

THE RECOVERY ACT IN PHILADELPHIA

ARRA COMPLIANCE & CONTROL GUIDE PHASES 1 - 5



Recovery
CITY OF PHILADELPHIA
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THE CITY OF PHILADELPHIA

AUGUST 2010

Table of Contents

Introduction.....2

Phase 1 –Application.....3

Phase 2 – Contracting Procedures.....5

Phase 3 – Documentation Requirements.....6

Phase 4 – Quarterly Reporting Policies & Procedures.....16

Phase 5 – Close-Out Requirements.....18

Introduction

Control and Compliance

The Recovery Office is developing a control and compliance program with the Chief Integrity Officer and Inspector General to help the City manage risks associated with the Recovery program. This rule book is one of the products of that control and compliance program and is intended to help City officials clearly understand the audit and control requirements of their ARRA grant and thereby minimize and mitigate risks to the City and its staff.

The respective roles of the Recovery, Chief Integrity Officer and Inspector General are summarized at Annex A.1. If you are unclear about any of the guidance contained in this document do not hesitate to contact a member of the team listed below.

The Deputy Integrity Officer will contact all Program Managers to schedule an appointment to identify key risks associated with individual grants and, where deemed necessary, to schedule a mock-audit.

Transparency and Accountability

The Recovery Act requires unprecedented levels of transparency and accountability in the management of ARRA grants and related activity. The City is committed to ensuring that the citizens and businesses of Philadelphia have access to the best possible information. The Recovery website at www.phila.gov/recovery is one of the main vehicles in which openness and transparency will be achieved. A summary of all grants, including expenditures, jobs created and retained and achievements will be posted and regularly updated on the website. You are encouraged to use the website to publicize activity relating to your ARRA grant. Note: **All press inquiries must be directed to the Recovery Office.**

