contractor prior to the Effective Date shall be performed at the sole risk of the Contractor, and in the event that this Agreement does not become effective, the State shall have no liability to the Contractor, including without limitation, any obligation to pay the Contractor for any costs incurred or Services performed. Contractor must complete all Services by the Completion Date specified in block 1.7.

4. CONDITIONAL NATURE OF AGREEMENT.

Notwithstanding any provision of this Agreement to the contrary, all obligations of the State hereunder, including, without limitation, the continuance of payments hereunder, are contingent upon the availability and continued appropriation of funds, and in no event shall the State be liable for any payments hereunder in excess of such available appropriated funds. In the event of a reduction or termination of appropriated funds, the State shall have the right to withhold payment until such funds become available, if ever, and shall have the right to terminate this Agreement immediately upon giving the Contractor notice of such termination. The State shall not be required to transfer funds from any other account to the Account identified in block 1.6 in the event funds in that Account are reduced or unavailable.

5. CONTRACT PRICE/PRICE LIMITATION/ PAYMENT.

5.1 The contract price, method of payment, and terms of payment are identified and more particularly described in EXHIBIT B which is incorporated herein by reference.

5.2 The payment by the State of the contract price shall be the only and the complete reimbursement to the Contractor for all expenses, of whatever nature incurred by the Contractor in the performance hereof, and shall be the only and the complete compensation to the Contractor for the Services. The State shall have no liability to the Contractor other than the contract price.

5.3 The State reserves the right to offset from any amounts otherwise payable to the Contractor under this Agreement those liquidated amounts required or permitted by N.H. RSA 80:7 through RSA 80:7-c or any other provision of law.

5.4 Notwithstanding any provision in this Agreement to the contrary, and notwithstanding unexpected circumstances, in no event shall the total of all payments authorized, or actually made hereunder, exceed the Price Limitation set forth in block 1.8.

6. COMPLIANCE BY CONTRACTOR WITH LAWS AND REGULATIONS/ EQUAL EMPLOYMENT OPPORTUNITY.

6.1 In connection with the performance of the Services, the Contractor shall comply with all statutes, laws, regulations, and orders of federal, state, county or municipal authorities which impose any obligation or duty upon the Contractor, including, but not limited to, civil rights and equal opportunity laws. In addition, the Contractor shall comply with all applicable copyright laws.

6.2 During the term of this Agreement, the Contractor shall not discriminate against employees or applicants for employment because of race, color, religion, creed, age, sex, handicap, sexual orientation, or national origin and will take affirmative action to prevent such discrimination.

6.3 If this Agreement is funded in any part by monies of the United States, the Contractor shall comply with all the provisions of Executive Order No. 11246 ("Equal Employment Opportunity"), as supplemented by the regulations of the United States Department of Labor (41 C.F.R. Part 60), and with any rules, regulations and guidelines as the State of New Hampshire or the United States issue to implement these regulations. The Contractor further agrees to permit the State or United States access to any of the Contractor's books, records and accounts for the purpose of ascertaining compliance with all rules, regulations and orders, and the covenants, terms and conditions of this Agreement.

7. PERSONNEL.

7.1 The Contractor shall at its own expense provide all personnel necessary to perform the Services. The Contractor warrants that all personnel engaged in the Services shall be qualified to perform the Services, and shall be properly licensed and otherwise authorized to do so under all applicable laws.

7.2 Unless otherwise authorized in writing, during the term of this Agreement, and for a period of six (6) months after the Completion Date in block 1.7, the Contractor shall not hire, and shall not permit any subcontractor or other person, firm or corporation with whom it is engaged in a combined effort to perform the Services to hire, any person who is a State employee or official, who is materially involved in the procurement, administration or performance of this Agreement. This provision shall survive termination of this Agreement.

7.3 The Contracting Officer specified in block 1.9, or his or her successor, shall be the State's representative. In the event of any dispute concerning the interpretation of this Agreement, the Contracting Officer's decision shall be final for the State.

8. EVENT OF DEFAULT/REMEDIES.

8.1 Any one or more of the following acts or omissions of the Contractor shall constitute an event of default hereunder ("Event of Default"):

8.1.1 failure to perform the Services satisfactorily or on schedule;

8.1.2 failure to submit any report required hereunder; and/or

8.1.3 failure to perform any other covenant, term or condition of this Agreement.

8.2 Upon the occurrence of any Event of Default, the State may take any one, or more, or all, of the following actions:

8.2.1 give the Contractor a written notice specifying the Event of Default and requiring it to be remedied within, in the absence of a greater or lesser specification of time, thirty (30) days from the date of the notice; and if the Event of Default is not timely remedied, terminate this Agreement, effective two

(2) days after giving the Contractor notice of termination;
8.2.2 give the Contractor a written notice specifying the Event of Default and suspending all payments to be made under this Agreement and ordering that the portion of the contract price which would otherwise accrue to the Contractor during the period from the date of such notice until such time as the State determines that the Contractor has cured the Event of Default shall never be paid to the Contractor;
8.2.3 set off against any other obligations the State may owe to the Contractor any damages the State suffers by reason of any Event of Default; and/or
8.2.4 treat the Agreement as breached and pursue any of its remedies at law or in equity, or both.

