Council Meeting: 06/15/2010
Agenda: Approval of Agreements
Item #: 8. g. (1).

CITY OF KIRKLAND
Department of Public Works
123 Fifth Avenue, Kirkland, WA 98033 425.587.3800
www.ci.kirkland.wa.us

MEMORANDUM

To: Marilynne Beard, Interim City Manager

From: Ray Steiger, P.E., Interim Public Works Director
Donna Burris, Internal Services Manager

Date: June 3, 2010

Subject: ENERGY EFFICIENCY & CONSERVATION BLOCK GRANT (EECBG) – HOME ENERGY REPORTS AGREEMENT

RECOMMENDATION:

It is recommended that Council approve the attached resolution authorizing the City Manager to sign an agreement with Puget Sound Energy and OPower to provide Home Energy Reports to over 11,000 of Kirkland's single-family residents.

BACKGROUND:

The American Recovery and Reinvestment Act of 2009 provided multiple funding opportunities intended for local governments. One such opportunity is the Energy Efficiency and Conservation Block Grant (EECBG). The overall intent of the EECBG Program is to assist eligible entities in creating and implementing strategies to:

- Reduce fossil fuel emissions in a manner that is environmentally sustainable and, to the maximum extent practicable, maximize benefits for local and regional communities;
- Reduce the total energy use of the eligible entities; and
- Improve energy efficiency in the building sector, the transportation sector, and other appropriate sectors.

The City of Kirkland is slated to receive $211,500 in EECBG formula funding. The Green Team recommended potential uses of this grant funding, and the projects proposed were consistent with Kirkland's emissions goals and Climate Protection Action Plan. At the May 19, 2009 meeting, Council approved staff recommendations from a menu of project options as shown below:

PROJECT	***ESTIMATE***	***STATUS***
Convert City Hall Parking Lot Lights to LED Technology	$54,000	NA – Per 5/18/10 Council memo
Convert Traffic Signals to LED Technology	$69,500	Compiling list of materials
Replace Single-Pane Windows at Fire Station 27	$28,000	Contract awarded
Home Energy Reports (Puget Sound Energy/OPower)	$60,000	***This memo***
TOTAL	***$211,500***	

OPower Home Energy Reports

Puget Sound Energy is contracting with OPower (formerly Positive Energy) www.opower.com and partnering with cities to provide home energy reports for residential customers. The report contains information and analysis about electricity and natural gas consumption in comparison with a resident's neighbors to help increase understanding about energy usage. The report also provides personalized action steps to reduce utility usage and costs. Reports are customized for the community and provide information about City programs and opportunities.

This program will present a helpful outreach method to engage the community about the Climate Protection Action Plan and encourage behaviors that will reduce the community's greenhouse gas emissions. OPower employs a statistical test and control methodology to sample energy use results over meaningful time periods (12-24 months) and measure exact impact within the community. Six other east King County cities (Bellevue, Redmond, Renton, Issaquah, Sammamish and Mercer Island) are also participating in this program utilizing EECBG funds. The City will be responsible for $5.10 per customer for one year of reports and an introductory letter so the $60,000 budgeted in the EECBG grant will provide reports for over 11,000 single-family residents in Kirkland.

Council Meeting: 06/15/2010
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RESOLUTION R-4817

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KIRKLAND REGARDING HOME ENERGY REPORTS FOR KIRKLAND RESIDENTS.

WHEREAS, the American Recovery and Reinvestment Act of 2009 provided funding for the Energy Efficiency and Conservation Block Grant; and

WHEREAS, the City received $211,500 funding from this grant, which at its May 19, 2010, meeting the Council determined should be spend on certain projects; and

WHEREAS, providing Home Energy Reports to residents of the City under a contract with PSE and OPower to further understanding about energy usage and provide action steps to reduce enegy consumption was one of these approved projects,

NOW, THEREFORE, be it resolved by the City Council of the City of Kirkland as follows:

Section 1. The City Manager is hereby authorized and directed to execute on behalf of the City of Kirkland an Interlocal Agreement substantially similar to that attached as Exhibit "A", which is entitled "Agreement for Home Energy Report Pilot Program."

Passed by majority vote of the Kirkland City Council in open meeting this _____ day of _____, 2010.

Signed in authentication thereof this ____ day of _____, 2010.

_____
MAYOR

Attest:

_____
City Clerk

PUGET SOUND ENERGY
The Energy To Do Great Things

Agreement for Home Energy Report Pilot Program
No. 2009-00_

This Agreement, dated as of _____, is entered into by and among **Puget Sound Energy, Inc.,** a Washington corporation ("PSE"), **OPOWER, Inc.**, a Delaware corporation ("OPOWER"), and _____ ("City"), a municipal corporation of the State of Washington. PSE, OPOWER, and City are each a "party" to this Agreement, and collectively may be referred to as "parties."

The Agreement sets forth each party's respective roles, commitments, and obligations with respect to **PSE's Home Energy Report Pilot Program ("Program")** further described in this document and its attachments. Those attachments consist of Attachment 1, Scope of Work; Attachment 2, Pricing/Invoicing Detail; Attachment 3, Sample Home Energy Report; Attachment 4, PSE/OPOWER contract (redacted); and Attachment 5, federal regulatory requirements, each of which is incorporated by this reference.

This Agreement is intended to implement a City decision to employ funds that the City obtained or will obtain under the American Recovery and Reinvestment Act of 2009 ("ARRA") from the US Department of Energy (or another funding agency), and thus increase the availability of a substantially identical PSE/OPOWER pilot program to eligible PSE customers within the City limits.
The parties agree to participate in the Program with an end date of the earlier of a) **12/31/2011;** b) until the allocated funding cap of $_____ allocated by the City and matched by PSE, as further set forth in this Agreement, is fully expended; or c) until this Agreement is terminated pursuant to Section 10 (the "Program Term"). If extensions of the Program Term are requested by PSE or the City and agreed upon by OPOWER, such extensions must be written and mutually agreed upon in advance through an amendment to this Agreement. The term of this Agreement runs concurrently with the Program Term.

1. Program Description

The PSE Home Energy Report Pilot Program is intended to increase energy efficiency practices and reduce consumption of energy by delivering energy usage information to participating PSE customers ("New Participants") together with energy savings information. New Participants will be selected through the process described in the Scope of Work and receive regular reports ("Home Energy Reports") that tell them where they stand in comparison to their neighborhood with respect to energy use (both electricity and gas). Further, the Program uses customers' energy profiles to individually target energy efficiency offers and rebates most relevant to New Participants, and such offers and rebates may be included in mailings or communications to New Participants.

Further detail found in Attachment 1 Scope of Work, and Attachment 4, PSE/OPOWER contract.

1.1 PSE Commitments:

- PSE shall work with OPOWER under the PSE/OPOWER contract to expand the availability of the Program to New Participants residing within the City limits.
- PSE shall ensure that at least the first Home Energy Reports have been delivered for New Participants within the City limits on or before December 31, 2010.
- For each New Participant residing within the City limits, PSE shall bear the Setup Fees and the Website License Fees as shown on Attachment 2. PSE shall bear one-half of each of the Report Delivery fees, the Website Access fees, and the costs of the Introductory Insert as shown on Attachment 2. PSE shall pay OPOWER the fees and costs allocable to PSE for New Participants under this Agreement consistent with a quarterly invoice issued from OPOWER to PSE. PSE's obligation to make its payments to OPOWER is not conditioned on any City payment or agreement to pay OPOWER pursuant to that invoice. PSE shall bear no liability for or responsibility for the portion of the fees to be paid by the City as described in Section 1.2 below. Invoices issued by OPOWER pursuant to this Agreement shall clearly indicate those fees to be paid by PSE and those fees to be paid by the City. All Setup Fees and Website License Fees are due and payable by PSE to OPOWER upon execution of this Agreement and are non-refundable.
- PSE's payments will be made directly to OPOWER.
- PSE shall maintain, and upon the City's reasonable request, provide to the City copies of invoices or proofs of payment of invoices to OPOWER, detailing PSE's expenditures to assist the City in documenting and reporting upon direct cash matching expenditures as such relate to the scope of work under this Agreement.
- PSE shall ensure that all Home Energy Reports are branded with PSE and City logo, at PSE's expense, subject to the restrictions in Section 5.
- PSE shall provide quarterly reports to City Program Coordinator specifying number of New Participants, number of opt-outs, and the Home Energy Report release schedule for New Participants.
- PSE shall provide the City with one summary of evaluation results from the Program not later than 18 months after the delivery of the first Home Energy Report to a New Participant within the City's limits.
- PSE shall provide, at no cost until September 30, 2011, all New Participants with access to the Energy Insider Website with energy saving tips.
- PSE shall comply with ARRA funding rules or requirements, if any, that are applicable to its responsibilities under this Agreement. PSE shall maintain and, upon the City's request, provide the City with, documentation to support the City in meeting reporting, audit or other documentation requirements imposed on the City under ARRA funding rules or requirements that apply to the grant(s) awarded to the City that the City is using to fund the City's participation in the Program.

1.2 City Commitments:

- For each New Participant residing within the City limits, City shall pay to OPOWER one-half of each of the Report Delivery fees, the Website Access fees, and the costs of the Introductory Insert, as shown on Attachment 2 and to be invoiced on a quarterly basis as described there. PSE and City may be concurrently invoiced by OPOWER for such costs and fees, but City is not obligated to pay OPOWER for City's portion of such costs and fees until PSE has already paid OPOWER for PSE's portion of those fees and costs. The City shall bear no liability for or responsibility for the portion of the fees to be paid by PSE as described in Section 1.1 above. Invoices issued by OPOWER pursuant

to this Agreement shall clearly indicate those fees to be paid by PSE and those fees to be paid by the City.

- City's payments will be made directly to OPOWER.
- City's total payments in support of the Program shall not exceed $_____, i.e., the amount of ARRA grant(s) received by the City and that the City has decided to make available to support the Program.
- City shall be responsible for all reporting or auditing that may be required for compliance with rules related to use of funds it obtained under the ARRA.

1.3 OPOWER Commitments:

- OPOWER shall implement the Program for delivery to New Participants residing within the City limits consistent with its obligations under the PSE/OPOWER contract (Attachment 4) and the Scope of Services (Attachment 1), provided that PSE and the Cities are meeting their payment commitments.
- Provided that PSE and the City meet their respective obligations necessary for delivery of the services, including without limitation timely delivery of data to OPOWER, timely execution of these Agreements, and timely payments to OPOWER, OPOWER shall deliver at least the first Home Energy Reports to New Participants within the City limits on or before December 31, 2010.
- OPOWER shall maintain records adequate to identify New Participants, and (except for the Setup Fees and Website License Fees payable immediately by PSE as described above) shall not bill either PSE or the City for costs or fees associated with any New Participants until such New Participants have been identified for the Program.
- OPOWER shall maintain its records of New Participants (and records of persons already participating in PSE's pilot program) in a manner consistent with the confidentiality of the provisions in the PSE/OPOWER contract (Attachment 4).
- Under a confidentiality agreement that restricts use of information at least to be consistent with privacy rules applicable to PSE customer information, OPOWER shall provide its records of the Program within the City limits to an independent auditor designated by the City, upon the City's reasonable request, but not more than once per year, for audit or review purposes to enable the City to verify the number of New Participants that have been identified during the applicable period.
- OPOWER shall invoice City and PSE on a quarterly basis for New Participants residing within the City limits consistent with Attachment 2.
- OPOWER shall comply with ARRA funding rules or requirements, including the federal regulatory requirements attached as Attachment 5, that are applicable to its responsibilities under this Agreement. OPOWER shall maintain and, upon the City's request, provide the City with, documentation to support the City in meeting reporting, audit or other documentation requirements imposed on the City under ARRA funding rules or requirements that apply to the grant(s) awarded to the City that the City is using to fund the City's participation in the Program.

2.0 Program Coordination Contacts:

PSE:	**City:**
Name Jessica Geenen	**Name**_____
Phone 425-457-5884	**Phone**_____
email jessica.geenen@pse.com	**email**_____

OPOWER:

Name Josh Bufford
Phone 804-514-0588
Email josh@opower.com

3.0 Qualifications for Participation

3.1 City:
City qualifies for this Program because some of its residents are PSE customers for gas and/or electric service who are not already participating in the Program as a member of a test or a control group, and because City received an ARRA grant that it desires to employ in support of expanding the availability of the Program to City residents.

3.2 Customers:
Qualifying New Participants are PSE customers who (a) are not part of the existing test or control groups living in single family homes within the City limits, (b) meet technical eligibility requirements regarding quality of data, (c) are selected through the process described in Task 8 of Appendix A to Amendment 3 of the PSE/OPOWER contract, and (d) choose not to opt out of the Program after being selected to participate.

4.0 Promotions and Advertising

4.1 The City, OPOWER and PSE must approve in advance and in writing any advertising or news releases about the Program. Proposed advertising or news releases must be provided three weeks in advance to the designated contacts for PSE, OPOWER and the City. The Introductory Insert (the first mailing announcing the Program to New Participants) shall comply with any applicable acknowledgement requirements associated with federal ARRA grant recipients.

4.2 Failure of a party to provide its written approval as set forth in section 4.1 shall not constitute such party's approval or acceptance.

5. Logos and Language

5.1 The PSE logo and the OPOWER logo must be added to all materials and advertising about the Program. The City logo—or other identifying information—will be included in any such materials or advertising if the City desires, at no cost to the City. PSE and OPOWER shall not use any trade name, trademark, service mark, or logo of the City (or any name, mark, or logo confusingly similar thereto) in any advertising, promotions, or otherwise, without the City's express prior written consent.

5.2 Each party acknowledges and agrees that it does not own any right, title or interest in or to any other party's name and logo. No party will at any time dispute or contest, directly or indirectly, the exclusive right and title to, and validity of, another party's respective name and logo. Each party agrees to take no action inconsistent with another party's ownership of its respective name and logo or that is likely to subject such party to claims by third parties or potential loss of any rights therein, and agrees and acknowledges that its use of the other party's name and logo inures to the benefit of such party. Each party acknowledges that maintaining a high standard of quality for the Program materials bearing the name and logo and maintaining the goodwill associated with such names and logos are of substantial importance.

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6. Limited Liability, Indemnification and Hold Harmless

6.1 Except as set forth in Sections 6.2 and 6.3 below or except with respect to violations of OPOWER's intellectual property rights as defined in the PSE/ OPOWER contract, the total liability for either PSE or the City under this Agreement shall be limited to paying their respective portion of the Program fees, costs or expenses as set forth herein or in Attachment 2, but only if and as such Program fees, costs or expenses become due and payable pursuant to the terms of this Agreement. If for any reason the City is unable to spend the full amount of the City's ARRA grant(s) allocated to this Program, whether due to lack of resident response, failure of advertising or Program performance or otherwise, PSE and City agree to work together to explore whether any replacement energy efficiency effort is viable or appropriate. OPOWER's liability under this Agreement shall be limited to the actual fees received pursuant to this Agreement.

6.2 PSE shall protect, defend, indemnify and save harmless the City, its officers, employees and agents from any and all costs, claims, judgments or awards of damages, arising out of or in any way resulting from the negligent acts or omissions of PSE or OPOWER with respect to the Program or the terms of this Agreement. .