Contacts

1. Maari Porter – Recovery Officer



215-686-6131



maari.porter@phila.gov

2. Adam Telem – Deputy Integrity Officer



215-686-2120



adam.telem@phila.gov

3. Cara Lindsey – Chief Financial Investigator, Office of the Inspector General



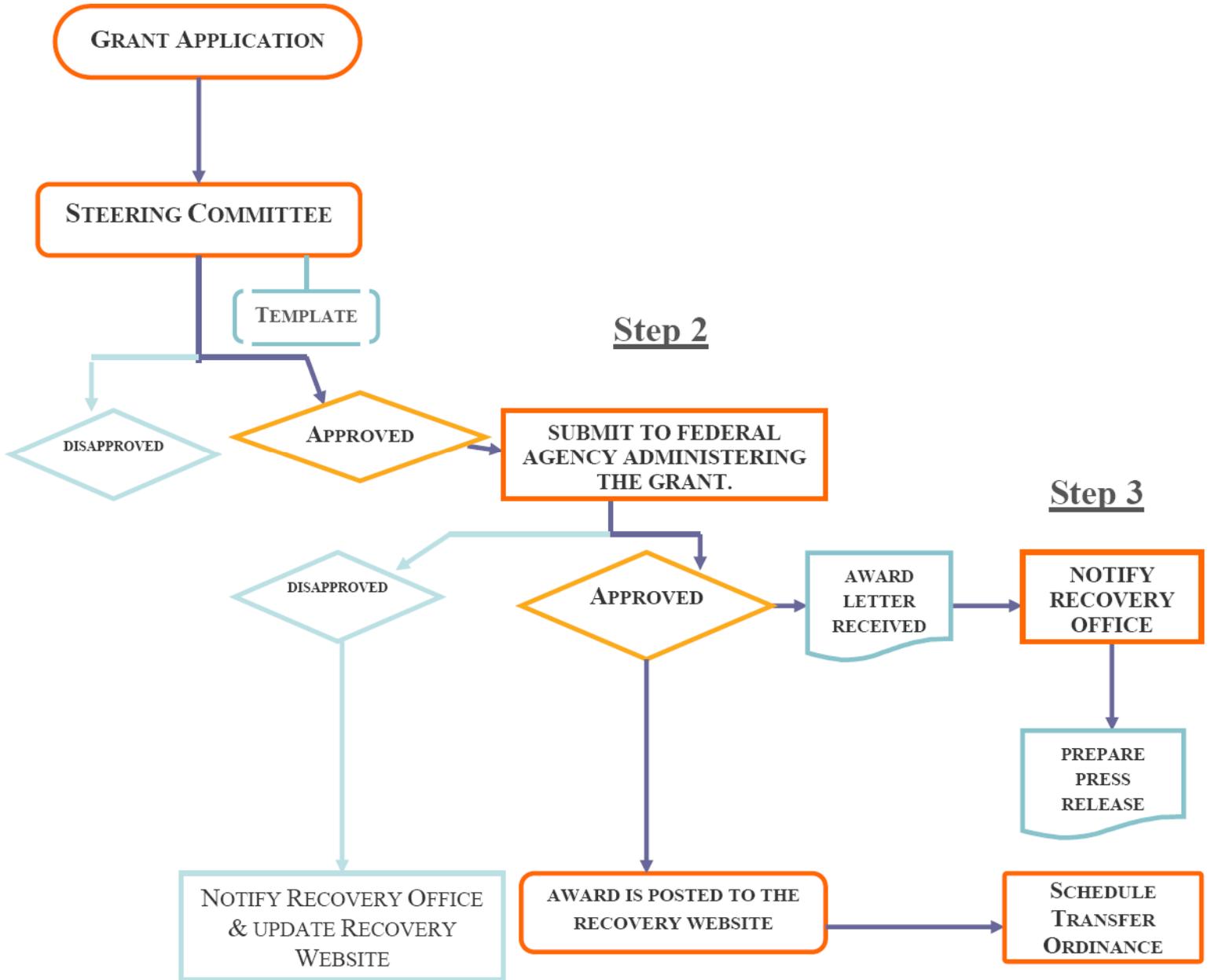
215-685-6058



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Phase 1 – Application

Step 1



Phase 1 – Application

The goal for this phase is to ensure your application is in line with the City’s strategic goals and ethics and to ensure it does not duplicate applications from other departments.

Step 1: Submission to Recovery Steering Committee

Program Managers are to submit their draft application to the Recovery Steering Committee for review and comment *prior* to submitting to federal or state agencies. A template (Annex A.2) is provided - for presentational purposes you should also consider providing a brief PowerPoint presentation outlining the purpose, the total amount applied for, the projected jobs created, the partners involved and key outcomes. This will be posted on the City’s Recovery website.

The Recovery Steering Committee meets regularly with the meeting televised on Channel 64. Email the Recovery Office to find out when the next meeting will be held.

If non-City partners are listed in the application, you are advised to submit your application to the Law Department and the Chief Integrity Officer for review prior to presenting the application to the Recovery Steering Committee.

Step 2: Submit to Federal or State Agency

Submit application to federal or state agency following approval by the Steering Committee.

The Recovery Office will post a brief summary of your application on the Recovery website and identify your grant as “pending”.

If approved or declined, including an informal notification by your federal or state agency, you must notify the Recovery Office.