9. DATA/ACCESS/CONFIDENTIALITY/PRESERVATION.

9.1 As used in this Agreement, the word "data" shall mean all information and things developed or obtained during the performance of, or acquired or developed by reason of, this Agreement, including, but not limited to, all studies, reports, files, formulae, surveys, maps, charts, sound recordings, video recordings, pictorial reproductions, drawings, analyses, graphic representations, computer programs, computer printouts, notes, letters, memoranda, papers, and documents, all whether finished or unfinished.

9.2 All data and any property which has been received from the State or purchased with funds provided for that purpose under this Agreement, shall be the property of the State, and shall be returned to the State upon demand or upon termination of this Agreement for any reason.

9.3 Confidentiality of data shall be governed by N.H. RSA chapter 91-A or other existing law. Disclosure of data requires prior written approval of the State.

10. TERMINATION. In the event of an early termination of this Agreement for any reason other than the completion of the Services, the Contractor shall deliver to the Contracting Officer, not later than fifteen (15) days after the date of termination, a report ("Termination Report") describing in detail all Services performed, and the contract price earned, to and including the date of termination. The form, subject matter, content, and number of copies of the Termination Report shall be identical to those of any Final Report described in the attached EXHIBIT A.

11. CONTRACTOR'S RELATION TO THE STATE. In the performance of this Agreement the Contractor is in all respects an independent contractor, and is neither an agent nor an employee of the State. Neither the Contractor nor any of its officers, employees, agents or members shall have authority to bind the State or receive any benefits, workers' compensation or other emoluments provided by the State to its employees.

12. ASSIGNMENT/DELEGATION/SUBCONTRACTS.

The Contractor shall not assign, or otherwise transfer any interest in this Agreement without the prior written consent of the N.H. Department of Administrative Services. None of the Services shall be subcontracted by the Contractor without the prior written consent of the State.

13. INDEMNIFICATION. The Contractor shall defend, indemnify and hold harmless the State, its officers and employees, from and against any and all losses suffered by the State, its officers and employees, and any and all claims, liabilities or penalties asserted against the State, its officers and employees, by or on behalf of any person, on account of,

based or resulting from, arising out of (or which may be claimed to arise out of) the acts or omissions of the Contractor. Notwithstanding the foregoing, nothing herein contained shall be deemed to constitute a waiver of the sovereign immunity of the State, which immunity is hereby reserved to the State. This covenant in paragraph 13 shall survive the termination of this Agreement.

14. INSURANCE.

14.1 The Contractor shall, at its sole expense, obtain and maintain in force, and shall require any subcontractor or assignee to obtain and maintain in force, the following insurance:

14.1.1 comprehensive general liability insurance against all claims of bodily injury, death or property damage, in amounts of not less than \$250,000 per claim and \$2,000,000 per occurrence; and

14.1.2 fire and extended coverage insurance covering all property subject to subparagraph 9.2 herein, in an amount not less than 80% of the whole replacement value of the property.

14.2 The policies described in subparagraph 14.1 herein shall be on policy forms and endorsements approved for use in the State of New Hampshire by the N.H. Department of Insurance, and issued by insurers licensed in the State of New Hampshire.

14.3 The Contractor shall furnish to the Contracting Officer identified in block 1.9, or his or her successor, a certificate(s) of insurance for all insurance required under this Agreement. Contractor shall also furnish to the Contracting Officer identified in block 1.9, or his or her successor, certificate(s) of insurance for all renewal(s) of insurance required under this Agreement no later than fifteen (15) days prior to the expiration date of each of the insurance policies. The certificate(s) of insurance and any renewals thereof shall be attached and are incorporated herein by reference. Each certificate(s) of insurance shall contain a clause requiring the insurer to endeavor to provide the Contracting Officer identified in block 1.9, or his or her successor, no less than ten (10) days prior written notice of cancellation or modification of the policy.

15. WORKERS' COMPENSATION.

15.1 By signing this agreement, the Contractor agrees, certifies and warrants that the Contractor is in compliance with or exempt from, the requirements of N.H. RSA chapter 281-A ("*Workers' Compensation*").

15.2 To the extent the Contractor is subject to the requirements of N.H. RSA chapter 281-A, Contractor shall maintain, and require any subcontractor or assignee to secure and maintain, payment of Workers' Compensation in connection with activities which the person proposes to undertake pursuant to this Agreement. Contractor shall furnish the Contracting Officer identified in block 1.9, or his or her successor, proof of Workers' Compensation in the manner described in N.H. RSA chapter 281-A and any applicable renewal(s) thereof, which shall be attached and are incorporated herein by reference. The State shall not be responsible for payment of any Workers' Compensation premiums or for any other claim or benefit for Contractor, or any subcontractor or employee of Contractor, which might arise under applicable State of New Hampshire Workers' Compensation laws in connection with the performance of the Services under this Agreement.