6.3 The City shall protect, defend, indemnify and save harmless PSE and/or OPOWER, its or their respective officers, employees and agents from any and all costs, claims, judgments or awards of damages, arising out of or in any way resulting from the negligent acts or omissions of the City with respect to the Program or the terms of this Agreement.

6.4 OPOWER shall protect, defend, indemnify and save harmless the City, its officers, employees and agents from any and all costs, claims, judgments or awards of damages, arising out of the negligent acts or omissions of OPOWER with respect to the Program or the terms of this Agreement. OPOWER shall have no such obligation for acts arising out of the acts of the City or PSE.

6.5 OPOWER will indemnify, defend, and hold the City (and its elected officials, officers, employees, successors, assigns, insurers, licensees, distributors, independent Consultants, and agents) harmless from all claims, damages, losses, and expenses arising out of any claim, action, or other proceeding that is based upon (a) OPOWER'S breach of any warranties under this Agreement, or (b) the infringement or misappropriation by OPOWER of any foreign or United States patent, copyright, trade secret, or other proprietary right.

7. Changes

No change or amendment to this Agreement or the Program shall be effective unless it is set forth in writing and executed by each of the parties.

8. No Discrimination; Compliance With Laws

8.1 OPOWER and PSE agree not to discriminate against any employee or applicant for employment or any other person in performance of this Agreement because of race, creed, color, national origin, marital status, sex, age, disability, or other circumstance

prohibited by federal, state, or local law or ordinance, except for a bona fide occupational disqualification.

8.2 OPOWER and PSE shall comply with all current federal, state, and local laws and ordinances applicable to the work to be done under this Agreement.

8.3 Violation of this Section 8 shall be a material breach of this Agreement and grounds for cancellation, termination or suspension of the Agreement by the City, in whole or in part, and may result in ineligibility for further work for the City.

9. Independent Contractor

9.1 OPOWER and/or PSE shall be and act as an independent contractor (and not as the employee, agent, or representative of the City) in the performance of this Agreement. The Agreement shall not be interpreted or construed as creating or evidencing an association, joint venture, partnership or franchise relationship among the parties or as imposing any partnership, franchise, obligation, or liability on any party. Neither OPOWER nor PSE shall be entitled to, and shall not attempt to, create or assume any obligation, express or implied, on behalf of the City. Neither OPOWER nor PSE shall permit or cause any of their employees, agents or subcontractors to perform any services under the Agreement in such a way as to cause or enable them to become, or claim to have become, employees, common law or otherwise, of the City. In addition, OPOWER and PSE acknowledge that as an independent contractor, it and/or its agents, servants or employees are not eligible to recover worker's compensation benefits from or through the City in the event of injury.

10. Termination

10.1 Any party may terminate this Agreement, and its participation in the Program, upon 30 days' written notice delivered to the other parties. In such an event, all payments or other obligations due or to be performed up to the effective date of termination shall be performed, and all obligations owed as of the date of termination shall remain until satisfied.

10.2 This Agreement is one of seven substantially identical agreements intended to be executed by PSE, OPOWER, and each of the Washington cities of Bellevue, Issaquah, Kirkland, Mercer Island, Redmond, Renton, and Sammamish. The economics of expanding the Program depend to a large extent upon sufficient additional participation. Thus, while it is not necessarily mandatory that each of the seven cities decides to participate, to ensure that the expansion of the Program is economic, if fewer than all of the seven cities decide to participate, PSE, OPOWER and the cities that decide to participate will need to evaluate whether proceeding remains feasible under the terms set forth here. Therefore, if one or more of the seven cities has not executed its version of this Agreement on or before June 30, 2010, PSE, OPOWER and the cities that have

executed will determine the proper course of proceeding, which may include declaring this Agreement to be void ab initio and of no effect, and each party reserves that right to itself in such circumstances for any or no reason, and in which case no party will owe any other party any damages, costs or reimbursements. Regardless, the parties recognize that failure of all parties to execute the agreements by June 30, 2010 may lead to delays in the provision of the services to any party or any New Participants.

11. Miscellaneous

Governing Law; Forum. The Agreement will be governed by the laws of Washington and its choice of law rules. OPOWER and PSE irrevocably consent to the exclusive personal jurisdiction and venue of the federal and state courts located in King County, Washington, with respect to any dispute arising out of or in connection with the Agreement, and agree not to commence or prosecute any action or proceeding arising out of or in connection with the Agreement other than in the aforementioned courts.

Severability. If any provision of the Agreement is held to be invalid or unenforceable for any reason, the remaining provisions will continue in full force without being impaired or invalidated in any way.

Nonwaiver. Any failure by any party to enforce strict performance of any provision of the Agreement will not constitute a waiver of that party's right to subsequently enforce such provision or any other provision of the Agreement.

No Assignment. Neither this Agreement nor any of the rights or obligations of the parties arising under this Agreement may be assigned, without the other parties' prior written consent. Subject to the foregoing, this Agreement will be binding upon, enforceable by, and inure to the benefit of, the parties and their successors and assigns. Notwithstanding the foregoing, in the event that OPOWER is acquired by, merged with, or otherwise transfers control of its corporate operations to a third party, then OPOWER shall be free to assign this agreement to such third party without seeking consent of either the City or PSE.

Notices. All notices and other communications under this Agreement must be in writing, and must be given by registered or certified mail, postage prepaid, or delivered by hand to the party to whom the communication is to be given, at its address set forth in this Agreement.

In witness whereof, the parties have caused this Agreement to be signed by their respective duly authorized representatives.

Puget Sound Energy, Inc. **_____(City)_____**

By: _____
Printed Name:
Title:

Date Signed: _____

By: _____
Printed Name: _____
Title: _____

Date: _____

OPOWER, Inc.

By: _____
Printed Name:
Title:

Date Signed: _____

Attachments:

- ✓ Attachment 1 Scope of Services
- ✓ Attachment 2 Pricing Table
- ✓ Attachment 3 Sample Home Energy Report
- ✓ Attachment 4 PSE/OPOWER contract (financial information redacted)
- ✓ Attachment 5 federal regulatory requirements

Attachment 1

SCOPE OF WORK

1. Selection of New Participants

PSE and OPOWER will select participants based on recommended parameters and technical eligibility requirements for available data and "neighbor" selection.

OPOWER will integrate data received from PSE with third party data and populate OPOWER's Insight Engine database. Following the data matching steps, address standardization and Geo-coding, OPOWER will analyze the integrated data and provide statistics and insights necessary to enable and recommend the final selection of New Participants by PSE and meeting the technical requirements.

Working in conjunction with PSE, OPOWER will partition customers into participants and controls, enabling measurement and reporting, and selecting an exact set of customers from within the City limits as identified by tax records.

2. Home Energy Reports Program (see Attachment 3 for Sample)

Description of Program

OPOWER's Home Energy Reporting System and Insight Engine are respectively the front-end and back-end of the communications platform it provides to utilities to better use customer data to engage customers. The Insight Engine is a software analytics engine that analyzes an array of data streams to derive insights about customer segments and individual customers.

The Home Energy Reporting System is delivered in the mail and online. It tells customers where they stand in their neighborhood with respect to energy use (both electricity and gas). Further, it uses customers' energy profiles – determined by the Insight Engine (e.g. heavy A/C use, consistent use, home owner/renter, etc) – to individually target energy efficiency offers and rebates most relevant to them.

Delivery of offline Home Energy Reports

a. OPOWER manages the creation, printing and mailing of Home Energy Reports.

b. The Home Energy Reports are delivered to the New Participants via USPS Standard Mail.

Description of Energy Insider Website

The online component of the Home Energy Reporting System, the Energy Insider Website, serves as an extension and elaboration of the offline reports, providing new participants with more opportunities to learn about their energy consumption and gain access to all available offers and rebates. This website includes OPOWER's robust online analysis tools, audit-like functionalities, and content functionalities. The website is

deployed as a destination for New Participant customers to better understand their energy use and to learn about actions they may take to reduce their consumption. The site is hosted and maintained by OPOWER and is private labeled for PSE so that it appears to the participant to be a site provided by PSE.

The Energy Insider Website will allow customers to: a) see similar information online as they would receive in a printed Home Energy Report; b) set personal goals for reducing energy use and track their progress towards their goal; c) browse the full set of energy efficiency tips in OPOWER's efficiency database; d) join other customers in sharing best practices, comments and reviews; e) view benchmarking online and audit-like functionalities ; f) provide information online that will be leveraged to make online and offline reporting and benchmarking more robust.

3. Provided Services

On behalf of PSE, OPOWER will deliver Home Energy Reports to New Participants through an opt-out program, and will make the Energy Insider Website available to New Participants.

New Participants will receive offline Home Energy Reports for an initial period of 12 months, with 12-month extensions subject to mutual signed agreement by PSE and the City. Accompanying the first months' mailing for any newly enrolled New Participants will be an introductory insert explaining the nature of the program, its duration, and the options for learning more or opting out. Home Energy Reports shall be delivered at an average frequency of no fewer than six reports per New Participant per year.

PSE customer service staff will be able to opt-out New Participants who call in and request to no longer receive the Home Energy Reports.

The Energy Insider Website will be available to New Participants throughout the initial term of the program with the option to extend subject to mutual signed agreement by PSE, OPOWER and City. OPOWER will host and maintain the website, which is integral to the Home Energy Reporting System, which in turn is integrated with the Insight Engine, both also hosted and maintained by OPOWER.

The Energy Insider Website includes the following sections:

a. Online Home Energy Report: This section is a secure area for New Participants to see online a very similar set of information to what is contained in their printed Home Energy Reports. New Participants can see their electricity and gas usage compared to neighborhood averages, and receive targeted energy efficiency recommendations generated by the Insight Engine.

b. Commitment Tracker: Enables New Participants to set a personal goal to reduce their energy use and to track their progress online.

c. Energy Efficiency Recommendation Library: New Participants gain access to Energy Insider's entire library of Energy Efficiency Tips, organized by cost to implement and type of energy use (heating, cooling, lighting, etc).

d. Online Benchmarking: New Participants view their benchmarking analysis, and interact with the website to view various analyses over time. This functionality is linked to the benchmarking report and participants' PSE account information.

e. Online Mini-Audit Functionality: New Participants can answer questions and provide input about their homes and energy-related behaviors. This functionality is linked to the benchmarking report and customers' account information.

f. Energy Insider Network: New Participants gain access to the Energy Insider Network, where they can share their suggestions with others, view popularity rankings of different efficiency tips in their neighborhood, and understand what's working and what isn't working for other people who appear similarly situated.

OPOWER
APPLICATION SERVICE AGREEMENT
Exhibit A
ORDER

ORDER # [_____]

The following products are licensed under the terms and conditions specified in the Application Service Provider Agreement (the "Agreement") between OPOWER, PSE and City dated _____ as well as the additional terms and conditions set forth in this Order:

OPOWER Proprietary Software:	Home Energy Reporting System Suite
OPOWER Portal URL:	www.psereports.com
Access Term:	4 Month Implementation Timeline (estimate) 12 months of reporting and web access from launch date: 9/1/10 - 8/30/11 (exact dates TBD)
Included Features:	X 6 Printed and Mailed Home Energy Reports X OPOWER Customer Portal X OPOWER CSR Portal X Program Report
Training Time & Expenses Included:	1 eight hour training day with OPOWER onsite and training materials included

Fees and Payments:

1. Service Fees

License Fees	Payment Due-Date
Home Energy Reporting Platform	
$1.25 set-up fee per new Designated Customer payable by **PSE**	Typically due at Execution of Agreement, this fee will be paid by OPOWER for the concurrent enrollment of the new Designated Customers for each City in this agreement.
$5.00 total license fee per Designated Customer per 12-month period $2.50 payable by **PSE** $2.50 payable by **City [city name]**	For initial Designated Customers: $XXX [$2.50*number of customers] due at Execution of the Agreement, estimated June 25, 2010, payable by **PSE** $XXX [$2.50*number of customers] due at Execution of the Agreement, estimated June 25, 2010, payable by **City [city name]** For additional Designated Customers, $5.00 per year upon addition of each Designated Customer.
OPOWER Portal	
$0 Set-up Fee	Customary fee of $25,000 will not be charged under the initial 12-month term of the Application Service Agreement.
$0 license fee per Designated Customer per year	Customary annual license fee will not be charged by OPOWER in the initial 12-month term of the Application Service Agreement. After the initial 12 month period, the OPOWER Portal license fee will be charged at the market rate.

2. Service Fees

Service Fee	Payment Terms
Home Energy Reports **Print Management, Printing, and Mailing**	
YEAR 1: 12 months of Reporting $5.00 per Designated Customer **6 reports Per Designated Customer, on average** $2.50 payable by **PSE** $2.50 payable by **City [city name]** Additional Designated Customers will be billed at $5.00 per Designated Customer for an average of 6 paper reports per 12-month period. Incremental reports above the average of 6 per Designated Customer, will be charged at $0.83/report	**First Reports Sent ("*FRS*"):** o 1/3 of annual printing and mailing fees for the initial Designated Customers due when first reports sent (estimated for September 1, 2010) **Program Year 1: 2010: 9/1/10 - 8/30/2011 (exact dates TBD)** Remaining balance for the Designated Customers paid in quarterly increments as reports are mailed o 2/9 of annual fee due after first 3 months from start of Program Year (FRS) o 2/9 of annual fee due after first 6 months from start of Program Year (FRS) o 2/9 of annual fee due after first 9 months from start of Program Year (FRS) In subsequent years and for Additional Designated Customers, print management, printing and mailing fees will be billed quarterly.
Explanatory insert: Welcome letter for the program; priced at $0.10 per letter	Due at Execution of Agreement, estimated June 25, 2010, for inclusion with the first reports and payable by **PSE**
Staff Training Days and Travel	
$0 per day or portion thereof	No charge for the first training day with PSE Energy Advisors. Additional training days will be invoiced upon delivery of the training at $2,000 per day.

* Fee Calculation is based upon delivery to each Designated Customer six (6) Reports over the 12 month program each report being one-page double-sided 8.5" by 11" Home Energy Reports per Program Year via USPS standard mail at current freight and postage prices. OPOWER may increase the fees by not more than an amount equal to the percentage increase of the USPS rate for Standard Mail Regular - Letters AADC Local entry rate, as defined in the USPS Domestic Mail Manual (current price is $0.256).

This pricing is good for the term of the Application Services Agreement and up to 250,000 Designated Customers. Additional Services may be subject to additional Fees as quoted by OPOWER, including smartgrid/AMI functionality.

All Fees are non-refundable except as expressly provided herein. Upon termination, OPOWER shall only refund the pro-rated portion of any Home Energy Report printing and mailing service Fees paid for services not yet delivered as of the termination date. All setup and license fees are deemed due and payable per the pricing table above, and will be invoiced accordingly.

All invoices to be paid within 30 days of receipt of invoice.

R-4817
Attachment 3

PUGET SOUND ENERGY
The Energy To Do Great Things

City Logo Here

Home energy report

REPORT PERIOD: 11/01/08 - 11/30/08

Account number:

**********AUTO**MIXED AADC 430

We are pleased to provide this personalized report to you. The purpose of the report is to:

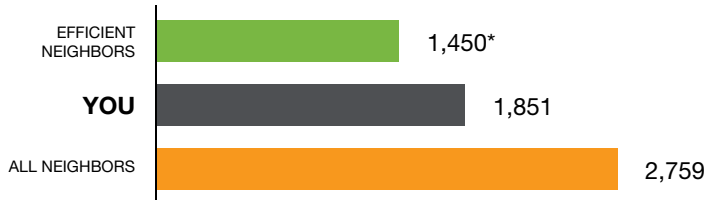
Provide information This report is an educational tool to help you understand your home's energy use in the context of other homes' energy use. This information is private and not shared with anyone else.