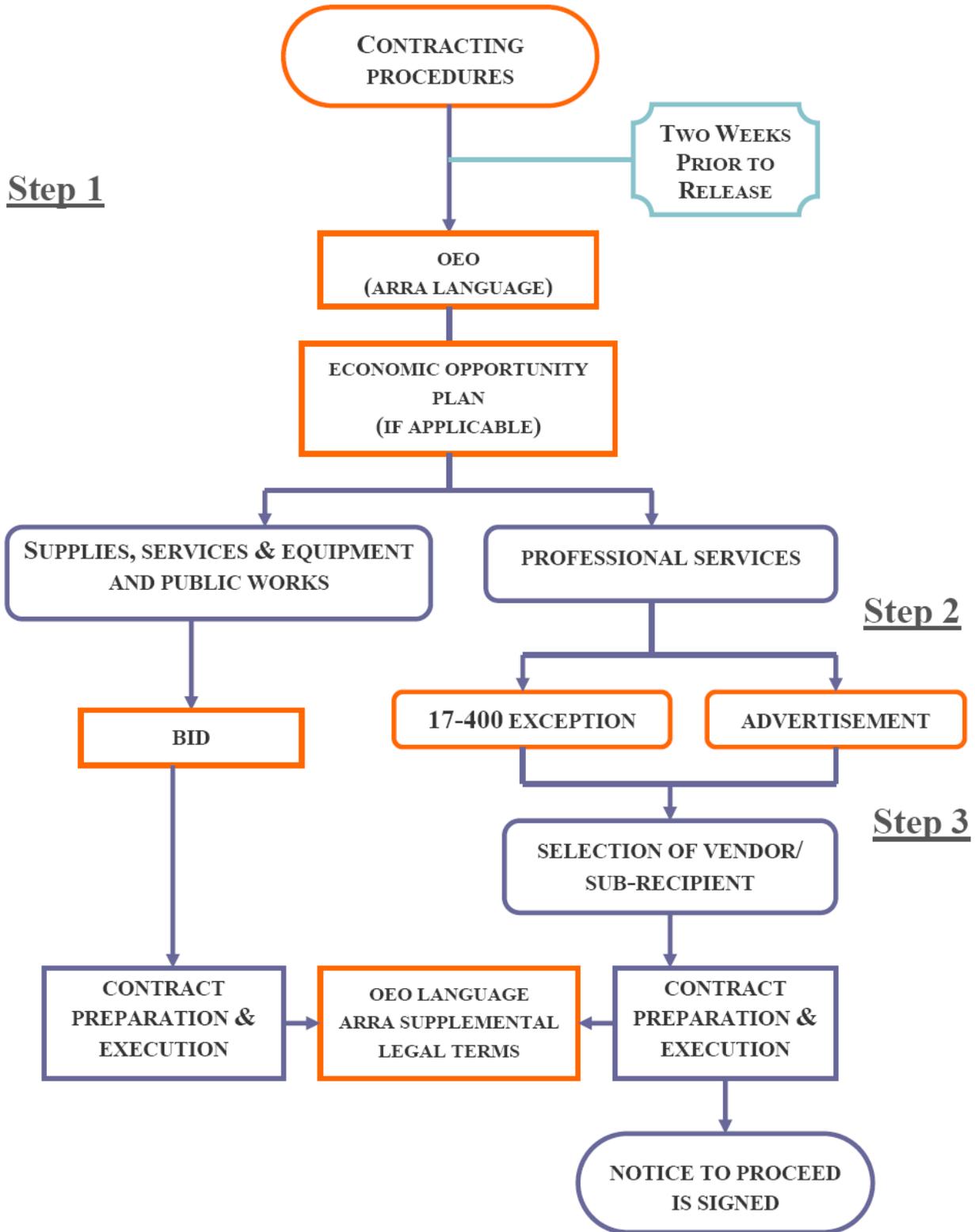
If approved, engage the Press Office to assess if a press release should be prepared – this will be posted on the City of Philadelphia homepage, as well as the Recovery website.

Step 3: Award Letter Received

Notify the Recovery Office and the Grants Accounting and Administration Unit (“GAAU”) once an award letter has been received. The GAAU will help initiate the grants process in the city’s books and records.

A Transfer Ordinance will be required if you have not provided for the ARRA grant in your department’s FY11 budget. Program Managers must notify the Recovery Office soon as possible if a Transfer Ordinance is required so a hearing can be scheduled in a good time. *No transfer ordinance means no spending.*

Phase 2 – Contracting Procedures



Phase 2 – Contracting Procedures

The goal for this phase is to create an efficient, accountable and transparent method for executing contracts paid for with ARRA funds. Project Managers are encouraged to begin this process as quickly as possible to ensure compliance with spending deadlines. *No contract means no spending.*

TO ENSURE COMPLIANCE WITH FEDERAL GRANTS, EVERY CONTRACT SHOULD BE SENT TO THE APPROPRIATE CITY AGENCY FOR APPLICATION OF AFFIRMATIVE ACTION RULES. IF THERE IS ANY QUESTION AS TO THE APPROPRIATE CITY AGENCY, THE LAW DEPARTMENT SHOULD BE CONSULTED.