16. WAIVER OF BREACH. No failure by the State to enforce any provisions hereof after any Event of Default shall be deemed a waiver of its rights with regard to that Event of Default, or any subsequent Event of Default. No express failure to enforce any Event of Default shall be deemed a waiver of the right of the State to enforce each and all of the provisions hereof upon any further or other Event of Default on the part of the Contractor.

17. NOTICE. Any notice by a party hereto to the other party shall be deemed to have been duly delivered or given at the time of mailing by certified mail, postage prepaid, in a United States Post Office addressed to the parties at the addresses given in blocks 1.2 and 1.4, herein.

18. AMENDMENT. This Agreement may be amended, waived or discharged only by an instrument in writing signed by the parties hereto and only after approval of such amendment, waiver or discharge by the Governor and Executive Council of the State of New Hampshire.

19. CONSTRUCTION OF AGREEMENT AND TERMS. This Agreement shall be construed in accordance with the laws of the State of New Hampshire, and is binding upon and inures to the benefit of the parties and their respective successors and assigns. The wording used in this Agreement is the wording chosen by the parties to express their mutual intent, and no rule of construction shall be applied against or in favor of any party.

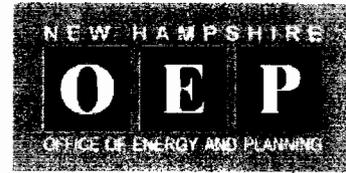
20. THIRD PARTIES. The parties hereto do not intend to benefit any third parties and this Agreement shall not be construed to confer any such benefit.

21. HEADINGS. The headings throughout the Agreement are for reference purposes only, and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Agreement.

22. SPECIAL PROVISIONS. Additional provisions set forth in the attached EXHIBIT C are incorporated herein by reference.

23. SEVERABILITY. In the event any of the provisions of this Agreement are held by a court of competent jurisdiction to be contrary to any state or federal law, the remaining provisions of this Agreement will remain in full force and effect.

24. ENTIRE AGREEMENT. This Agreement, which may be executed in a number of counterparts, each of which shall be deemed an original, constitutes the entire Agreement and understanding between the parties, and supersedes all prior Agreements and understandings relating hereto.



July 14, 2010

**Contract
between
Office of Energy and Planning
and
Community Development Finance Authority**

- Exhibit A - Scope of Services -

1. Project Title:

Energy Efficiency and Conservation Block Grant- Retrofit Ramp-up Program

2. Project Period:

This contract is effective from Governor and Executive Council approval date through May 31, 2013 for program activities, invoicing, and program year closeout. All funds must be expended by the completion date of May 31, 2013. The New Hampshire Office of Energy and Planning at any time, in its sole discretion, may terminate the contract or postpone or delay all and any part of this contract, upon written notice.

3. Program Description and Purpose:

The New Hampshire Office of Energy and Planning (OEP) awards a total of \$8,508,332 in American Recovery and Reinvestment Act – Energy Efficiency and Conservation Block Grant's Retrofit Ramp-up Program (Retrofit Ramp-up) funds to the Community Development Finance Authority (CDFA) for the purposes of implementing a community driven program aimed at massive energy reductions through the retrofitting of buildings across multiple sectors, including residential, commercial, industrial and municipal.

CDFA shall:

- a. Abide to the U.S. Department of Energy (DOE) Terms and Conditions in the award issued on 6/1/10 (Attachment I).
- b. Develop and implement a program in accordance with the DOE approved proposal dated 12/14/09 (Attachment II).
- c. Enter into a sub-recipient agreement with the City of Nashua (\$200,000) to support its implementation of the Retrofit Ramp-up Program.
- d. Enter into a vendor agreement with Jordan Institute (\$100,000) to support its technical assistance services to implement the Retrofit Ramp-up Program.
- e. Develop new financial mechanisms and hone existing ones, aimed at expanding private lending investments in energy efficiency improvements.
- f. Develop a marketing and outreach program to garner community participation.
- g. Open field offices within the three Beacon Communities and actively seek communities input in development of the program.
- h. Replicate the program by conducting a competitive selection process to pick the Phase II Beacon Communities and offering program services to community members.
- i. Create a Retrofit Ramp-up Advisory Committee to assist in advising the program.
- j. Work with state, regional and national partners to effectively implement the program.
- k. Attend national conferences devoted to the Retrofit Ramp-up Program.

- l. Oversee the program's progress and compliance with all associated requirements; and
- m. Collect and report data on project types, jobs created/retained, avoided energy use, emissions reduced, and other data as outlined in this Contract or as amended from time to time. Other funding sources (ARRA, RGGI, REF, other) that borrowers or grantees succeed in leveraging for projects funded under this program must also be tracked and reported on by CDFA. Detailed financial and program reports must be submitted to OEP monthly. A final Program Report is due to OEP on or before September 30, 2013.