Track progress We will help you learn about how your home's usage changes over time and where you likely have opportunities to save.

Share energy efficiency tips On the back of the report, we provide ideas for saving energy and money. For more ideas, visit our special website at www.psereports.com

November Neighbor Comparison

You used **28% MORE** energy than your efficient neighbors.



HOW YOU'RE DOING:

GREAT ☺☺

GOOD ☺

MORE THAN AVERAGE

* This energy index combines electricity (kWh) and natural gas (therms) into a single measurement.

WHO ARE YOUR "NEIGHBORS"?

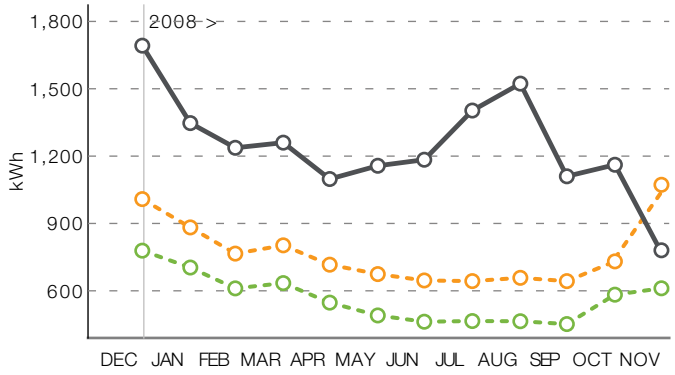
ALL NEIGHBORS
Approximately 100 occupied nearby homes that are similar in size to yours (avg 2,023 sq ft) and have both electricity and natural gas service.

EFFICIENT NEIGHBORS
The most efficient 20 percent from the "All Neighbors" group.

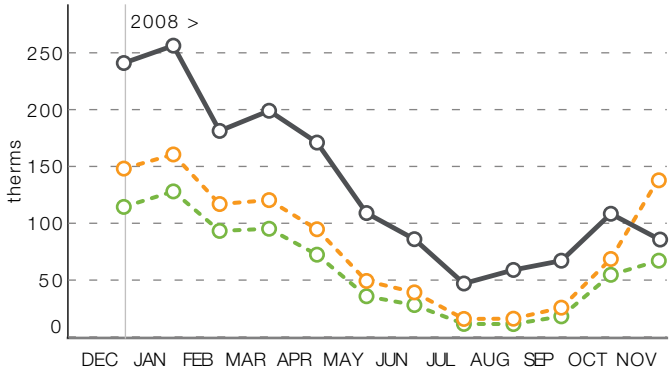
Last 12 Months Neighbor Comparison

You used **74% MORE** energy than your neighbors.
This costs you about **$1,385 EXTRA** per year.

Electricity | 70% more electricity than your neighbors



Natural Gas | 77% more natural gas than your neighbors



Personalized
Action Steps

- ☐ Set your thermostat for comfort and savings
- ☐ Switch to compact fluorescent bulbs
- ☐ Upgrade your washer and get money back

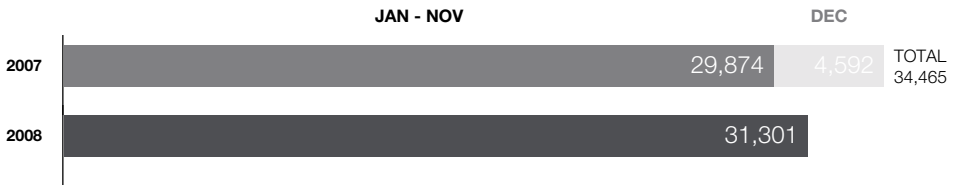
TURN OVER TO LEARN MORE

Personal Comparison | How your energy use this year compares to last year.

About This Graph
This section shows how much energy you've used so far this year and compares that amount to the same period last year.

As the months go by you can see how your progress compares to last year.

Your Progress
So far this year, you've used **5% MORE** energy than last year.



* This energy index combines electricity (kWh) and natural gas (therms) into a single measurement.

Action Steps | Personalized tips chosen for you based on your energy use and housing profile

Quick Fixes
Things you can do right now

☐ **Set your thermostat for comfort and savings**
Heating in the winter in our area requires a lot of energy. By setting your thermostat appropriately, you can be comfortable while saving energy and money.

Set the thermostat up to 10 degrees lower than your preferred setting (or off) when you're away from home or sleeping. This temperature reduction can save you up to 10% on heating.

Consider a programmable thermostat to help you save.

SAVE UP TO $65 IN ANNUAL HEATING COSTS

Smart Purchases
Save a lot by spending a little

☐ **Switch to compact fluorescent bulbs**
Compact fluorescent light bulbs (CFLs) use 75% less energy and last up to 10 times longer than standard incandescent light bulbs. Replace a few of your incandescent bulbs and start saving money now.

Today's CFLs provide high-quality light and are available in a variety of sizes and shapes.

PSE offers a discount of up to $3 on certain bulbs—find participating retailers at PSE.com.

SAVE $60 OR MORE OVER THE LIFE OF A BULB

Great Investments
Big ideas for big savings

☐ **Upgrade your washer and get money back**
Washing your clothes in a machine uses significant energy, especially if you use warm or hot water. In fact, when using warm or hot water cycles, up to 90% of the total energy used for washing clothes goes towards water heating.

Some premium-efficiency clothes washers use about half the water of older models—resulting in significant savings.

PSE offers rebates for some washers. Contact us for details.

REBATE OF $100 FOR ELIGIBLE WASHERS

To find more ways to save energy and money and for more information about this report visit:

www.psereports.com

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POSITIVE ENERGY, INC.
IMPLEMENTATION AND LICENSE AGREEMENT
Agreement 6400001120

This Implementation and License Agreement (the "Agreement") is between Positive Energy, Inc., a Delaware corporation with offices located at 1911 Fort Myer Drive, Suite 702, Arlington, VA 22209 ("Positive Energy"), and Puget Sound Energy, Inc. with offices located at 10885 NE 4th, Bellevue WA 98004-5591 (the "Utility"), and is effective as of March 25, 2008 (the "Effective Date").

Positive Energy has developed technology that permits it to analyze certain patterns and parameters of residential utility customers' energy use and make customized energy conservation recommendations. The Utility wishes to make this information available to its customers. Now, therefore, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Positive Energy and the Utility do hereby agree as follows:

1. **Definitions.**

1.1 "**Anonymized Data**" means: (a) any data or information, including but not limited to, Confidential Information, provided to Positive Energy by the Utility under the terms of this Agreement and any data or information collected and/or compiled by Positive Energy under the terms of this Agreement, including, but not limited to the product of any manipulation, analysis, calculations, or processing of such data; and (b) in each case from which individual or specific Utility Customer information cannot be determined or derived.

1.2 **"Confidential Information"** has the meaning given in the Mutual Confidentiality and Nondisclosure Agreement attached as Appendix F.

1.3 **"Customer"** means any current or former electric or gas utility customer and any person, organization, or business entity that is eligible to be an electric utility customer of the Utility.

1.4 **"Designated Customers"** means the 40,000 Customers who receive Home Energy Reports hereunder, or such other group of Customers as mutually agreed upon by the parties and added by executing the Additional Services Order Form, the form of which is set forth in Appendix D.

1.5 **"Home Energy Report"** has the meaning given in the Statement of Work ("SOW") attached as Appendix A.

1.6 "**Infringing Materials**" has the meaning given in Section 13.2.

1.7 "**Intellectual Property Rights**" means all rights of a person or business entity in, to, or arising out of: (i) any U.S., international or foreign patent or any application therefore and any and all reissues, divisions, continuations, renewals,

extensions and continuations-in-part thereof; (ii) inventions (whether patentable or not in any country), invention disclosures, improvements, trade secrets, proprietary information, know-how, technology and technical data; (iii) copyrights, copyright registrations, mask works, mask works registrations, applications, moral rights, patents, trademarks, trade secrets, and rights of personality, privacy and likeness, whether arising by operation of law, contract, license or otherwise; and (iv) any other similar or equivalent proprietary rights anywhere in the world.

1.8 "**Marks**" means all trademarks, service marks, trade dress, trade names, domain names, corporate names, brand names, product names, proprietary logos, symbols, all other indicia of origin, all applications to register and registrations for the foregoing, and any renewals therefore.

1.9 "**Positive Energy Data**" means any data or information collected and/or compiled by Positive Energy under this Agreement, excluding the Utility Data.

1.10 "**Positive Energy Work Product**" shall mean proprietary or licensed systems owned by Positive Energy, or any analysis, compilation, aggregation, derivative work, or work of authorship created by Positive Energy under the terms of this Agreement, including without limitation the Home Energy Reports, Program Reports, and Sample Reports.

1.11 "**Program Report**" has the meaning given in the SOW.

1.12 "**Sample Reports**" has the meaning given in Section 3.1.

1.13 **"Services"** has the meaning given in Section 2.1.

1.14 "**Utility Data**" means any data or information supplied by the Utility to Positive Energy under this Agreement, including personally identifiable data as further defined in Appendix F; provided, however, that the Utility Data shall not include the Anonymized Data.

2. **Party Responsibilities.**

2.1 **Positive Energy.** Positive Energy shall provide the services, including the Home Energy Reports and the Program Reports, to the Utility and its Customers during the Term as set forth in the SOW attached at Appendix A (the "**Services**"). Positive Energy will use reasonable efforts to make the Services available 24 hours per day, 7 days per week, except for downtime for scheduled and unscheduled maintenance, and will promptly investigate any technical problems that the Utility reports to Positive Energy.

2.2 **Utility.** The Utility shall provide the Utility Data to Positive Energy as mutually agreed upon or as set forth in the SOW.

2.3 **Feedback.** The Utility agrees to provide Positive Energy with prompt written notification of any comments or complaints about the Services that are made by

Customers, and of any problems with the Services or their use that the Utility becomes aware of during the Term. Such written notification shall be considered to be part of Positive Energy's Confidential Information.

2.4 **Additional Services and Changes.** The parties may agree to additions or changes to the Services by written amendment to the SOW signed by both parties. Such additions or changes may be subject to additional Fees.

3. **Licenses.**

3.1 **Positive Energy License to Utility.** Subject to the terms and conditions of this Agreement, Positive Energy hereby grants to the Utility:

(a) a perpetual, fully paid, non-exclusive, non-sublicensable, royalty-free license to use, internally reproduce, internally distribute, internally transmit, and privately display (i) the Home Energy Reports, solely for use in providing customer service to Designated Customers and for other purposes as mutually agreed upon by the parties and (ii) the Program Reports for Energy Efficiency services, solely for the purpose of evaluating the initiatives contemplated hereunder; and

(b) a fully paid, non-exclusive, non-sublicensable, royalty-free license during the Term to use, reproduce, publicly perform and publicly display single, Anonymized Data samples of the Home Energy Reports (**"Sample Reports"**) solely for the purpose of promoting and publicizing the Services with Positive Energy's written approval, or as otherwise mutually agreed by the parties.

3.2 **Utility License to Positive Energy** Subject to the terms and conditions of this Agreement and Appendices, the Utility hereby grants to Positive Energy:

(a) a worldwide, perpetual, fully paid, exclusive, non-sublicensable (except as provided below), royalty-free license to, in connection with the Services, use, reproduce, have reproduced, publish, perform, publicly display, distribute, have distributed, transmit, have transmitted, reformat, modify, edit, translate, compile, archive, and create derivative works of the Utility Data**.** Positive Energy shall not use the Utility Data except to provide the Services as authorized herein or as otherwise authorized by the Utility in writing. Any data used outside of Services provided to PSE by Positive Energy must be Anonymized data. Positive Energy may sublicense, with the notification and agreement of the Utility, the foregoing license to its third party service providers solely as necessary for Positive Energy to exercise its obligations under this Agreement. If Positive Energy sublicenses any part of this agreement, the Mutual Confidentiality and Nondisclosure Agreement attached as Appendix F must be completed by the third party sublicensee and provided to the Utility.

3.3 **Trademark License.** In performing its obligations under and in accordance with the Agreement, the Utility grants to Positive Energy a limited , non-transferable (except as otherwise provided herein), royalty-free license to use the Utility Marks provided by the Utility to Positive Energy; and Positive Energy grants to the

Utility a limited, non-exclusive, non-transferable (except as otherwise provided herein), royalty-free license to use the Positive Energy Marks provided to the Utility, each in connection with the Services and the promotion thereof.

4. **Fees.** The Utility shall pay to Positive Energy the license and service fees set forth in Appendix C ("Fees").

5. **Term; Termination.**

5.1 **Term.** The term (the "**Term**") of this Agreement shall commence on the Effective Date and continue for 12 months from the delivery of the first Home Energy Report unless terminated earlier as expressly provided

5.2 **Termination.** This Agreement may be terminated by either party prior to the expiration of the Term, upon delivery of written notice of termination to the other party, as follows:

(a) if the other party fails to perform or observe any material term or condition in this Agreement and fails to cure such breach within thirty (30) days after receipt of written notice of such breach from the non-breaching party; provided that if the Utility terminates the Agreement under this Section 5.2(a), Positive Energy shall refund the pro-rated portion of any Home Energy Report license Fees (excluding set-up Fees) and Home Energy Report printing and mailing service Fees paid for Services not yet delivered as of the termination date;

(b) if the other party (i) makes a general assignment for the benefit of creditors, (ii) admits in writing its inability to pay debts as they come due, (iii) voluntarily files a petition or similar document initiating any bankruptcy or reorganization proceeding, or (iv) involuntarily becomes the subject of a petition in bankruptcy or reorganization proceeding and such proceeding shall not have been dismissed or stayed within sixty (60) days after such filing;

(c) if the other party is prevented from performing or unable to perform any of its obligations under this Agreement for more than ninety (90) days due to a Force Majeure Event; or

(d) by mutual written agreement of the parties.

(e) The Utility may, at its sole discretion, terminate Positive Energy's services under this Agreement anytime after six months from contract date by giving Positive Energy a 60 day written notice of such termination. In the event of such termination, the Utility shall pay to Positive Energy reasonable costs including: personnel costs, recoverable costs incurred to date in the performance of such services, including without limitation printing costs, plus possible other costs incurred as a result of such termination. Service Fees (such as printing and mailing services not rendered) shall be refundable, on a pro-rated basis, in the event of termination under this Section 5.2.

5.3 **Effect of Termination.** Upon notification of termination or expiration of this Agreement for any reason:

(a) Each party shall promptly cease all use of the other party's Marks, provided that the Utility may continue to internally use the Positive Energy Marks solely in connection with the license granted in Section 3.1(a);

(b) The Utility shall promptly cease all use of all Positive Energy Work Products, excluding the Home Energy Reports and Program Reports (which the Utility may continue to use for internal purposes in accord with the license granted in Section 3.1(a)), and shall return or destroy such Positive Energy Work Products (excluding the Home Energy Reports and Program Reports) at Positive Energy's request; and

(c) All rights and obligations of the parties under this Agreement shall expire, except that all accrued payment obligations hereunder shall survive such termination or expiration; and the rights and obligations of the parties under Sections 1, 3.1(a), 3.2, 4 (to the extent fees accrued during the Term), 5.3, 6 – 13, and 21 shall survive such termination or expiration.