Step 1: Submission to Office of Economic Opportunity (OEO)

For contracts that will undergo OEO review the following requirements apply:

All contracts subject to 8-200 of the Philadelphia Home Rule Charter or Chapter 17-1400 of the Philadelphia Code must be sent to OEO for review at least two weeks prior to posting. Each department has an OEO liaison. A list of OEO liaisons and departments covered is attached (Annex A.3).

ARRA Non-Competitively Bid Contracts anticipated to cost the City more than \$1,000,000 **and** requiring approval by City Council must have an Economic Opportunity Plan. For ARRA purposes, approval by City Council would mainly be required when departments want the initial term of the contract to be for a period greater than one year.

ARRA Competitively Bid Contracts anticipated to cost the City more than \$250,000 must have an Economic Opportunity Plan.

These Economic Opportunity Plan determinative values are project based and not expenditure based. This means that the threshold for the EOP requirement is based upon the total value of the contract and not the total amount of ARRA dollars involved. Even if only \$1.00 of ARRA money is used, if the value of the project is greater than \$250,000 (meaning there are other sources of funding), you must have an economic opportunity plan.

The Recovery Office and OEO are developing a process, with departments, to track and report on achievement of participation ranges applied to those contracts receiving ARRA funding. Details of this process will follow separately.

Step 2: Advertisement of Contracting Opportunity

All ARRA solicitation documents (e.g., RFPs and bid specifications) *must* contain the following language:

- “Any contract resulting from this solicitation shall be subject to appropriation of funds by Council of the City of Philadelphia.”

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- “This opportunity is ARRA funded. The City must comply with all current and future reporting requirements established by the ARRA and the federal or Commonwealth of Pennsylvania agencies having jurisdiction over ARRA funds. By submitting a response to this RFP, applicant agrees to cooperate with the City and provide to the City any data and information necessary to comply with ARRA Section 1512 as well as, in addition, any other information requested by the City. This commitment will be incorporated into any contract awarded pursuant to this RFP.”

This language should be placed clearly and conspicuously on the applicable solicitation document to ensure that potential respondents are reasonably on notice of this important condition to the City entering into these contracts.

Step 3: Award & Contract Process

The City's standard procedures for contracting are applicable to all ARRA contracts, including both competitively bid and non-competitively bid contracts. This step is designed to highlight only those items which are in addition to, and not in lieu of, the City's standard procedures. Under no circumstances should project managers deviate from the City's standard practices without first consulting with the Law Department and the Office of the Chief Integrity Officer.

All contracts entered into ACIS must contain the phrase “ARRA Funded” in the “Scope of Services” field. This will help the Recovery Office to track ARRA professional contracts.

All contracts must include the applicable, OEO approved participation ranges. Contracts awarded pursuant to a competitive bid or RFP containing an Economic Opportunity Plan must contain all applicable letters of intent, quotations and any other accompanying documents regarding solicitation and commitments with minority, women and disabled owned businesses (“M/W/DSBE”), including the Best and Good Faith Efforts Form.