4. **Goals of the Program:**

- a. Provide communities with effective tools and strategies for marketing to and engaging property owners in making the changes needed to yield improved energy efficiencies in their buildings.
- b. Identify and create sustainable financial products and resources that will make retrofitting a viable option both now and in the future for property owners.
- c. Provide easy access to technical expertise needed to attain maximum reductions in the fossil fuel emissions and total energy use of residential, commercial, nonprofit and municipal buildings.
- d. Stimulate local economies and create jobs.

5. **Attachments to this Contract:**

Attached to this contract shall be documents that further guide program administration and requirements:

- a. Exhibit B: Project Costs
- b. Exhibit C: Special Provisions
- c. Exhibit D, E, F, G, H, I: Certifications and Assurances
- d. Attachment I: US DOE Recovery Act: EECBG- New Hampshire Beacon Community Project, Special Terms and Conditions, Award Number: DE-EE0003576, CFDA Number: 81.128
- e. Attachment II: NH Office of Energy and Planning's Approved Proposal by U.S. Department of Energy
- f. Attachment III: US OMB Implementing Guidance

6. **Scope of Services:**

CDFA shall bring to successful completion the Project by performing the following tasks, as outlined in Attachment I, Statement of Project Objectives:

- a. Task 1: Develop and Enhance Financing Mechanisms for residents, business and nonprofits to request funding for qualifying projects.
- b. Task 2: Design Marketing and Outreach Program that will be structured to meet the state's goals while ensuring it is customized to each community, striving for the highest possible participation level.
- c. Task 3: Implement Program to achieve massive energy reductions across multiple building sectors by engaging community members to participate in services provided through the Beacon Communities Project.
- d. Task 4: Develop Mentorship Program and Implement Beacon Phase II to allow communities to share their success and challenges and expand the Beacon Communities Project to other communities in the state.
- e. Task 5: Project Management and Reporting to document the projects successes and failures, verify energy savings, and ensure transparency of funding.

7. **Grant Administration:**

CDFA shall:

- a. Adhere to the program budget approved by DOE. If adjustments are needed, it must be approved by OEP and DOE.
- b. Using its own staff and resources, perform all activities as necessary to administer the Project in accordance with the provisions of this agreement.
- c. Enforce the terms and conditions of its agreements to be entered into with grantees, subrecipients and vendors.
- d. Be solely responsible for the performance of this agreement.
- e. Submit to OEP all required reports as specified in this exhibit and as amended from time to time, and

- shall monitor and enforce the reporting requirements of the residents, businesses and contractors as provided in any agreements.
- f. Provide such training or create such documents as is necessary to secure satisfactory performance of duties and responsibilities as outlined in grantee, subrecipient and vendor agreements.
 - g. Monitor the residents, businesses and contractors for compliance with their respective agreements and all pertinent requirements referenced herein.
 - h. Within 5 days of the end of each month report, in the pre-determined format and as amended from time to time, the funds expended, jobs created and retained, energy saved, and emissions reduced.
 - i. When applicable, ensure that Buy American, National Environmental Policy Act, Davis Bacon regulations, National Historic Preservation Act (NHPA) and all other applicable ARRA regulations are met by grantees, subrecipients and vendors. Any project that may trigger NEPA must first be approved by OEP.
 - j. Develop a programmatic agreement with the NH Division of Historical Resources to simplify and expedite the approval process with NHPA.
 - k. Notify OEP about media inquiries, responses, published articles and events highlighting Retrofit Ramp-up projects.
 - l. Ensure that reasonable access is provided to OEP, OES, DOE, and OMB for all administrators, vendors, facilities, work sites, employees of the contractor(s), financial or other records, and assistance to ensure the safety and convenience for the performance of site visits and evaluations.
 - m. Ensure that activities to be undertaken in connection with the Project shall comply with all applicable federal, state, and local design standard regulations and safety and construction codes.
 - n. CDFA shall have an OMB circular A-133 audit performed in any fiscal year in which it expends more than \$500,000 in federal funding. CDFA shall insure that any subrecipient or vendor expending in excess of \$500,000 in federal funding in any fiscal year shall be subject to an A-133 agreement.
 - o. Where the CDFA is not subject to the requirements of OMB Circular A-133, CDFA shall submit to OEP two copies of an audited financial report, within 90 days after the end of each fiscal year. Said audit shall be conducted utilizing the guidelines set forth in "Standards for Audit of Governmental Organizations, Programs, Activities, and Functions" by the Comptroller of the United States.
 - p. CDFA shall require its subrecipients and vendors to submit yearly audits to CDFA for review of A-133 compliance and report back to OEP.
 - q. Monitor the activities of subrecipients and vendors to ensure that Federal awards are used for authorized purposes in compliance with laws, regulations, and the provisions of contracts or grant agreements and to ensure that performance goals are achieved. Monitoring must cover each program, function or activity, including but not limited to: program administration, internal financial management controls, civil rights and equal opportunity employer requirements, procurement standards, labor standards including Davis Bacon requirements, Buy American provisions, and subrecipient monitoring. Monitoring of subrecipients and vendors must be conducted at least twice a year or more often if CDFA or OEP determines after a risk analysis that more oversight is necessary.