For the avoidance of doubt, nothing in this Section 5.3 shall restrict Positive Energy's right to use the Positive Energy Work Products after termination of this Agreement.

6. **Data Security.**

6.1 Positive Energy shall treat the Utility Data as Confidential Information in accordance with Section 7.

6.2 Positive Energy shall use commercially reasonable physical, managerial, and technical safeguards to preserve the integrity and security of the Utility Data while in its possession and control hereunder.

6.3 The Utility shall have the right, during the Term upon seven (7) days notice and during Positive Energy's normal business hours, to conduct an audit of Positive Energy's compliance with the Data Security provisions of this Agreement, provided that such audit shall be conducted by an independent third party approved by Positive Energy (such approval not to be unreasonably withheld), and provided that such audit shall not unreasonably disrupt Positive Energy's business or operations.

6.4 Positive Energy shall not provide access to any hardware on which the Utility Data is stored, maintained, housed or used in its performance hereunder to any person or entity (except for employees of Positive Energy and its affiliates and subcontractors) without the prior written consent of the Utility, which consent shall not unreasonably be withheld.

6.5 Positive Energy shall promptly notify the Utility of any actual, probable or reasonably suspected breach of security of the Positive Energy systems and of any other actual, probable or reasonably suspected unauthorized access to or acquisition, use, loss, destruction, compromise or disclosure of any Confidential Information (as defined in Appendix F) of the Utility, including without limitation any Company Information (as defined in Section 7) (each, a "Security Breach"). In any notification to the Utility required under this Section 6.5, Positive Energy shall designate a single individual employed by Positive Energy who must be available to the Utility 24-hours per day, 7-days per week as a contact regarding Positive Energy's obligations under this Section 6.5. Positive Energy shall (a) assist the Utility in investigating, remedying and taking any other action the Utility deems necessary regarding any Security Breach and any dispute, inquiry or claim that concerns the Security Breach; and (b) shall provide the Utility with assurance satisfactory to the Utility that such Security Breach or potential Security Breach will not recur. Unless prohibited by an applicable statute or court order, Positive Energy shall also notify the Utility of any third-party legal process relating to any Security Breach, including, but not limited to, any legal process initiated by any governmental entity (foreign or domestic).

6.6 Upon the termination of this Agreement, any and all Utility Data in the possession or control of Positive Energy, its agents, employees, assigns, providers and subcontractors, residing on any and all hardware shall be securely removed within sixty (60) days thereof. Computer and servers must be electronically wiped (e.g. using a secure data deletion program for computers that writes random data in multiple passes) or the physical media must be destroyed. Tapes, CDs, cartridges and other electronic and/or physical storage and backup media and devices containing Utility Data must also be securely deleted or destroyed within sixty (60) days thereof.

7. **Confidentiality.**

7.1 The Mutual Confidentiality and Nondisclosure Agreement attached hereto as Appendix F is hereby incorporated by reference.

7.2 **Utility Information.** The Utility exclusively owns all Company Information. “Company Information” is any personally identifiable information about persons or entities that Positive Energy obtains in any manner from any source under this Agreement, which concerns prospective and existing customers or employees of (1) the Utility, (2) the Utility's affinity marketing partners, (3) the Utility’s contracting parties and (4) the Utility’s data suppliers. Company Information includes, without limitation, names, addresses, telephone numbers, e-mail addresses, social security numbers, credit card numbers, call-detail information, purchase information, product and service usage information, frequent flier information, account information, credit information and demographic information, to the extent that each of the foregoing is personally identifiable. Positive Energy (a) may collect, access, use, maintain and disclose Company Information only for the specific purpose for which such Company Information is collected, stored or processed by Positive Energy under this Agreement, and (b) shall, without limiting any other obligations applicable to Company Information hereunder, treat all Company Information as Confidential Information of the Utility. For this

Agreement, the acts or omissions of Positive Energy and anyone with which it is associated (e.g., employees of Positive Energy and its subsidiaries and affiliates, and Positive Energy's agents and approved contractors and subcontractors, and their respective employees) are Positive Energy's acts or omissions.

Positive Energy will indemnify the Utility, its subsidiaries and affiliates, and each of their respective officers, shareholders, directors and employees from and against any claims, losses, liabilities and expenses (including, without limitation, reasonable attorneys' fees and expenses) that relate to any failure to comply with any obligation enumerated in this (1) Agreement relating to Company Information, or (2) this Section, subject to the indemnification process set forth in Section 13.1.

8. **Administrative Contacts.** The parties' primary contacts for purposes of implementing this Agreement shall be as follows:

Puget Sound Energy

Contract:

Services Buyer: Pamela Mead	(425) 456-2409
On-going Project Coordination:	
Nathan Adams	(425) 456-2411

Positive Energy:

President: Alexander Laskey	(415) 830-2485
CEO: Daniel Yates	(650) 281-8460

9. **Ownership.**

9.1 **By Positive Energy.** Positive Energy acknowledges and agrees that, as between the Utility and Positive Energy, the Utility owns all right, title, and interest in and to the Utility Data and Utility Marks and the Intellectual Property Rights therein, and nothing in this Agreement will confer on Positive Energy any right of ownership or interest in such Utility Data or the Utility Marks.

9.2 **By Utility.** The Utility acknowledges and agrees that, as between the Utility and Positive Energy, Positive Energy owns all right, title, and interest in and to the Positive Energy Work Products (excluding the Utility Data), Positive Energy Data, Positive Energy Marks and the Intellectual Property Rights therein, and nothing in this Agreement will confer on the Utility any right of ownership or interest in the Positive Energy Work Products (excluding the Utility Data), Positive Energy Data or Positive Energy Marks.

9.3 **Use of Marks.**

(a) Positive Energy may identify the Services, including but not limited to the Home Energy Reports with the Positive Energy Marks and "powered by Positive Energy" or other similar phrasing;

(b) During the Term, (i) the Utility may use Positive Energy's Marks to identify and publicize the Services at trade shows and utility industry events; (ii) at the mutual agreement of Positive Energy and the Utility, the Utility may use Positive Energy's Sample Reports to publicize the Services at trade shows and utility industry events; and (iii) Positive Energy may identify the Utility as a Positive Energy customer and use the Utility's Marks in connection therewith, provided that (a) such identification shall not state or imply an endorsement by the Utility; and (b) Positive Energy shall not publicly publish or display any results or findings from the Services in connection with the Utility's Marks or name without prior written approval from PSE.

(c) Except as expressly permitted by this Agreement, each party shall have a right of approval over the use of its Marks by the other party.

(d) All use of another party's Marks pursuant to this Agreement shall be in accordance with such party's policies regarding Mark usage, as provided in writing to the party using such Marks from time to time, and any goodwill accruing to any such Mark shall inure to the benefit of the owner thereof. Each party shall have the right to immediately suspend the other party's use of its Mark if such use is not in conformity with such policies. Neither party will use, register or take other action with respect to any Mark of the other party, except to the extent authorized in writing by such party in advance. Each party will have the sole right and discretion to bring proceedings alleging infringement of its Marks or unfair competition related thereto; provided, however, that each party agrees to provide the other party with its reasonable cooperation and assistance with respect to any such infringement proceedings arising under or relating to this Agreement.

10. **Representations and Warranties**

10.1 **By Positive Energy.** Positive Energy hereby represents, warrants and covenants that:

(a) The Services (excluding the Utility Data and Positive Energy's use thereof under this Agreement) and Positive Energy Marks do not and will not violate any applicable statute, regulation, or law, or infringe any Intellectual Property Right of any third party, and will not include any content that constitutes a libel, slander or defamation against any third party or in any way violates, conflicts with or infringes upon any right of any kind or nature of any third party, including without limitation, any rights of publicity or privacy or other rights, or give rise to any legal claim by any third party;

(b) All obligations owed to third parties by Positive Energy with respect to the Services (excluding the Utility Data and Positive Energy's use thereof under the Agreement) and Positive Energy Marks, including without limitation,

obtaining and complying with all third party licenses, remitting any and all third-party payments and making any and all necessary filings have been and will be made, adhered to and maintained;

(c) Positive Energy is a corporation duly organized, validly existing, and in good standing under the laws of the state of its incorporation, and has the full power and authority to enter into and perform its obligations under this Agreement; and

(d) The execution, delivery, and performance by Positive Energy of this Agreement will not violate any law, statute, or other governmental regulation, or any other agreement or instrument to which Positive Energy is a party.

10.2 **By the Utility.** The Utility hereby represents, warrants and covenants that:

(a) The Utility Data and the Utility Marks, and Positive Energy's use of them hereunder, do not and will not violate any applicable statute, regulation, or law or infringe any Intellectual Property Right of any third party, and will not include any content that constitutes a libel, slander or defamation against any third party or in any way violates, conflicts with or infringes upon any right of any kind or nature of any third party, including without limitation, any rights of publicity or privacy or other rights, or give rise to any legal claim by any third party;

(b) All obligations owed to third parties with respect to the Utility Data and the Utility Marks, including without limitation, obtaining and complying with all third party licenses, remitting any and all third-party payments and making any and all necessary filings have been and will be made, adhered to and maintained;

(c) The Utility has the full power and authority to enter into and perform its obligations under this Agreement; and

(d) The execution, delivery, and performance by the Utility of this Agreement will not violate any law, statute, or other governmental regulation, or any other agreement or instrument to which the Utility is a party.

11. **DISCLAIMER OF WARRANTIES.** EXCEPT FOR THE EXPRESS REPRESENTATIONS AND WARRANTIES PROVIDED IN THIS AGREEMENT, (I) NEITHER PARTY MAKES ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, ORAL OR WRITTEN, WITH RESPECT TO SUCH PARTY'S DATA, SERVICES, OR MARKS PROVIDED UNDER THIS AGREEMENT, AND HEREBY DISCLAIMS ANY AND ALL IMPLIED WARRANTIES, INCLUDING ALL IMPLIED WARRANTIES OF MERCHANTABILITY, NONINFRINGEMENT AND FITNESS FOR A PARTICULAR PURPOSE, WHETHER ALLEGED TO ARISE BY LAW, BY USAGE IN THE TRADE, BY COURSE OF DEALING OR COURSE OF PERFORMANCE, AND (II) EACH PARTY ACKNOWLEDGES THAT THE OTHER PARTY'S DATA, SERVICES, OR MARKS (INCLUDING ANY SERVERS OR OTHER HARDWARE,

SOFTWARE AND OTHER ITEMS USED OR PROVIDED BY POSITIVE ENERGY) ARE PROVIDED "AS IS" AND THAT NEITHER PARTY MAKES ANY WARRANTY THAT THE FOREGOING ITEMS WILL BE FREE FROM BUGS, FAULTS, DEFECTS, OR ERRORS OR THAT ACCESS TO ITS SITE WILL BE UNINTERRUPTED.

12. **Limitation on Damages.**

12.1 **EXCLUSION OF INCIDENTAL AND CONSEQUENTIAL DAMAGES.** NEITHER PARTY WILL BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, OR EXEMPLARY DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT, EVEN IF THE OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND REGARDLESS OF WHETHER SUCH LIABILITY SOUNDS IN CONTRACT, NEGLIGENCE, TORT, STRICT LIABILITY, WARRANTY, OR OTHERWISE**.**

12.2 **MAXIMUM AGGREGATE LIABILITY.** EXCEPT FOR ANY INDEMNIFICATION LIABILITY ARISING UNDER SECTION 13 OF THIS AGREEMENT, THE MAXIMUM LIABILITY OF EITHER PARTY FOR ANY CLAIMS ARISING IN CONNECTION WITH THIS AGREEMENT WILL NOT EXCEED THE AGGREGATE AMOUNT OF PAYMENTS MADE BY THE UTILITY TO POSITIVE ENERGY UNDER THIS AGREEMENT DURING THE PREVIOUS EIGHTEEN (18) MONTHS, PROVIDED THAT THE UTILITY WILL REMAIN LIABLE FOR THE AGGREGATE AMOUNT OF ANY PAYMENT OBLIGATIONS OWED TO POSITIVE ENERGY PURSUANT TO THIS AGREEMENT.

13. **Indemnification.**

13.1 **General Indemnity.** Each party shall indemnify, defend and hold harmless the other party, any entity controlled, controlled by or under common control with the party, and the officers, directors, consultants, employees, successors and permitted assigns of each from and against any third party lawsuits, claims, demands, penalties, losses, fines, liabilities, damages, costs, expenses, including attorney's fees and costs, or other liability arising from (a) any breach of any of the representations or warranties made by the party hereunder, or (b) any breach by the party of Section 7. The indemnified party shall promptly notify the indemnifying party in writing of any such claim; provided that the failure to provide such notice shall not relieve the indemnifying party of its indemnification obligations hereunder except to the extent of any material prejudice directly resulting from such failure. The indemnifying party shall bear full responsibility for, and shall have the right to solely control, the defense (including any settlements) of any such claim; provided, however, that (i) the indemnifying party shall keep the indemnified party informed of, and consult with the indemnified party in connection with the progress of such litigation or settlement; (ii) the indemnified may participate in the defense and settlement of such claim at its own expense with attorneys of its own selection; and (iii) the indemnifying party shall not have any right, without the indemnified party's written consent, to settle any such claim if such settlement arises

from or is part of any criminal action, suit or proceeding, contains a stipulation to, or admission or acknowledgement of, any liability or wrongdoing (whether in contract, tort or otherwise) on the part of the indemnified party, or requires any specific performance by the indemnified party, including, but not limited to, the payment of unindemnified amounts on the part of the indemnified party.

13.2 Injunctions. If any use of the Services, the Utility Data, or any portion thereof is enjoined, or is found by final, nonappealable order of a court or a regulatory body of competent jurisdiction to infringe or misappropriate any third-party's Intellectual Property Rights (such Services or Utility Data to be deemed the **"Infringing Materials"**) in any place where the Infringing Materials are used or accessed, in addition to any rights in this Section 13, then Positive Energy (in the case of the Services) or the Utility (in the case of the Utility Data) shall, at its sole expense, either: (i) obtain from such third-party the right for the other party to continue to use the Infringing Materials; or (ii) modify the Infringing Materials to avoid and eliminate such infringement or misappropriation, as the case may be; provided, however, that such modification shall comply with the SOW; or (iii) if neither of the remedies are commercially feasible, terminate this Agreement.

13.2 **Sole Remedy.** THE FOREGOING PROVISIONS OF THIS SECTION 13 SET FORTH EACH PARTY'S SOLE AND EXCLUSIVE LIABILITY AND EACH PARTY'S SOLE AND EXCLUSIVE REMEDY FOR ANY CLAIMS OF INFRINGEMENT OR MISAPPROPRIATION OF INTELLECTUAL PROPERTY RIGHTS OF ANY KIND.

14. **Insurance and Release.**

14.1 Positive Energy shall maintain in effect at all times during the Term coverage or insurance as specified in the sample certificate of insurance attached as Appendix B and in accordance with the applicable laws relating to worker's compensation regardless of whether such coverage or insurance is mandatory or merely elective under the law.