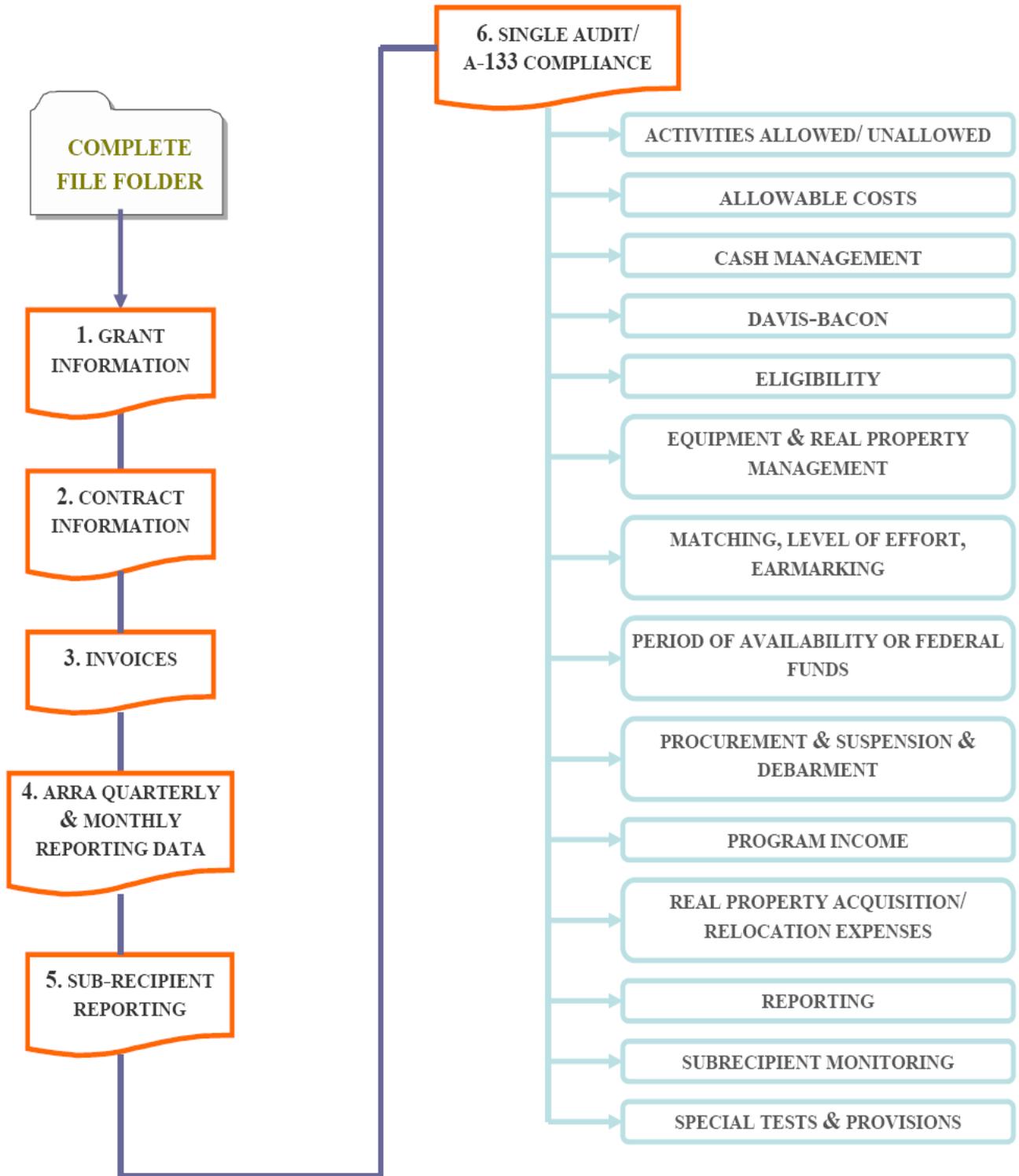
If amending an existing contract, the existing OEO approved participation ranges carry forward and apply to the added ARRA dollars.

All departments must keep accurate records of purchase orders issued off of Procurement Department contracts.

All non-competitively bid contracts must also contain the “Addendum to Contract Supplemental Terms and Conditions for ARRA Funded Non-Competitively Bid Contracts.” (Attached Annex A.4). All competitively bid contracts must contain the “Addendum to Contract Supplemental Terms and Conditions for ARRA Funded Contracts Subject to Competitive Sealed Bid by City’s Procurement Department.” (Attached Annex A.5).