8. **Federal Compliance**

If applicable, CDFA shall comply, and shall require any grantee, subrecipient or vendor to comply, with the following federal and state laws and all applicable standards, rules, orders, or regulations issued pursuant thereto:

- a. The Copeland "Anti-Kickback" Act, as amended (118 USC 874) as supplemented in Department of Labor regulations (41 CFR Chapter 60).
- b. Labor Standards. Davis-Bacon Act, as amended (40 USC 276a-276a-7), the Contract Work Hours and Safety Standards Act (40 USC 327-333).
- c. The Flood Disaster Protection Act of 1973 (PL 93-234), as amended, regulations issued pursuant to that act, and Executive Order 11985.
- d. The National Environmental Policy Act of 1969 (PL 90-190); the National Historic Preservation Act of 1966 (80 Stat 915, 116 USC 470); and Executive Order No. 11593 of May 31, 1971, as specified in 24 CFR 58.
- e. The Clean Air Act, as Amended, 42 USC 1857 et seq., the Federal Water Pollution Control Act, as amended, 33 USC 1251 et seq. and the regulations of the Environmental Protection Agency with respect thereto, at 40 CFR Part 15, as amended from time to time.
- f. The NH State Energy Code (RSA 155-D).

- g. The NH State Life Safety Code (RSA 155:1) and rules of the NH State Fire Marshal
- h. The Recovery and Reinvestment Act of 2009, Public Law 111-5 ("Recovery Act" or "Act") and applicable standards, rules orders, regulations and guidelines issued pursuant thereto, as amended from time to time and detailed in Exhibit C of this contract.

9. Agreement with Grantees, Subrecipients and Vendors:

- a. CDFA shall enter into an Agreement with residents, businesses and contractors to be funded by Project funds in a form acceptable to CDFA and OEP.
- b. CDFA shall cause all applicable provisions of this contract to be inserted in all grantee, subrecipient or vendor Agreements for any work or Project activities covered by this Agreement so that the provisions will be binding on each grantee or subrecipient; provided, however, that the foregoing provisions shall not apply to contracts for standard commercial supplies or raw materials.
- c. CDFA shall take such action with respect to any such Agreement, contract or subcontract as the State, or, where applicable, the United States, may direct as a means of enforcing such provisions, including sanctions for noncompliance.

10. OEP Requirements:

OEP shall:

- a. Have the right to inspect all project sites, interview workers and ensure that all regulations are being met.
- b. Collaborate with CDFA and its partners in their efforts to publicize the program.
- c. Have the right to inspect and monitor financial records and transactions.
- d. Reimburse CDFA for costs incurred for administrative and program costs on a monthly basis.
- e. Provide CDFA with clear and complete guidance on the data to be recorded, which may be amended from time to time.
- f. Have the right to participate in the selection of projects and review records of applications submitted whether funded or not.
- g. Respond in a reasonable and timely manner to all requests for clarification or program modification from CDFA in order to ensure the success of the Project and the distribution of all funds prior to May 31, 2013.
- h. File form 1512 reports in a timely manner with OES, federalreporting.gov and any other agency/department to who they are required to report.
- i. File reports with DOE as required.

11. Records and Accounts: Access

During the performance of the Project Activities and for a period of three (3) years after the Completion Date or the date of the final audit approval by OEP, whichever is later, CDFA shall keep, and shall require any resident, business and contractor to keep, the following records and accounts:

- a. **Records of Direct Work:** Detailed records of all direct work performed by its personnel under this contract.
- b. **Fiscal Records:** Books, records, documents and other statistical data evidencing, and permitting a determination to be made by OEP of all project costs and other expenses incurred by CDFA and all income received or collected by CDFA, during the performance of the project activities. The said records shall be maintained in accordance with generally acceptable accounting procedures and practices, and which sufficiently and properly reflect all such costs and expenses, and shall include, without limitation, all ledgers, books, audits, records and original evidence of costs such as purchase requisitions and orders, invoices, vouchers, bills, requisitions for materials, inventories, valuations of in-kind contributions, labor time cards, payrolls and other records requested or required by OEP.
- c. **Contractor and Subcontractor Records:** CDFA shall, and where applicable, residents, businesses and contractor shall, establish, maintain and preserve property management, project performance, financial management and reporting documents and systems, and such other books, records, and other data pertinent to the project as OEP may require. Such records shall be retained for a period of three (3) years following completion of the project and receipt of final payment by CDFA, or until an audit is completed and all questions arising are resolved, whichever is later.