14.2 Positive Energy releases the Utility, its successors and assigns, and the respective directors, officers, employees, agents and representatives of the Utility and its successors and assigns (collectively, the "PSE Group") from all claims, losses, harm, liabilities, damages, costs, and expenses related to any property damage or personal injury (including death) that may result or occur in connection with the Services or this Agreement. To the fullest extent permitted by applicable law, the foregoing release shall apply regardless of any act, omission, negligence or strict liability of any of the PSE Group or any one or more of them.

15. **Invoices**

15.1 Positive Energy shall submit to the Utility invoices for each payment event set forth in Appendix C. Each of Positive Energy's invoices shall set forth in a detailed and clear manner a complete description of all Services performed and the dates on which such Services were performed. Further, where applicable, each such invoice

shall be supported by such receipts, documents and other information as the Utility may request.

15.2 Positive Energy shall place the number of this Agreement on all of its invoices and submit such invoices by mailing to the attention of the Utility Project Representative requesting the Services at his or her appropriate address, or to such other address as the Utility may specify.

16. **Payment**

16.1 The Utility shall pay each of Positive Energy's invoices within thirty (30) days of receipt and verification thereof.

16.2 If payment is not timely made per subsection 16.1, interest shall accrue on the unpaid balance of the lesser of one percent (1%) per month or the maximum lawful rate.

16.3 In no event shall total Fees payable under this Agreement exceed **$500,000** without the prior consent of an authorized representative of the Utility.

17. **Travel Expenses.** The Utility will reimburse Positive Energy for all actual and reasonable travel or lodging expenses at cost as incurred by Positive Energy in connection with this Agreement at the request of or as pre-approved by the Utility. All invoices for expenses shall be accompanied by copies of receipts or other reasonable documentation of expenses incurred.

18. **Subcontractors.** Positive Energy shall perform all of the Services. Positive Energy shall not, by contract or otherwise, delegate performance of any Services to any other person or entity without the Utility's written consent; provided, however, that Positive Energy may engage subcontractors for printing, mailing, graphic design, web hosting, and other Internet services in connection with the Services without consent.

19. **Rights to Materials.** Except as otherwise provided herein (which exception encompasses without limitation the Positive Energy Work Products, Positive Energy Marks, and this Agreement), all material submitted to the Utility by Positive Energy hereunder that is not clearly identified as proprietary shall become property of the Utility upon receipt, together with all rights associated with ownership of such items.

20. **Publicity.** Except as may be required by law, neither party to this Agreement shall, without the prior written consent of the other, make any news release or public announcement or place any advertisement stating that the Utility and Positive Energy have contracted for the products or services specified in this Agreement or have entered into any business relationship.

21. **Miscellaneous.**

21.1 **Assignment.** Neither party may assign, sublicense, delegate or otherwise transfer any of its rights or obligations under this Agreement without the express prior

written consent of the other party. Notwithstanding the foregoing, either party may assign this Agreement without consent to another entity merging with, consolidating with, or acquiring all or substantially all of the party's assets or stock, provided that the assignee shall assume all rights and obligations under this Agreement. Any authorized assignment shall be binding upon and enforceable by and against the parties' successors and assigns, provided that any unauthorized assignment shall be null and void and constitute a breach of this Agreement.

21.2 **Entire Agreement.** This Agreement, and any amendments thereto, constitutes the entire agreement between the parties and supersedes all previous agreements, oral or written, with respect to the subject matter of this Agreement. This Agreement may not be amended without the prior written consent of all parties. In the event of any inconsistency between the Appendices and this Agreement, the provisions of this Agreement shall govern.

21.3 **Force Majeure.** If either party is prevented from performing or is unable to perform any of its obligations under this Agreement due to causes beyond the reasonable control of the party invoking this provision, including but not limited to acts of God, acts of civil or military authorities, riots or civil disobedience, wars, strikes or labor disputes (each, a "Force Majeure Event"), such party's performance shall be excused and the time for performance shall be extended accordingly provided that the party immediately takes all reasonably necessary steps to resume full performance.

21.4 **Governing Law.** This Agreement is made under and shall be governed by the laws of the State of Washington, excluding any rule or principle that would refer to and apply the substantive law of another state or jurisdiction.

21.5 **Notices.** Unless otherwise specified, all notices, requests, or other communications required or appropriate to be given under this Agreement shall be in writing and shall be deemed delivered three business days after postmarked if sent by U.S. Postal Service Certified or Registered Mail, Return Receipt Requested. Notices delivered by other means shall be deemed delivered upon receipt by the addressee. Routine communications may be made by first class mail, fax, or other commercially accepted means. Notices shall be sent to the address specified below:

If to the Utility:

Puget Sound Energy, Inc.
Contract Services (PSE10N)
PO Box 90868
Bellevue, WA 98009-0868
Attn: Pamela J. Mead

If to Positive Energy:

1911 Fort Myer Drive, Suite 702
Arlington, VA, 22209
Attn: Daniel Yates

Either party may change its contact information by providing the other party with notice of the change in accordance with this section.

21.6 **Relationship of Parties.** The parties are independent contractors and will have no right to assume or create any obligation or responsibility on behalf of the other party. Neither party shall hold itself out as an agent of the other party. This Agreement will not be construed to create or imply any partnership, agency, joint venture or formal business entity of any kind. Positive Energy shall not be entitled to workers' compensation, retirement, insurance or other benefits afforded to employees of the Utility. Without limiting the generality of the foregoing, Positive Energy shall not be treated as an employee of the Utility for federal tax, worker's compensation, or any other purpose. Positive Energy shall not be entitled to any pension, deferred compensation, welfare, insurance or other benefits afforded employees.

21.7 **Remedies Cumulative.** The rights and remedies of each party set forth in any provision of this Agreement are in addition to and do not in any way limit any other rights or remedies afforded to such party by any other provisions of this Agreement or by law.

21.8 **Severability.** If any provision of this Agreement is held invalid or unenforceable, it shall be replaced with the valid provision that most closely reflects the intent of the parties and the remaining provisions of the Agreement will remain in full force and effect.

21.9 **Waiver.** No delay or failure by either party to exercise any right or remedy under this Agreement will constitute a waiver of such right or remedy. All waivers must be in writing and signed by an authorized representative of the party waiving its rights. A waiver by any party of any breach or covenant shall not be construed as a waiver of any succeeding breach of any other covenant.

21.10 **Headings.** The headings of the articles and paragraphs contained in this Agreement are inserted for convenience and are not intended to be part of or to affect the interpretation of this Agreement.

21.11 **Construction.** Both parties acknowledge and agree that the Agreement has been jointly prepared and its provisions will not be construed more strictly against either party as a result of its participation in such preparation.

- - - - - - - - - - Signature Page Follows - - - - - - - - - -

ACCEPTED FOR
THE UTILITY (Puget Sound Energy)

By:_____ Date:_____
Pamela J. Mead
Services Buyer

ACCEPTED FOR
POSITIVE ENERGY, INC.

By:_____ Date:_____
Daniel Yates
CEO

Appendix A - Statement of Work
Appendix B - Sample Certificate of Insurance
Appendix C - Payment Schedule
Appendix D - Supplemental Features
Appendix E - Additional Services Order Form
Appendix F – Mutual Confidentiality and Nondisclosure Agreement

PSE No. 6400001120

AMENDMENT 3 (CITIES PROJECT)
TO IMPLEMENTATION AND LICENSE AGREEMENT

This Amendment 3 ("Amendment") is dated and effective as of October 16, 2009, (the "Addendum Effective Date") by and between **OPOWER, Inc.**, a Delaware corporation with offices at 1911 Fort Myer Drive, Suite 702, Arlington, VA 22209 ("OPOWER"), and **Puget Sound Energy, Inc.**, with offices at 10885 NE 4th, Bellevue, WA 98004-5591 (the "Utility"), and pertains to and is made a part of the Implementation and License Agreement 6400001120 executed between the parties and dated as of March 25, 2008 (the "Agreement"). All undefined capitalized terms herein shall have the meanings ascribed to such terms as set forth in the Agreement.

1. **Services.** OPOWER shall provide Home Energy Reports, the Program Reports and/or access to web services, as specified in any Agreement between PSE and the City Partner, to the Utility and its Customers and the City Partner program recipients during the Term as set forth in the SOW attached hereto as Appendix A.

2. "**City Partner**". Any city, town, village, county or other municipality whose residents are PSE ratepayers and who have chosen to allocate Federal, state, municipal or other funds, to expand OPOWER's partnership with PSE into the City's service territory.

3. **City Partner Marks.** Upon execution of an agreement with each City Partner, PSE will acquire and transfer to OPOWER a royalty-free license to use the City Partner Marks for purposes of delivering the Services.

4. **Fees.** The Utility shall pay to OPOWER the license and service fees set forth in the Scope of Work, which is attached hereto as Appendix A.

5. **Term.** The term (the "Term") of this Agreement shall commence on the Effective Date and continue for 12 months, renewing annually subject to mutual signed agreement by PSE and OPOWER, from the delivery of the first Home Energy Report unless terminated earlier as expressly provided.

6. **Governing Terms.** As modified by this Addendum, OPOWER and the Utility agree that the terms and conditions set forth in the Agreement, and all exhibits, schedules, addenda, and prior modifications thereto, if any, shall remain in full force and effect and shall govern, control, and contain the entire understanding between OPOWER and the Utility with respect to the subject matter of the Agreement, except as otherwise modified by the express written agreement between OPOWER and the Utility.

Signed this date: **October 16, 2009**

Puget Sound Energy, Inc.	**OPOWER, Inc.**
By: Pamela J. Mead	By:
Pamela J. Mead Purchasing Services Buyer	Name: Daniel Yates
	Title: CEO

APPENDIX A

STATEMENT OF WORK FOR AMENDMENT 3 - CITIES

This Statement of Work ("SOW") covers the engagement between OPOWER, Inc. ("OPOWER") and Puget Sound Energy ("PSE") for the expanded delivery of the Home Energy Reports, the Energy Insider Website, and Program Reports in PSE's Service Territory as specified in Amendment 3, PSE Contract #6400001120. The SOW is an integral part of, and incorporated by reference into the Amendment. Capitalized terms have the meaning given in the Amendment or the Implementation and License Agreement dated March 25, 2008.

OPOWER's Home Energy Reporting System and Insight Engine are respectively the front-end and back-end of the communications platform it provides to utilities to better use customer data to engage customers. The Insight Engine is a software analytics engine that analyzes an array of data streams to derive insights about customer segments and individual customers. The Home Energy Reporting System is delivered in the mail and online. It tells customers where they stand in their neighborhood with respect to energy use (both electricity and gas). Further, it uses customers' energy profiles – determined by the Insight Engine (e.g. heavy A/C use, consistent use, home owner/renter, etc) – to individually target energy efficiency offers and rebates most relevant to them.

Throughout the course of the Agreement robust measurement and verification will be performed, with annual updates culminating in a final report at the conclusion of the program. The report will detail the program impact on the customer base on a number of critical dimensions, including reduction in energy use and overall increase in program participation in energy efficiency programs.

Scope of Work Outline

Product Definitions:

A. Home Energy Reporting System
   i. Home Energy Reports
   ii. Energy Insider Website
B. Insight Engine
C. Customer Service Interface
D. Program Reports

Project Phases:

The Home Energy Reporting System will be delivered to residents of the target cities using a phased approach, as follows, and which will be further detailed below.

PHASE I A: INFRASTRUCTURE AND PRODUCT CUSTOMIZATION

1. Deploy technical infrastructure
2. Select pilot regions and acquire 3rd party data
3. Design optimization, segmentation and targeting plan.
4. Integration of program marketing for Home Energy Reports and Energy Insider Website

PHASE I B: PRODUCT INTEGRATION

5. Deploy Customer Service Interface

6. Implement automated data transfer
7. Integrate PSE data streams and populate Insight Engine
8. Final Selection of Designated Customers

PHASE II: IMPLEMENTATION

9. Implement Home Energy Reports (offline reporting)
10. Deployment of Energy Insider Website (online functionality)

PHASE III: MEASUREMENT AND VERIFICATION

11. Measure and Report on conservation, efficiency and program participation

PHASE IV: OPTIMIZATION AND EXPANSION (optional)

12. Optimize expansion and selection of new Designated Customers based on learnings from phases II and III.

Several deliverables will occur in parallel. The final project timeline will be mutually agreed to via the Program Work Plan that will be completed after the program kickoff meeting, as needed for expanded services.

Commencing delivery of the Home Energy Reports is subject to PSE's approval prior to the mutually agreed to scheduled mailing date, which shall not be unreasonably withheld or delayed. PSE will be invoiced and obligated for the payments tied to the program stated in this Statement of Work, and shown on the pricing schedule in Appendix B. Payment shall not be unreasonably withheld or delayed.

PRODUCT DEFINITIONS

A. Home Energy Reporting System

The Home Energy Reporting System is a combined offline and online system of delivery of customized energy data and recommendations to Designated Customers. Designated Customers are those residential customers who are chosen to receive the reports and access to the website. The system is delivered as a software-as-a-service ("SaaS"), minimizing IT footprint and demands on PSE's staff.

The offline portion of the system, called "Home Energy Reports", is comprised of the following modules, each of which is individually selected for the Designated Customer:

a. *Energy Comparison Report:* An individualized comparison of the Designated Customer's energy use to a group of Customers living in similar sized homes, nearby. The group of Customers is selected to be large enough so that the energy use of another individual Customer cannot be derived.

b. *Progress Tracker:* An individualized comparison of the Designated Customer's energy use for the current time period this year compared to their usage during that same time period during the previous year. For Designated Customers who respond to requests for commitments to reduce energy use, their commitment is presented to them in the Progress Tracker for easy tracking.

c. *Dynamically Generated Tips and Offers:* Tips, recommendations, or offers (collectively "Action Steps") to market new products and services to Designated Customers and to

help them reduce overall and peak electricity consumption.

- Includes PSE marketing and efficiency programs, referrals to and promotions for energy saving products and services.
- Optional: may include 3rd party offers, discounts and coupons (to be priced as an option upon request).
- Dynamically generated and targeted for each Designated Customer based on the analysis, profiling and segmentation performed in Task 6, and/or as directed by PSE marketing staff.

Delivery of offline Home Energy Reports is as follows:

d. OPOWER manages the creation, printing and mailing of Home Energy Reports.
e. The Home Energy Reports are delivered to the Designated Customers via USPS Standard Mail.

The online component of the Home Energy Reporting System, the Energy Insider Website, serves as an extension and elaboration of the offline reports, providing Designated Customers with more opportunities to learn about their energy consumption and gain access to all available offers and rebates. This website includes OPOWER's robust online analysis tools, audit-like ("best tips for me" and "neighbor challenge"), and content functionalities. The website is deployed as a destination for Designated Customers to better understand their energy use and to learn about actions they may take to reduce their consumption. The site is hosted and maintained by OPOWER and is private labeled for PSE so that it appears to the Customer to be a site provided by the PSE. The Energy Insider Website will allow customers to: a) see similar information online as they would receive in a printed Home Energy Report; b) set personal goals for reducing energy use and track their progress towards their goal; c) browse the full set of energy efficiency tips in OPOWER's efficiency database; d) join other customers in sharing best practices, comments and reviews; e) view benchmarking online and audit-like functionalities ("best tips for me" and "neighbor challenge"); f) provide information online that will be leveraged to make online and offline reporting and benchmarking more robust.