The Recovery Office will maintain a centralized list of M/W/DSBE participation in all ARRA contracts. This list will also include participation information arising from federally mandated affirmative action programs. The Recovery Office will request updated information every quarter. This list will be made publicly available.

Phase 3 – Documentation Requirements



Phase 3 – Documentation Requirements

The goal for this phase is to provide a clear and comprehensive checklist of what constitutes a good file that will satisfy ARRA and City, state and federal audit controls and requirements.

Federal Office of Management and Budget have declared that programs with ARRA awards – no matter how small – are to be treated by auditors as “high-risk.” So remember—*document, document, document!*

“If an activity or action is not documented, it does not exist.”
—City Controller’s Office

If you seek clarification and are unsure about any of the provisions listed below, do not hesitate in contacting Adam Telem, Deputy Integrity Officer or Cara Lindsey, Chief Financial Investigator.

Contents of a Complete File:

Maintaining information on the five categories described below will ensure that you have a complete file for grant monitoring and reporting purposes.

1) Grant Data—Files must contain all of the applicable grant documents. This includes the following:

- Grant application
- Grant award letter or memo
- Grant amendment(s)
- Documents containing directives from state and federal agencies, e.g., OMB, detailing administration and reporting requirements applicable to that grant—
 - Bulletins
 - Memos
 - Letters
 - E-mails
- Documents tracking grant funds received by state and federal agencies, e.g., cashed checks, reimbursements and wire transfers. The GAAU must have a copy of all these documents.

Documentation covering federal reporting requirements for grants is covered in #4 on pg. 10.

2) Contract Information—Files must contain a copy of the final versions of the following contract documents:

- All RFPs and responses, including documents created during the evaluation process.
- Conformed contracts and all amendments, change orders and other related documentation.

- Documentation evidencing project status and performance including compliance with the deadlines and project schedules set forth in the contract. You should have a back up plan prepared to protect against delays in the event your contractor fails to perform satisfactorily.

Examples:

- Capital Improvement/Infrastructure projects – purchase orders/invoices, quality assurance documentation, photos, reports of inspection by City monitors
- Training programs – training materials, dates/times/places of training, attendance records, identification of trainers, spot visits by monitors
- Job placement – pay stubs, W-2 forms, payroll records, employment contracts
- Tutoring/education – evidence of advancement/achievement, test scores

- Documentation of sub-recipient monitoring, including site visits.
- Documentation evidencing compliance with OEO guidelines.
- Documentation that all contractors and subcontractors have current business privilege licenses (should consult with L&I) and are tax compliant with the City (should consult with Revenue Department).
- Any promotion/communication materials used by contractor in performance of the contract, e.g., community outreach.
- Proof of eligibility of all beneficiaries.

Examples:

- Proof of Income – W2 forms, pay stubs, age and energy use for programmatic grants
- Proof of Age – birth certificate or drivers license
- Proof of Property Ownership – deed or property tax bill
- Proof of Energy Use – utility bill
- Proof of Education Level – school attendance records or documents evidencing drop-out
- Governmental assistance – Food stamps, Medicaid cards, welfare payments
- Residency – utility bill, drivers license or phone bill
- Identification – drivers license, Social Security card or passport

3) Invoices—All invoices must be in the file and should contain the following information:

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- Vendor/sub-recipient name
 - Contract number
 - Invoice amount
 - Total amount invoiced to date
 - Total amount already paid to vendor
 - Itemized costs
 - Time and Materials Contracts
 - Name of individual providing services
 - Hours worked
 - Hourly rate
 - Description of services provided
 - Deliverables/milestones completed
 - Fixed Priced Contracts
 - Name of individuals providing services
 - Hours worked
 - Description of services performed
 - Deliverables/milestones completed
 - Cost of each deliverable/milestone
 - Subcontractor information
 - Name of all subcontractors providing services (including subcontractors' subcontractors and any other company being paid with ARRA funds)
 - Invoice amount and basis (e.g., hourly rate or fixed price)
 - Description of services performed
 - OEO Information
 - Name of each MBE/WBE/DSBE subcontractor
 - Name of all individuals providing services
 - Compensation owed to each MBE/WBE/DSBE subcontractor/s under current invoice (vendors should note if none rather than omit MBE/WBE/DSBE subcontractor)