- f. The NH State Energy Code (RSA 155-D).
- g. The NH State Life Safety Code (RSA 155:1) and rules of the NH State Fire Marshal.
- h. The Recovery and Reinvestment Act of 2009, Public Law 111-5 (“Recovery Act” or “Act”) and applicable standards, rules orders, regulations and guidelines issued pursuant thereto, as amended from time to time and detailed in Exhibit C of this contract.

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- e. Provide CDFA with clear and complete guidance on the data to be recorded, which may be amended from time to time.
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- shall monitor and enforce the reporting requirements of the residents, businesses and contractors as provided in any agreements.
- f. Provide such training or create such documents as is necessary to secure satisfactory performance of duties and responsibilities as outlined in grantee, subrecipient and vendor agreements.
 - g. Monitor the residents, businesses and contractors for compliance with their respective agreements and all pertinent requirements referenced herein.
 - h. Within 5 days of the end of each month report, in the pre-determined format and as amended from time to time, the funds expended, jobs created and retained, energy saved, and emissions reduced.
 - i. When applicable, ensure that Buy American, National Environmental Policy Act, Davis Bacon regulations, National Historic Preservation Act (NHPA) and all other applicable ARRA regulations are met by grantees, subrecipients and vendors. Any project that may trigger NEPA must first be approved by OEP.
 - j. Develop a programmatic agreement with the NH Division of Historical Resources to simplify and expedite the approval process with NHPA.
 - k. Notify OEP about media inquiries, responses, published articles and events highlighting Retrofit Ramp-up projects.
 - l. Ensure that reasonable access is provided to OEP, OES, DOE, and OMB for all administrators, vendors, facilities, work sites, employees of the contractor(s), financial or other records, and assistance to ensure the safety and convenience for the performance of site visits and evaluations.
 - m. Ensure that activities to be undertaken in connection with the Project shall comply with all applicable federal, state, and local design standard regulations and safety and construction codes.
 - n. CDFA shall have an OMB circular A-133 audit performed in any fiscal year in which it expends more than \$500,000 in federal funding. CDFA shall insure that any subrecipient or vendor expending in excess of \$500,000 in federal funding in any fiscal year shall be subject to an A-133 agreement.
 - o. Where the CDFA is not subject to the requirements of OMB Circular A-133, CDFA shall submit to OEP two copies of an audited financial report, within 90 days after the end of each fiscal year. Said audit shall be conducted utilizing the guidelines set forth in "Standards for Audit of Governmental Organizations, Programs, Activities, and Functions" by the Comptroller of the United States.
 - p. CDFA shall require its subrecipients and vendors to submit yearly audits to CDFA for review of A-133 compliance and report back to OEP.
 - q. Monitor the activities of subrecipients and vendors to ensure that Federal awards are used for authorized purposes in compliance with laws, regulations, and the provisions of contracts or grant agreements and to ensure that performance goals are achieved. Monitoring must cover each program, function or activity, including but not limited to: program administration, internal financial management controls, civil rights and equal opportunity employer requirements, procurement standards, labor standards including Davis Bacon requirements, Buy American provisions, and subrecipient monitoring. Monitoring of subrecipients and vendors must be conducted at least twice a year or more often if CDFA or OEP determines after a risk analysis that more oversight is necessary.

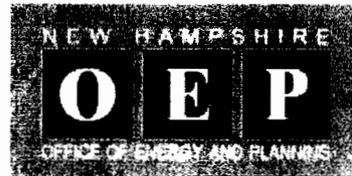
8. **Federal Compliance**

If applicable, CDFA shall comply, and shall require any grantee, subrecipient or vendor to comply, with the following federal and state laws and all applicable standards, rules, orders, or regulations issued pursuant thereto:

- a. The Copeland "Anti-Kickback" Act, as amended (118 USC 874) as supplemented in Department of Labor regulations (41 CFR Chapter 60).
- b. Labor Standards. Davis-Bacon Act, as amended (40 USC 276a-276a-7), the Contract Work Hours and Safety Standards Act (40 USC 327-333). (Because this program is targeted at residents, the Davis Bacon Act does not apply.)
- c. The Flood Disaster Protection Act of 1973 (PL 93-234), as amended, regulations issued pursuant to that act, and Executive Order 11985.
- d. The National Environmental Policy Act of 1969 (PL 90-190); the National Historic Preservation Act of 1966 (80 Stat 915, 116 USC 470); and Executive Order No. 11593 of May 31, 1971, as specified in 24 CFR 58.
- e. The Clean Air Act, as Amended, 42 USC 1857 et seq., the Federal Water Pollution Control Act, as amended, 33 USC 1251 et seq. and the regulations of the Environmental Protection Agency with respect thereto, at 40 CFR Part 15, as amended from time to time.