B. Insight Engine

The Insight Engine is the back-end data services and analytics engine that powers OPOWER's customer facing applications, including both the online and offline components of the Home Energy Reporting System, for all OPOWER clients. The Insight Engine includes:

- Flexible ETL framework for regular, automated importing of multiple data streams from multiple data sources.
- Sophisticated data matching and cleansing routines for demographic, housing and energy data.
- Geo-coding module for latitude/longitude positioning of addresses.
- Customizable data calculation engine for neighborhood normative comparisons.

C. Customer Service Interface

The Customer Service Interface is a password protected web application for PSE (or OPOWER) customer service staff to support the Home Energy Reporting System. The Customer Service Interface includes:

- Individual password protected user accounts for each customer service representative.
- Flexible permissioning system for differing levels of administrative access.

- Access to all current and historical Home Energy Reports in PDF format, and searchable by both Report Customer last name and account number.

D. Program Reports
Program Reports are provided annually to provide a robust evaluation of the program's accomplishments and effectiveness. Program Reports are composed of two sections, the first of which is Confidential, and the second of which can be shared. The Confidential first section contains detailed information on the technical approaches and techniques utilized to perform the program analysis. These details include analytic methodologies, 3rd-party data sources, data matching techniques, regression models, and models used for energy profiling. The second section, which may be shared, contains the key findings and results from the analysis of the program. These results include the overall energy savings and program participation results from the program, with performance breakdowns by key segments (segments detailed in Task 8 below).

All of these products comprise the Home Energy Reporting System Suite, and are currently being provided (in whole or part, depending on the project) to all OPOWER utility clients, being delivered as a software-as-a-service.

PHASE I A: INFRASTRUCTURE AND PRODUCT CUSTOMIZATION

Task 1: Deploy technical infrastructure

OPOWER will install and configure all necessary hardware, software and network infrastructure for the delivery of the Home Energy Reports and Energy Insider Website.

Task 1 Details:
OPOWER will set up and configure the technical infrastructure:
- Requisition and configure OPOWER servers.
- Install and configure required underlying software (e.g. database server, application server, web server, etc)
- Install and configure multi-layered backup system
- Extend and secure networking topology.
- Harden networked servers and implement operations processes and access controls

Task 1 Deliverables:
- Fully deployed hardware and software infrastructure ready for program launch

ALREADY COMPLETED FOR PUGET SOUND PER SOW #1 in Puget Sound Energy Agreement No. 6400001120, dated March 25, 2008 ("Agreement")

Task 2: Select pilot regions and acquire 3rd party data

OPOWER will perform historical energy usage, demographic and geographic research, in conjunction with PSE, to identify the regions of PSE territory best suited to deploy the pilot program. Zip codes, city, and county boundaries will be considered so as to optimize data coverage and ensure speedy deployment.

Task 2 Details:

OPOWER will identify pilot regions:

- OPOWER and PSE will work together to select the residential Designated Customers from the target cities and an accompanying impacts to the control group. The initial plan is for approximately 75,000 customers to receive either electric-only or electric and gas reports. The control groups will also be established for each type of customer. The final split will be agreed to based upon program goals and by mutual consent.
- Analyze demographic, geographic, and local data coverage rates to select optimal regions for pilot program.
- Acquire housing data from 3rd party providers and county assessor offices in pilot region
- Acquire demographic data from 3rd party providers for pilot region
- Extend geocoding licenses to selected areas

Task 2 Deliverables:

- Selected pilot regions with accompanying 3rd party data sample.

ALREADY COMPLETED FOR PUGET SOUND PER SOW #1 in Puget Sound Energy Agreement No. 6400001120, dated March 25, 2008 ("Agreement") for initial 40,000 designated customers

OPOWER will complete for the additional Designated Customers, up to 950,000, as dictated via change orders.

Task 3: Design optimization, segmentation and targeting plan

OPOWER will develop an analytically grounded segmentation plan to optimize targeting of PSE programs and recommendations.

Task 3 Details:

OPOWER and PSE will:

- Compile available analysis of previous marketing campaigns used to market PSE rebates, programs and recommendations. Where possible, key metrics, such as internal and external cost per acquisition, will be provided to better inform targeting efforts.

OPOWER will:

- Use energy, housing, and demographic data and available past program participation data to design a multi-dimensional segmentation plan of Designated Customers based on:
    - Energy consumption patterns (e.g. normalized high seasonal peak, high base load, etc.)

  - Housing data (e.g. age of house, size of house, value of home, type of construction, presence of a pool, presence of a garage)
  - Past program participation & rebate redemption (e.g. Energy Star and other rebates; rate programs, etc...) if available
  - Demographic data (e.g. renter vs. homeowner, presence of children in the household, indicators of interest in environmental issues, age of customer, duration of residence, socioeconomic/income levels, as available)
- Identify high-potential prospects for program marketing by profiling historical participants and available historical marketing campaign results.

Task 3 Deliverables:
- Designated Customer segmentation and targeting plan summary.

ALREADY COMPLETED FOR PUGET SOUND PER SOW #1 in Puget Sound Energy Agreement No. 6400001120, dated March 25, 2008 ("Agreement")

OPOWER will complete for the additional up to 950,000 customers as dictated via change orders.

Task 4: Integration of program marketing for Home Energy Reports and Energy Insider Website.

OPOWER will work with PSE to target PSE rebates, programs, and recommendations in the Home Energy Reports and through the Energy Insider Website. Updates to these marketing materials will be implemented as needed.

Task 4 Details:

OPOWER and PSE will:
- Compile a comprehensive list of rebates, programs, and recommendations for inclusion in the Home Energy Reports and Energy Insider Website.

OPOWER will:
- Brand the Home Energy Reports and Energy Insider Website with the PSE logo according to PSE's branding style guide.
- Integrate PSE's rebates, programs, and recommendations into OPOWER's offer and tip database for presentation on the Home Energy Reports and Energy Insider Website.
- Update rebates, programs, and recommendations, as needed, by material changes in program structure or availability of program funds.

Task 4 Deliverables:
- Sample Home Energy Report branded with the PSE and City logos, according to PSE's style guide.
- Energy Insider Website branded with the PSE logo, according to PSE's style guide. PSE marketing materials and efficiency programs integrated and formatted for use in OPOWER's Action Steps database.
- Periodic updates of marketed PSE efficiency programs and campaigns as required.

ALREADY COMPLETED FOR PUGET SOUND PER SOW #1 in Puget Sound Energy Agreement No. 6400001120, dated March 25, 2008 ("Agreement") OPOWER will continue to update program marketing details on a semi-annual basis or as needed.

PHASE I B: PRODUCT INTEGRATION AND CUSTOMIZATION

1. Tasks in Phase IB will need to occur in parallel with Phase IA, as they often require greater time for completion.

Task 5: Deploy Customer Service Interface

OPOWER will provide its Customer Service Interface to support the Home Energy Reporting System, and conduct on-site training of customer service staff on using this interface.

Task 5 Details:

OPOWER will:

- Create and permission password-protected accounts for customer service representatives and customer service managers. OPOWER will not be providing accounts to customer service representatives as they will be provided by PSE (or PSE contractor).
- Conduct eight-hours of on-site training session.

Task 5 Deliverables:

- Configured and deployed Customer Service Interface
- Onsite training day (8 hours).

ALREADY COMPLETED FOR PUGET SOUND PER SOW #1 in Puget Sound Energy Agreement No. 6400001120, dated March 25, 2008 ("Agreement") Future training for program changes or new components will be conducted by OPOWER or by PSE with "train the trainer" input from OPOWER.

Task 6: Implement Automated Data Transfer

OPOWER and PSE will jointly develop, implement, and finalize a protocol for regular, secure transfer of data from PSE to OPOWER in a mutually agreed upon format(s).

Task 6 Details:

- Establish secure, firewalled connection (e.g., sftp, ssh) between OPOWER servers and PSE data center for secure transmission of data.

OPOWER and PSE will jointly develop data transfer protocols:

- Develop the list of data elements owned by PSE (e.g., electricity usage and billing data, gas usage and billing data, energy efficiency program participation) and mutually agreed

upon data formats for each to be used in the project implementation. Transfer protocols will need to be developed for data coming from both the electricity system and the gas system.

- Establish a process for the initial transfer of historical data from PSE to OPOWER. The expected data transfer will include 12+ months of energy usage data (back to January 1, 2008, as available) and customer identifying data (address, account #, etc) for the customers from which Designated Customers, neighbors and control groups will be developed.
- Establish an ongoing process for energy usage updates for the selected groups of Designated Customers and customers in the neighbor and control groups.

- Establish an ongoing process for notification of all new Customers and all Customers that have ended their relationship with PSE.

Task 6 Deliverables:

Task 6 Deliverables:

- Establish secure, firewalled connection (e.g., sftp, ssh) between OPOWER servers and PSE data center for secure transmission of electricity data.
- OPOWER receives initial historical energy data and other agreed upon data elements via established, secure connection.
- OPOWER and PSE establish a schedule for ongoing automated data update processes for new, continuing, and departing Customers.

TRANSFER CONNECTION AND DATA FOR KING COUNTY AND ELECTRIC-ONLY CUSTOMERS ARE ALREADY COMPLETED FOR PUGET SOUND PER SOW #1 in Puget Sound Energy Agreement No. 6400001120, dated March 25, 2008 ("Agreement") ADDITIONAL HISTORIC AND ONGOING DATA FOR NEW GEOGRAPHIC AREAS OR ACCOUNT TYPES WILL NEED TO BE COMPLETED VIA THE SAME TRANSFER METHOD. INCLUSION WILL BE DETERMINED BY ACCOUNT TARGETING PLANS.

Task 7: Integrate PSE data streams and populate Insight Engine

OPOWER will integrate data received from PSE with third party data and populate the Insight Engine database by performing the following steps.

Task 7 Details:

OPOWER will:

- Define and author data transform layer for initial and ongoing meter data from PSE.
- Parse and load initial account information and meter read data, and additional data provided by PSE in accordance with Task 6.
- Parse and load available third-party data (e.g. housing data, demographic data) sourced by OPOWER in Task 2.
- Match data, ensuring accurate combination of initial and ongoing Customer and 3rd-party data through the unique customer identifier from your system, and for the 3rd party data through rigorous name and address matching to append those data to your customer data.
- Standardize all addresses to USPS standards for geo-coding and mailing purposes.

- Geo-code all addresses to establish longitude and latitude coordinates for each premise.
- Initiate ongoing normative calculations to determine and regularly update neighbor and efficient neighbor calculations for each Customer.

Task 7 Deliverables:

Task 7A Deliverables:

- Insight Engine with loaded and matched historic and ongoing energy data, housing, and demographic data for all Customers.
- Geo-codes and normative calculations for all Customers loaded in the Insight Engine.

TRANSFER CONNECTION AND DATA FOR KING COUNTY AND ELECTRIC-ONLY CUSTOMERS ARE ALREADY COMPLETED FOR PUGET SOUND PER SOW #1 in Puget Sound Energy Agreement No. 6400001120, dated March 25, 2008 ("Agreement") ADDITIONAL DATA LOADING, GEO-CODING AND CALCULATIONS FOR NEWLY TARGETED ACCOUNTS AND GEOGRAPHIES WILL HAVE TO BE COMPLETED WHEN ACCOUNTS ARE ADDED TO THE PROGRAM.

Task 8: Final selection of Designated Customers

OPOWER will analyze the integrated data resulting from Task 7 and provide statistics and insights necessary to enable the final selection of the test and control groups for the program.

Task 8 Details:

- Working in conjunction with PSE, OPOWER will randomly partition the customers in the selected pilot regions into test and control, selecting an exact set of customers from the pilot regions identified in Task 2. The final test group selection will comprise the Designated Customers.
- The selection of the Designated Customers must meet OPOWER's technical eligibility requirements for available data and "neighbor" selection. Such eligibility requirements shall be shared with PSE in writing prior to implementation, via a data requirements document.

Task 8 Deliverables:

- Final selection of Designated Customers and control group for the program implementation.

PHASE II: IMPLEMENTATION

Task 9: Implement Home Energy Reports Program

OPOWER will deliver the Home Energy Reports to PSE Designated Customers through an opt-out program. OPOWER will make the Energy Insider Website available to PSE Designated Customers and to additional customers

Task 9 Details:

- Designated Customers will receive offline Home Energy Reports for an initial period of 12 months, with 12-month extensions subject to mutual signed agreement by PSE and OPOWER.
- Accompanying the first months' mailing for any newly enrolled Designated Customers will be an introductory insert explaining the nature of the program, its duration, and the options for learning more or opting out.
- Home Energy Reports shall be delivered at an average frequency of no fewer than six reports per Designated Customer per year.
- Cities with 15,000 or more participating Designated Customers shall have the option to co-brand Home Energy Reports with their City Mark at sole discretion of PSE.
- OPOWER will provide reporting to PSE at least once every two months detailing participation of Designated Customers whom are participating as a result of an agreement with a City Partner.
- The Energy Insider Website will be available to Designated Customers throughout the initial term of the program with the option to extend subject to mutual signed agreement by PSE and OPOWER.

PSE customer service staff will be able to opt-out Designated Customers who call in and request to no longer receive the Home Energy Reports.

Optional: At PSE's discretion, OPOWER may source and include 3rd party offers and coupons in the Home Energy Reports to increase their effectiveness and ability to be acted upon.

Task 9 Deliverables:

- Delivery of an average of six (6) reports per year per Designated Customer.

Task 10: Deploy Home Energy Reporting Website

OPOWER shall make available the Energy Insider Website to all Designated Customers.

Task 10 Details:

- OPOWER will work with PSE to "private-label" the website, branding it with PSE's logo, according to PSE's style guide.
- OPOWER will work closely with PSE to set up a mutually agreed upon authentication process to allow Designated Customers access to their energy information online. Such authentication process will include a method to provide Designated Customers with secure and easy access to their information through the website.
- OPOWER will host and maintain the website, which is integral to the Home Energy Reporting System, which in turn is integrated with the Insight Engine, both also hosted and maintained by OPOWER.
- The Energy Insider Website includes the following sections:
  1. *Online Home Energy Report*: This section is a secure area for Designated Customers to see online a very similar set of information to what is contained in their printed Home Energy Reports. Designated Customers can see their electricity and gas usage compared to neighborhood averages, and receive targeted energy efficiency recommendations generated by the Insight Engine.

2. *Commitment Tracker:* Enables Designated Customers to set a personal goal to reduce their energy use and to track their progress online.
3. *Energy Efficiency Recommendation Library:* Designated Customers gain access to OPOWER's entire library of Energy Efficiency Tips, organized by cost to implement and type of energy use (heating, cooling, lighting, etc).
4. *Online Benchmarking:* Designated Customers view their benchmarking analysis, and interact with the website to view various analyses over time. This functionality is linked to the benchmarking report and customers' account information.
5. *Online mini-Audit Functionality:* Designated Customers can answer questions and provide input about their homes and energy-related behaviors, through the "best tips for me" and "neighbor challenge". This functionality is linked to the benchmarking report and customers' account information.
6. *OPOWER's Network:* Designated Customers gain access to the OPOWER Network, where they can share their suggestions with others, view popularity rankings of different efficiency tips in their neighborhood, and understand what's working and what isn't working for people like them.

Task 10 Deliverables:

- Contractor shall make available the Energy Insider Website to all Designated Customers for the initial period of 12 months.

PHASE III: MEASUREMENT AND VERIFICATION

Task 11: Measure and Report on Conservation, Efficiency and Program Participation

- OPOWER shall provide annual reports, thirteen months from the date of the first mailing of Home Energy Reports and every twelve months thereafter or until this Agreement is terminated. Reports will be delivered in electronic format and are provided to verify program accomplishments (the "Program Reports").

Task 11 Details:

Program Reports are composed of two sections, the first of which is Confidential, and the second of which can be shared. These details include analytic methodologies, 3rd-party data sources, data matching techniques, regression models, and models used for energy profiling.

Program Reports will include:

- Section 1: the first section is Confidential and contains detailed information on the technical approaches and techniques utilized to perform the program analysis:
    - Detailed information on the statistical analytic techniques used, such as multi-variate predictive modeling methodology.
    - Information on the methodology used to select test and control groups
    - Matching techniques and data cleaning techniques used to avoid bias
    - Details on cross sectional model diagnostics

- Section 2: the second section may be shared, is not Confidential, and contains the key findings and results from the analysis of the program. This includes the overall energy savings and program participation results from the program, and results broken down by segment, as delineated below:
-

- Analysis of change in electric consumption among Designated Customers compared to the established control group and to their historic consumption. Analysis shall include breakdown of program impact by segments, subject to sufficient data sets and mutual consent. Such segments may include analysis by:
  - Heat type (electric or gas)
  - Designated Customer investment likelihood (a combined measure of wealth, home ownership, etc)
  - Energy profile (high summer peak, low summer peak, etc)
  - Year over year analysis of energy usage
- Final output includes overall analysis of savings impact of Reports and cost of Reports to customer and to PSE (per customer and total for time period). OPOWER shall provide all assumptions and factors used in the calculation of energy and cost savings for PSE internal verification purposes.
- Response rates for trackable actions taken by Designated Customers and for program participation rates for which data is provided to OPOWER, including rebate redemptions and other efficiency and conservation programs tracked at the household level. OPOWER will measure the incremental response rates and aggregate program participation attribution rates for Designated Customers compared to the control group.

Task 11 Deliverable: Delivery of annual Program Reports

PHASE IV: OPTIMIZATION AND EXPANSION (Optional)

Task 12: Optimize expansion and selection of new Designated Customers based on learnings from PHASES I - III.

At the end of the first year and any subsequent years as agreed to by PSE and OPOWER, OPOWER will analyze the results from DELIVERABLES II and III and provide recommendations about how to optimize the expansion of the Home Energy Reporting System among PSE's customers.

Task 12 Details:

- Working in conjunction with PSE, OPOWER will identify the priorities subject to PSE's approval, for expansion and select a set of households that is optimized to increase the efficacy of the program and to increase and explore learnings from the ongoing implementation.
- If desired by PSE, OPOWER and PSE will together select additional Designated Customers as determined by PSE, and an accompanying control group.
- Customers must meet OPOWER's technical eligibility requirements for available data and neighbor selection, as provided to PSE.
- The frequency of Home Energy Report delivery to different sub-segments of the Designated Customers as determined in Task 5 above shall be reconsidered and optimized and this frequency shall be established by amendment to this Statement of Work, with an accompanying amendment to the budget, as appropriate.

Task 12 Deliverables:

- Selection of Designated Customers and control group for program expansion opportunities.

AMENDMENT #4
TO
IMPLEMENTATION AND LICENSE AGREEMENT

This Amendment #1 ("**Amendment #1**") is dated and effective as of _____ ____, 2009 by and between **Positive Energy, Inc.**, a Delaware corporation ("**Positive Energy**"), and **Puget Sound Energy, Inc.** ("**Utility**"), and amends the Implementation and License Agreement 6400001120 executed between the parties and dated as of March 25, 2008 (the "**Agreement**").

WHEREAS the parties wish to amend the Agreement as set forth herein.

NOW, THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree to the following.

1. The term of the Agreement shall be extended until December 31, 2011.

2. The attached Statement of Work (Appendix A) shall cover the engagement between Positive Energy and Utility for the ongoing delivery of and expansion of services.

3. As modified by this Amendment #1, Positive Energy and the Utility agree that the terms and conditions set forth in the Agreement, and all exhibits, schedules, addenda, and prior modifications thereto, shall remain in full force and effect and shall govern, control, and contain the entire understanding between the parties with respect to the subject matter of the Agreement, except as otherwise modified by the express written agreement between the parties, including without limitation the Purchase Order Form attached hereto as Appendix C.

EXECUTED as of the date first set forth above.

POSITIVE ENERGY, INC.	PUGET SOUND ENERGY, INC.
By_____	By _____
_____	_____
Name	Name
_____	_____
Title	Title

EECBG Terms and Conditions

Special Provisions

A. Flow Down Requirement

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

B. Segregation of Costs

Recipients must segregate the obligations and expenditures related to funding under the Recovery Act. Financial and accounting systems should be revised as necessary to segregate, track and maintain these funds apart and separate from other revenue streams. No part of the funds from the Recovery Act shall be commingled with any other funds or used for a purpose other than that of making payments for costs allowable for Recovery Act projects.

Prohibition on Use of Funds

None of the funds provided under this agreement derived from the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, may be used by any State or local government, or any private entity, for any casino or other gambling establishment, aquarium, zoo, golf course, or swimming pool.

C. Access to Records

With respect to each financial assistance agreement awarded utilizing at least some of the funds appropriated or otherwise made available by the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, any representative of an appropriate inspector general appointed under section 3 or 8G of the Inspector General Act of 1988 (5 U.S.C. App.) or of the Comptroller General is authorized –

(1) to examine any records of the contractor or grantee, any of its subcontractors or subgrantees, or any State or local agency administering such contract that pertain to, and involve transactions relation to, the subcontract, subcontract, grant, or subgrant; and

(2) to interview any officer or employee of the contractor, grantee, subgrantee, or agency regarding such transactions.

D. Publication

An application may contain technical data and other data, including trade secrets and/or privileged or confidential information, which the applicant does not want disclosed to the public or used by the Government for any purpose other than the application. To protect such data, the applicant should specifically identify each page including each line or paragraph thereof containing the data to be protected and mark the cover sheet of the application with the following Notice as well as referring to the Notice on each page to which the Notice applies:

Notice of Restriction on Disclosure and Use of Data

The data contained in pages ---- of this application have been submitted in confidence and contain trade secrets or proprietary information, and such data shall be used or disclosed only for evaluation purposes, provided that if this applicant receives an award as a result of or in connection with the submission of this application, DOE shall have the right to use or disclose the data here to the extent provided in the award. This restriction does not limit the Government's right to use or disclose data obtained without restriction from any source, including the applicant.

Information about this agreement will be published on the Internet and linked to the website

www.recovery.gov , maintained by the Accountability and Transparency Board. The Board may exclude posting contractual or other information on the website on a case-by-case basis when necessary to protect national security or to protect information that is not subject to disclosure under sections 552 and 552a of title 5, United States Code.

E. Protecting State and Local Government and Contractor Whistleblowers

The requirements of Section 1553 of the Act are summarized below. They include, but are not limited to:

Prohibition on Reprisals: An employee of any non-Federal employer receiving covered funds under the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing, including a disclosure made in the ordinary course of an employee's duties, to the Accountability and Transparency Board, an inspector general, the Comptroller General, a member of Congress, a State or Federal regulatory or law enforcement agency, a person with supervisory authority over the employee (or other person working for the employer who has the authority to investigate, discover or terminate misconduct, a court or grant jury, the head of a Federal agency, or their representatives information that the employee believes is evidence of:

- gross management of an agency contract or grant relating to covered funds;
- a gross waste of covered funds
- a substantial and specific danger to public health or safety related to the implementation or use of covered funds;
- an abuse of authority related to the implementation or use of covered funds; or
- as violation of law, rule, or regulation related to an agency contract (including the competition for or negotiation of a contract) or grant, awarded or issued relating to covered funds.

Agency Action: Not later than 30 days after receiving an inspector general report of an alleged reprisal, the head of the agency shall determine whether there is sufficient basis to conclude that the non-Federal employer has subjected the employee to a prohibited reprisal. The agency shall either issue an order denying relief in whole or in part or shall take one or more of the following actions:

- Order the employer to take affirmative action to abate the reprisal.
- Order the employer to reinstate the person to the position that the person held before the reprisal, together with compensation including back pay, compensatory damages, employment benefits, and other terms and conditions of employment that would apply to the person in that position if the reprisal had not been taken.
- Order the employer to pay the employee an amount equal to the aggregate amount of all costs and expenses (including attorneys' fees and expert witnesses' fees) that were reasonably incurred by the employee for or in connection with, bringing the complaint regarding the reprisal, as determined by the head of a court of competent jurisdiction.

Nonenforceablity of Certain Provisions Waiving Rights and remedies or Requiring Arbitration: Except as provided in a collective bargaining agreement, the rights and remedies provided to aggrieved employees by this section may not be waived by any agreement, policy, form, or condition of employment, including any predispute arbitration agreement. No predispute arbitration agreement shall be valid or enforceable if it requires arbitration of a dispute arising out of this section.

Requirement to Post Notice of Rights and Remedies: Any employer receiving covered funds under the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, shall post notice of the rights and remedies as required therein. (Refer to section 1553 of the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, www.Recovery.gov, for specific requirements of this section and prescribed language for the notices.).

F. Request for Reimbursement

Reserved

G. False Claims Act

Recipient and sub-recipients shall promptly refer to the DOE or other appropriate Inspector General any credible evidence that a principal, employee, agent, contractor, sub-grantee, subcontractor or other person has submitted a false claim under the False Claims Act or has committed a criminal or civil violation of laws pertaining to fraud, conflict or interest, bribery, gratuity or similar misconduct involving those funds.

H. Information in supporting of Recovery Act Reporting

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

I. Availability of Funds

Funds appropriated under the Recovery Act and obligated to this award are available for reimbursement of costs until September 30, 2015.

J. Additional Funding Distribution and Assurance of Appropriate Use of Funds

Applicable if award is to a State Government or an Agency

Certification by Governor -- Not later than April 3, 2009, for funds provided to any State or agency thereof by the American Reinvestment and Recovery Act of 2009, Pub. L. 111-5, the Governor of the State shall certify that: 1) the state will request and use funds provided by the Act; and 2) the funds will be used to create jobs and promote economic growth.

Acceptance by State Legislature -- If funds provided to any State in any division of the Act are not accepted for use by the Governor, then acceptance by the State legislature, by means of the adoption of a concurrent resolution, shall be sufficient to provide funding to such State.

Distribution – After adoption of a State legislature's concurrent resolution, funding to the State will be for distribution to local governments, councils of government, public entities, and public-private entities within the State either by formula or at the State's discretion.

K. Certifications

With respect to funds made available to State or local governments for infrastructure investments under the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, the Governor, mayor, or other chief executive, as appropriate, certified by acceptance of this award that the infrastructure investment has received the full review and vetting required by law and that the chief executive accepts responsibility that the infrastructure investment is an appropriate use of taxpayer dollars. Recipient shall provide an additional certification that includes a description of the investment, the estimated total cost, and the amount of covered funds to be used for posting on the Internet. A State or local agency may not receive infrastructure investment funding from funds made available by the Act unless this certification is made and posted.

1. REPORTING AND REGISTRATION REQUIREMENTS UNDER SECTION 1512 OF THE RECOVERY ACT (MAY 2009)

a. This award requires the recipient to complete projects or activities which are funded under the American Recovery and Reinvestment Act of 2009 (Recovery Act) and to report on use of Recovery Act funds provided through this award. Information from these reports will be made available to the public.

b. The reports are due no later than ten calendar days after each calendar quarter in which the recipient receives the assistance award funded in whole or in part by the Recovery Act.

c. Recipients and their first-tier recipients must maintain current registrations in the Central Contractor Registration (http://www.ccr.gov) at all times during which they have active federal awards funded with Recovery Act funds. A Dun and Bradstreet Data Universal Numbering System (DUNS) Number (http://www.dnb.com) is one of the requirements for registration in the Central Contractor Registration.

d. The recipient shall report the information described in section 1512(c) of the Recovery Act using the reporting instructions and data elements that will be provided online at http://www.FederalReporting.gov and ensure that any information that is pre-filled is corrected or updated as needed.

2. REQUIRED USE OF AMERICAN IRON, STEEL, AND MANUFACTURED GOODS -- SECTION 1605 OF THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009 (MAY 2009)

THIS AWARD TERM IS APPLICABLE TO ANY RECOVERY ACT FUNDS FOR CONSTRUCTION, ALTERATION, MAINTENANCE, OR REPAIR OF A PUBLIC BUILDING OR PUBLIC WORK AND THE TOTAL PROJECT VALUE IS ESTIMATED LESS THAN $7,443,000. THIS AWARD TERM ALSO APPLIES TO ALL SUBGRANTS AND CONTRACTS.

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:

None

[Award official to list applicable excepted materials or indicate "none"]

(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) 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 valuation of the request, including—
      (A) A description of the foreign and domestic iron, steel, and/or manufactured goods;
      (B) Unit of measure;
      (C) Quantity;
      (D) Cost;
      (E) Time of delivery or availability;
      (F) Location of the project;
      (G) Name and address of the proposed supplier; and
      (H) A detailed justification of the reason for use of foreign iron, steel, and/or manufactured goods cited in accordance with paragraph (b)(3) of this section.
   (ii) A request based on unreasonable cost shall include a reasonable survey of the market and a completed cost comparison table in the format in paragraph (d) of this section.
   (iii) The cost of iron, steel, and/or manufactured goods material shall include all delivery costs to the construction site and any applicable duty.
   (iv) 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)*
Item 1:			
Foreign steel, iron, or manufactured good			
Domestic steel, iron, or manufactured good			
Item 2:			
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.

3. REQUIRED USE OF AMERICAN IRON, STEEL, AND MANUFACTURED GOODS (COVERED UNDER INTERNATIONAL AGREEMENTS)--SECTION 1605 OF THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009 (MAY 2009)

THIS AWARD TERM IS APPLICABLE TO ANY RECOVERY ACT 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. THIS AWARD TERM ALSO APPLIES TO ALL SUBGRANTS AND CONTRACTS.

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:

None

[Award official to list applicable excepted materials or indicate "none"]

(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) 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 iron, steel, and/or manufactured goods;
- (B) Unit of measure;
- (C) Quantity;
- (D) Cost;
- (E) Time of delivery or availability;
- (F) Location of the project;
- (G) Name and address of the proposed supplier; and
- (H) A detailed justification of the reason for use of foreign iron, steel, and/or manufactured goods cited in accordance with paragraph (b)(4) of this section.

(ii) A request based on unreasonable cost shall include a reasonable survey of the market and a completed cost comparison table in the format in paragraph (d) of this section.

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

(iv) 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)*
Item 1:			
Foreign steel, iron, or manufactured good			
Domestic steel, iron, or manufactured good			
Item 2:			
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.