12. Termination; Remedies

- a. Inability to Perform; Termination by CDFA. As a result of causes beyond its control, and notwithstanding the exercise of good faith and diligence in the performance of its obligations hereunder, if it shall become necessary for CDFA to terminate this contract, CDFA shall give OEP thirty (30) days advance written notice of such termination, in which event the contract shall terminate at the expiration of said thirty (30) days.
- b. Termination Without Default. In the event of termination without default and upon receipt, acceptance and approval by OEP of the Termination Report, as referenced in the General Provisions, CDFA shall receive payment for all Project Costs incurred in the performance of Grant Activities completed up to and including the date of termination and for which payment had not previously been made including, but not limited to, all reasonable expenses incurred in the preparation of the Termination Report; provided, however, that in the event that any payments have been made hereunder in excess of Project Costs incurred up to and including the date of termination of the contract, OEP shall offset any payments to be made hereunder against such payments, and if applicable, CDFA shall refund to OEP the amount of any excess funds it retains after such offset.
- c. Termination for Default. In the event of termination for default or other violation of Project requirements, OEP shall, upon receipt, acceptance and approval of the Termination Report submitted by CDFA, pay CDFA for Project Costs incurred up to and including the date of termination (subject to off-set against funds paid to CDFA hereunder and to the refund of any excess funds); provided, however, that in such event the amount of such payment shall be determined solely by OEP; and provided, further, that in no event shall the making of any such payments relieve CDFA of any liability for damages sustained or incurred by OEP as a result of CDFA's breach of its obligations hereunder, or relieve CDFA of responsibility to seek return of Grant Funds from any Subrecipient or Beneficiary where applicable.
- d. Limitation on CDFA Liability for Subgranted Funds. Notwithstanding anything in this contract to the contrary and absent the presence of fraud or negligence on the part of CDFA in enforcing its rights and obligations under the terms of any Subrecipient agreement, the sole obligation of CDFA with respect to the return of Grant Funds, in the event of default on a grant condition or other termination of the Project or event requiring return of Grant Funds, shall be to make a good faith effort to return to the State of New Hampshire all grant funds paid to Residents through CDFA. CDFA shall make good faith efforts to enforce the legal obligations entered into with the Residents as provided herein, to call upon the collateral held by itself or others, and exercise due diligence in its efforts in bringing about the satisfaction of the grant obligations and, having done so, it shall not be required to look to any other funds to recoup grant funds not recovered from the Residents.
- e. Assignment to OEP and Payment of Expenses and Costs. CDFA hereby agrees that, in the event it fails to enforce the provisions of any grantee, subrecipient or vendor agreement or fails to cure an Event of Default resulting in termination of this Agreement or the Project, CDFA shall, upon demand by OEP, assign and convey to OEP all or any of its rights, title and interest, or delegate to OEP all or any of its obligations under the grantee, subrecipient or vendor agreement and any Mortgage, Promissory Note, Security Agreement or other agreement as applicable. Such delegation or assignment shall be effective only in the event of a default by grantee, subrecipient or vendor or beneficiary in its or their obligations under the grantee, subrecipient or vendor agreement or other agreement.
- f. Where the contract is terminated or the Project is otherwise terminated due to default, inability to perform, or reason other than project completion and grant funds are required to be returned by CDFA, the disposition of grant funds to be returned shall be determined solely by OEP.



July 14, 2010

**Exhibit B – Project Costs: Method and Terms of Payment
American Recovery and Reinvestment Act – Energy Efficiency and Conservation Block
Grant- Retrofit Ramp-up Program**

1. PROJECT COSTS: PAYMENT SCHEDULE; REVIEW BY OEP

1.1 Costs: The following terms shall apply to this agreement:

1.1.1 "Project Costs" shall mean all reimbursable costs, including administrative costs, incurred by a Business in performance of Project Activities. Project costs include, but are not limited to: preparation of environmental review, record keeping, reporting, audits, and oversight of Project construction, monitoring, verification, and compliance with all federal, state, and local laws, rules, and regulations and this contract. A non-profit business shall meet the requirements of OMB Circular A-122.

1.1.2 "Administrative Costs" shall mean all expenses directly or indirectly incurred by Community Development Finance Authority (CDFA) in the administration of the Project as determined by OEP to be eligible and allowable for payment in accordance with the DOE approved Program Budget and cost standards set forth in OMB Circular A-87 and A-122 as revised from time to time.

1.2 Payment of Project Costs: Subject to the terms and conditions of this agreement, OEP agrees to pay CDFFA all Project and Administrative Costs, provided, however, in no event shall the total of all payments made by OEP pursuant to this Agreement exceed the Grant Amount as set out in Paragraph 3 of the Exhibit A- Scope of Services and provided further that all Project Costs shall have been incurred prior to the Completion Date as noted in Paragraph 2 of Exhibit A- Scope of Services.