4. WAGE RATE REQUIREMENTS UNDER SECTION 1606 OF THE RECOVERY ACT (MAY 2009)

THIS AWARD TERM IS APPLICABLE TO RECOVERY ACT PROGRAMS OR ACTIVITIES THAT MAY INVOLVE CONSTRUCTION, ALTERATION, MAINTENANCE, OR REPAIR. THIS AWARD TERM ALSO APPLIES TO ALL SUBGRANTS AND CONTRACTS.

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

Pursuant to Reorganization Plan No. 14 and the Copeland Act, 40 U.S.C. 3145, the Department of Labor has issued regulations at 29 CFR parts 1, 3, and 5 to implement the Davis-Bacon and related Acts. Regulations in 29 CFR 5.5 instruct agencies concerning application of the standard Davis-Bacon contract clauses set forth in that section. Federal agencies providing grants, cooperative agreements, and loans under the Recovery Act shall ensure that the standard Davis-Bacon contract clauses found in 29 CFR 5.5(a) are incorporated in any resultant covered contracts that are in excess of $2,000 for construction, alteration or repair (including painting and decorating).

b. For additional guidance on the wage rate requirements of section 1606, contact your awarding agency. Recipients of grants, cooperative agreements and loans should direct their initial inquiries concerning the application of Davis-Bacon requirements to a particular federally assisted project to the Federal agency funding the project. The Secretary of Labor retains final coverage authority under

Reorganization Plan Number 14.

5. RECOVERY ACT TRANSACTIONS LISTED IN SCHEDULE OF EXPENDITURES OF FEDERAL AWARDS AND RECIPIENT RESPONSIBILITIES FOR INFORMING SUBRECIPIENTS (MAY 2009)

a. To maximize the transparency and accountability of funds authorized under the American Recovery and Reinvestment Act of 2009 (Pub. L. 111--5) (Recovery Act) as required by Congress and in accordance with 2 CFR 215.21 "Uniform Administrative Requirements for Grants and Agreements" and OMB Circular A--102 Common Rules provisions, recipients agree to maintain records that identify adequately the source and application of Recovery Act funds. OMB Circular A--102 is available at http://www.whitehouse.gov/omb/circulars/a102/a102.html

b. For recipients covered by the Single Audit Act Amendments of 1996 and OMB Circular A--133, "Audits of States, Local Governments, and Non-Profit Organizations," recipients agree to separately identify the expenditures for Federal awards under the Recovery Act on the Schedule of Expenditures of Federal Awards (SEFA) and the Data Collection Form (SF--SAC) required by OMB Circular A--133. OMB Circular A--133 is available at http://www.whitehouse.gov/omb/circulars/a133/a133.html. This shall be accomplished by identifying expenditures for Federal awards made under the Recovery Act separately on the SEFA, and as separate rows under Item 9 of Part III on the SF--SAC by CFDA number, and inclusion of the prefix "ARRA-" in identifying the name of the Federal program on the SEFA and as the first characters in Item 9d of Part III on the SF--SAC.

c. Recipients agree to separately identify to each subrecipient, and document at the time of subaward and at the time of disbursement of funds, the Federal award number, CFDA number, and amount of Recovery Act funds. When a recipient awards Recovery Act funds for an existing program, the information furnished to subrecipients shall distinguish the subawards of incremental Recovery Act funds from regular subawards under the existing program.

d. Recipients agree to require their subrecipients to include on their SEFA information to specifically identify Recovery Act funding similar to the requirements for the recipient SEFA described above. This information is needed to allow the recipient to properly monitor subrecipient expenditure of ARRA funds as well as oversight by the Federal awarding agencies, Offices of Inspector General and the Government Accountability Office.

6. DAVIS BACON ACT REQUIREMENTS (MAY 2009)

THIS AWARD TERM IS APPLICABLE TO ARRA AWARDS WHEN WAGE RATE REQUIREMENTS UNDER SECTION 1606 OF THE RECOVERY ACT TERM IS APPLICABLE. THIS AWARD TERM IS ALSO APPLICABLE TO SUBGRANTS AND CONTRACTS.

Note: Where necessary to make the context of these articles applicable to this award, the term “Contractor” shall mean “Recipient” and the term “Subcontractor” shall mean “Subrecipient or Subcontractor” per the following definitions.

Recipient means the organization, individual, or other entity that receives an award from DOE and is financially accountable for the use of any DOE funds or property provided for the performance of the project, and is legally responsible for carrying out the terms and conditions of the award.

Subrecipient means the legal entity to which a subaward is made and which is accountable to the recipient for the use of the funds provided. The term may include foreign or international organizations (such as agencies of the United Nations).

Davis-Bacon Act

(a) *Definition*.—“Site of the work”—

(1) Means--
   (i) The primary site of the work. The physical place or places where the construction called for in the award will remain when work on it is completed; and
   (ii) The secondary site of the work, if any. Any other site where a significant portion of the building or work is constructed, provided that such site is—
      (A) Located in the United States; and
      (B) Established specifically for the performance of the award or project;

(2) Except as provided in paragraph (3) of this definition, includes any fabrication plants, mobile factories, batch plants, borrow pits, job headquarters, tool yards, etc., provided—
   (i) They are dedicated exclusively, or nearly so, to performance of the award or project; and
   (ii) They are adjacent or virtually adjacent to the "primary site of the work" as defined in paragraph (a)(1)(i), or the "secondary site of the work" as defined in paragraph (a)(1)(ii) of this definition;

(3) Does not include permanent home offices, branch plant establishments, fabrication plants, or tool yards of a Contractor or subcontractor whose locations and continuance in operation are determined wholly without regard to a particular Federal award or project. In addition, fabrication plants, batch plants, borrow pits, job headquarters, yards, etc., of a commercial or material supplier which are established by a supplier of materials for the project before opening of bids and not on the Project site, are not included in the "site of the work." Such permanent, previously established facilities are not a part of the "site of the work" even if the operations for a period of time may be dedicated exclusively or nearly so, to the performance of a award.

(b) (1) All laborers and mechanics employed or working upon the site of the work 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, or as may be incorporated for a secondary site of the work, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics. Any wage determination incorporated for a secondary site of the work shall be effective from the first day on which work under the award was performed at that site and shall be incorporated without any adjustment in award price or estimated cost. Laborers employed by the construction Contractor or construction subcontractor that are transporting portions of the building or work between the secondary site of the work and the primary site of the work shall be paid in accordance with the wage determination applicable to the primary site of the work.

(2) 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 (e) of this article; 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 period.

(3) Such laborers and mechanics shall be paid not less than the appropriate wage rate and fringe benefits in the wage determination for the classification of work actually performed, without regard to skill, except as provided in the article entitled Apprentices and Trainees. 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.

(4) The wage determination (including any additional classifications and wage rates conformed under

paragraph (c) of this article) 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.

c. (1) The Contracting Officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the award 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 all the following criteria have been met:
   (i) The work to be performed by the classification requested is not performed by a classification in the wage determination.
   (ii) The classification is utilized in the area by the construction industry.
   (iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(2) 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
Employment Standards Administration
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.

(3) 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 of the Wage and Hour Division 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.

(4) The wage rate (including fringe benefits, where appropriate) determined pursuant to subparagraphs (c)(2) and (c)(3) of this article shall be paid to all workers performing work in the classification under this award from the first day on which work is performed in the classification.

(d) Whenever the minimum wage rate prescribed in the award 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.

(e) 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.

Rates of Wages

The minimum wages to be paid laborers and mechanics under this award involved in performance of work at

the project site, as determined by the Secretary of Labor to be prevailing for the corresponding classes of laborers and mechanics employed on projects of a character similar to the contract work in the pertinent locality, are included as an attachment to this award. These wage rates are minimum rates and are not intended to represent the actual wage rates that the Contractor may have to pay.

Payrolls and Basic Records

(a) Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of 3 years thereafter for all laborers and mechanics working at the site of the work. 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 paragraph (d) of the article entitled Davis-Bacon Act, 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.

(b) (1) The Contractor shall submit weekly for each week in which any award work is performed a copy of all payrolls to the Contracting Officer. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under paragraph (a) of this article. This information may be submitted in any form desired. Optional Form WH-347 (Federal Stock Number 029-005-00014-1) is available for this purpose and may be purchased from the --

Superintendent of Documents U.S. Government Printing Office Washington, DC 20402

The Prime Contractor is responsible for the submission of copies of payrolls by all subcontractors.

(2) 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 award and shall certify --

(i) That the payroll for the payroll period contains the information required to be maintained under paragraph (a) of this article and that such information is correct and complete;

(ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the award 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 the Regulations, 29 CFR Part 3; and

(iii) 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 award.

(3) 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 subparagraph (b)(2) of this article.

(4) The falsification of any of the certifications in this article 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.

(c) The Contractor or subcontractor shall make the records required under paragraph (a) of this article available for inspection, copying, or transcription by the Contracting Officer or authorized representatives of the Contracting Officer or the Department of Labor. The Contractor or subcontractor shall permit the Contracting Officer or representatives of the Contracting Officer or the Department of Labor to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit required records or to make them available, the Contracting Officer may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment. 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.

Withholding of Funds

The Contracting Officer shall, upon his or her 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 award or any other Federal award with the same Prime Contractor, or any other federally assisted award 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 award. 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, all or part of the wages required by the award, the Contracting Officer may, after written notice to the Contractor, 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.

Apprentices and Trainees

(a) Apprentices.

(1) An apprentice will be permitted to work at less than the predetermined rate for the work they performed when they are employed—
  (i) 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 and Training, Employer, and Labor Services (OATELS) or with a State Apprenticeship Agency recognized by the OATELS; or
  (ii) In the first 90 days of probationary employment as an apprentice in such an apprenticeship program, even though not individually registered in the program, if certified by the OATELS or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice.

(2) 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.

(3) Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated in paragraph (a)(1) of this article, shall be paid not less than the applicable 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.

(4) 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 journeyman hourly rate specified in the applicable wage determination.

(5) 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.

(6) In the event OATELS, or a State Apprenticeship Agency recognized by OATELS, 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.

(b) Trainees.

(1) 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, Office of Apprenticeship Training, Employer, and Labor Services (OATELS). The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by OATELS.

(2) 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 in 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 in 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 OATELS shall be paid not less than the applicable wage rate in 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 in the wage determination for the work actually performed.

(3) In the event OATELS 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.

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

Compliance with Copeland Act Requirements

The Contractor shall comply with the requirements of 29 CFR Part 3, which are hereby incorporated by reference in this award.

Subcontracts (Labor Standards)

(a) Definition. "Construction, alteration or repair," as used in this article means all types of work done by laborers and mechanics employed by the construction Contractor or construction subcontractor on a particular building or work at the site thereof, including without limitation—

(1) Altering, remodeling, installation (if appropriate) on the site of the work of items fabricated off-

site;

(2) Painting and decorating;

(3) Manufacturing or furnishing of materials, articles, supplies, or equipment on the site of the building or work;

(4) Transportation of materials and supplies between the site of the work within the meaning of paragraphs (a)(1)(i) and (ii) of the "site of the work" as defined in the article entitled Davis Bacon Act of this award, and a facility which is dedicated to the construction of the building or work and is deemed part of the site of the work within the meaning of paragraph (2) of the "site of work" definition; and

(5) Transportation of portions of the building or work between a secondary site where a significant portion of the building or work is constructed, which is part of the "site of the work" definition in paragraph (a)(1)(ii) of the Davis-Bacon Act article, and the physical place or places where the building or work will remain (paragraph (a)(1)(i) of the Davis Bacon Act article, in the "site of the work" definition).

(b) The Contractor or subcontractor shall insert in any subcontracts for construction, alterations and repairs within the United States the articles entitled—

(1) Davis-Bacon Act;

(2) Contract Work Hours and Safety Standards Act -- Overtime Compensation (if the article is included in this award);

(3) Apprentices and Trainees;

(4) Payrolls and Basic Records;

(5) Compliance with Copeland Act Requirements;

(6) Withholding of Funds;

(7) Subcontracts (Labor Standards);

(8) Contract Termination – Debarment;

(9) Disputes Concerning Labor Standards;

(10) Compliance with Davis-Bacon and Related Act Regulations; and

(11) Certification of Eligibility.

(c) The Prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor performing construction within the United States with all the award articles cited in paragraph (b).

(d) (1)Within 14 days after issuance of the award, the Contractor shall deliver to the Contracting Officer a completed Standard Form (SF) 1413, Statement and Acknowledgment, for each subcontract for construction within the United States, including the subcontractor's signed and dated acknowledgment that the articles set forth in paragraph (b) of this article have been included in the subcontract.

Within 14 days after the award of any subsequently awarded subcontract the Contractor shall deliver to the Contracting Officer an updated completed SF 1413 for such additional subcontract.

(e) The Contractor shall insert the substance of this article, including this paragraph (e) in all subcontracts for construction within the United States.

Contract Termination -- Debarment

A breach of the award articles entitled Davis-Bacon Act, Contract Work Hours and Safety Standards Act -- Overtime Compensation, Apprentices and Trainees, Payrolls and Basic Records, Compliance with Copeland Act Requirements, Subcontracts (Labor Standards), Compliance with Davis-Bacon and Related Act Regulations, or Certification of Eligibility may be grounds for termination of the whole award or in part for the Recovery Act covered work only, and for debarment as a Contractor and subcontractor as provided in 29 CFR 5.12.

Compliance with Davis-Bacon and Related Act Regulations

All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are hereby incorporated by reference in this award.

Disputes Concerning Labor Standards

The United States Department of Labor has set forth in 29 CFR Parts 5, 6, and 7 procedures for resolving disputes concerning labor standards requirements. Such disputes shall be resolved in accordance with those procedures and not the Disputes and Appeals as defined in 10 CFR 600.22. Disputes within the meaning of this article include disputes between the Contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

Certification of Eligibility

(a) By entering into this award, 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 awards by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

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

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

Approval of Wage Rates

All straight time wage rates, and overtime rates based thereon, for laborers and mechanics engaged in work under this award must be submitted for approval in writing by the head of the contracting activity or a representative expressly designated for this purpose, if the straight time wages exceed the rates for corresponding classifications contained in the applicable Davis-Bacon Act minimum wage determination included in the award. Any amount paid by the Contractor to any laborer or mechanic in excess of the agency approved wage rate shall be at the expense of the Contractor and shall not be reimbursed by the Government. If the Government refuses to authorize the use of the overtime, the Contractor is not released from the obligation to pay employees at the required overtime rates for any overtime actually worked.

7. HISTORIC PRESERVATION

Prior to the expenditure of Federal funds to alter any structure or site, the Recipient 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. In order to fulfill the requirements of Section 106, the Recipient must contact the State Historic Preservation Officer (SHPO),

and, if applicable, the Tribal Historic Preservation Officer (THPO), to coordinate the Section 106 review outlined in 36 CFR Part 800. SHPO contact information is available at the following link: http://www.ncshpo.org/find/index.htm. THPO contact information is available at the following link: http://www.nathpo.org/map.html.

Section 110(k) of the NHPA applies to DOE funded activities. Recipients shall avoid taking any action that results in an adverse effect to historic properties pending compliance with Section 106.

Recipients should be aware that the DOE Contracting Officer will consider compliance with Section 106 of NHPA complete only after the Recipient has submitted adequate background documentation to the SHPO/THPO for its review, and the SHPO/THPO has provided written concurrence to the Recipient that it does not object to its Section 106 finding or determination. Recipient shall provide a copy of this concurrence to the Contracting Officer.