1.3 Review by OEP; Disallowance of Costs: At any time during the performance of the Project Activities, and upon receipt of the monthly and quarterly Progress Reports, Closeout Report, or Audited Financial Report, OEP may review all Project Costs incurred by CDFFA and all payments made to date. Upon such review, OEP shall disallow any items of expense which are not determined to be allowable or are determined to be in excess of actual expenditures, and shall, by written notice specifying the disallowed expenditures, inform CDFFA of any such disallowance. If OEP disallows costs for which payment has not yet been made, it shall refuse to pay such costs. If payment has been made with respect to costs which are subsequently disallowed, OEP may deduct the amount of disallowed costs from any future payments under this Agreement or require that CDFFA refund to OEP the amount of the disallowed costs.

2. METHOD AND TERMS OF REIMBURSEMENT FOR PROJECT COSTS

- 2.1 When Project Funds May Be Released: CDFA will submit an itemized monthly invoice with supporting documentation to OEP for Project and Administrative Costs incurred for loans and/or grants awarded. OEP will reimburse CDFA from the total contracted amount not to exceed \$8,508,332. OEP shall not disburse any funds for the purposes of subrecipient and vendor agreements until such time as the respective agreements specified in Exhibit A and any other agreements or documents specified pursuant to this Agreement are fully executed and received, and where applicable are reviewed and approved in writing by OEP. Agreements and documents may include:
- 2.1.1 A Subrecipient Agreement, as applicable;
 - 2.1.2 A Vendor Agreement, as applicable;
 - 2.1.3 Documentation of other committed leveraged funds or additional financing;
 - 2.1.4 Copies of required certificates of insurance from all parties to this agreement;
- 2.2 Timing of Payments: Within thirty (30) days of the receipt by OEP of requests for reimbursement from CDFA specifying all costs incurred, OEP agrees to reimburse CDFA for costs, except that reimbursement may be withheld until OEP determines that a particular project activity or portion of the project activity hereunder has been satisfactorily completed. Payments may be withheld if required satisfactory reporting has not been submitted to OEP.
- 2.3 Disbursement of funds by OEP does not constitute acceptance of any item as an eligible cost.

3. REQUIRED DOCUMENTATION FOR DISBURSEMENT OF GRANT FUNDS

- 3.1 Reimbursement requests for all Project, Administrative and Delivery Costs shall be accompanied by proper supporting documentation in the amount of each requested disbursement along with a payment request form as supplied by OEP, which shall be completed and signed by CDFA. Documentation may include invoices for supplies, equipment, services, contractual services, and, where applicable, a report of salaries paid or to be paid.

4. LIMITATIONS ON USE OF FUNDS

- 4.1 Funds for this program are to be used in a manner consistent with the US DOE Recovery Act: EECBG- New Hampshire Beacon Community Project, Special Terms and Conditions (Attachment I) and the NH Office of Energy and Planning's Approved Proposal by U.S. Department of Energy (Attachment II).
- 4.2 Project funds may not, without advance written approval by OEP, be obligated prior to the Effective Date or subsequent to the Completion Date of the Project period. The funding assistance authorized hereunder shall not be obligated or utilized for any activities requiring a release of funds under the Environmental Review Procedure for the American Recover and Reinvestment Act- Energy Efficiency and Conservation Block Grant- Retrofit Ramp-up Program until such release is issued in writing by OEP.
- 4.3 Changes in Funding Categories: CDFA may submit a written request to OEP for the authority to transfer grant funds from one class of Business to another as listed in the Program Budget.

5. PERFORMANCE OF SERVICES BY GRANTEE PRIOR TO EFFECTIVE DATE; PAYMENT BY OEP

- 5.1 Any Project Activities performed by CDFA prior to the Effective Date shall be performed at the sole risk of CDFA and will not be reimbursed by OEP without their prior approval.

6. REVOLVING LOAN FUND AND LOAN LOSS RESERVE ACCOUNT

- 6.1 Program Income: All program income earned during the term of this Agreement shall be reinvested into Revolving Loan Funds (RLF) or Loan Loss Reserve (LLR) accounts that meet the goals of this program.
- 6.2 When Program Income becomes available in a RLF or LLR, CDFA shall use it to further the goals of the US DOE Recovery Act: EECBG- New Hampshire Beacon Community Project, Special Terms and Conditions (Attachment I) and the NH Office of Energy and Planning's Approved Proposal by U.S. Department of Energy (Attachment II).
- 6.3 After the Completion Date, CDFA shall continue to administer the RLF and LLR in accordance with Paragraph 6.2 of this Exhibit B. If, following the Completion Date, demand for the RLF and/or LLR capital is not sufficient to fully utilize the amounts available, CDFA may petition OEP, who will petition the US Department of Energy, for an alternative use of the RLF and/or LLR. OEP agrees that it will not unreasonably withhold approval of any such request.
- 6.4 RLF/LLR Administrative Costs: CDFA may use up to 10% of any program income to cover costs incurred in the ongoing administration of the RLF and/or LLR.