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- Description of services performed by each MBE/WBE/DSBE subcontractors under the current invoice (vendors should note if none rather than omit MBE/WBE/DSBE subcontractor)
 - Compensation paid to each MBE/WBE/DSBE subcontractor to date
 - Representation from vendor concerning accuracy of OEO information

4) **ARRA Quarterly and Monthly Reporting Data**— The next section of your files should contain the complete files for 1512 quarterly reporting and regular, typically monthly, reporting to your federal or state agency. You should refer to your specific grant conditions for the regular reporting requirements, as each grant has distinct requirements.

Accountability

It is important to show auditors, investigators, the public, Council and anyone else who asks:

- Objective of the grant
- Items/services to be purchase with the grant
- Process for choosing contractors comports with City requirements (including OEO requirements)
- Process for choosing clients/beneficiaries is objective
- Process for monitoring contract/spending of grant money
- Job counting calculations
- Administrative Cost Tracking
- Accurate reporting to your federal or (if applicable) state agency

The American Recovery and Reinvestment Act of 2009 requires, as a condition of the receipt of funds, quarterly reporting on the use of funds.

An entity that receives assistance funding under the Recovery Act must report information including, but not limited to:

1. The total amount of recovery funds received from that agency.
2. The amount of recovery funds received that were expended or obligated to projects or activities.
3. A detailed list of all projects or activities for which recovery funds were expended or obligated.

-
4. Detailed information on any subcontracts or sub-grants awarded by the recipient to include the data elements required to comply with the Federal Funding Accountability and Transparency Act of 2006.

a. Documentation Requirements

Your files should contain copies of the following:

- All Section 1512 quarterly reports submitted to federalreporting.gov or to state agencies.
- All financial and performance reports submitted to federal or state agencies.
- Job creation and retention data:
 - For quarterly FTE calculations you should keep records of:
 - Name of employee
 - Name of employer
 - Position
 - Start of employment date
 - Bi-annual certification is required for employees working 100% on the grant. Annex A.6 contains a template certification form.
 - For employees not working 100% on the grant you must have documentation to prove time spent on ARRA funded projects, i.e. project summary sheets. A timesheet alone is not enough.
 - Total hours worked per person per quarter and total hours worked on ARRA per quarter. For tracking and verification purposes you should be able to identify, through timesheets, the total hours worked per week over the 13 week period of the quarter and of that, those hours solely on ARRA. (Refer to OMB guidance for FTE calculation at Annex A.7).
 - In some cases federal and state agencies require grant recipients to also count jobs differently to that required by OMB for 1512 purposes. If that is the case your file should include documentation containing directives from these

agencies about how to count jobs created or retained, including bulletins, letters and emails.

- Expenditure data
 - FAMIS spreadsheet provided by the Grants Accounting Office at the end of the quarter as the City requires that reported expenditures match FAMIS.
 - If your federal or state agency specifically requires that you provide additional expenditure information, for example obligations (encumbrances) you should document and file the request and any additional financial data you provide.

5) **Sub-Recipient Reporting**— The requirements for invoicing, job creation or retained data and expenditures will cover many of your responsibilities for sub-recipient monitoring. However, there is one general requirement that you should take notice of:

- **All sub-recipients receiving contracts above \$500,000 are required to submit an audit and any corrective action taken on the audit findings.** The audit should be submitted to your fiscal office and the GAAU. The Law Department will ensure this requirement is included within your contract language.
- A copy of any audit commissioned by a sub-recipient and submitted to the City must be kept on file. Any correspondence between the City and sub-recipient pertaining to corrective action must also be filed.

All sub-recipients receiving contracts above \$500,000 are required to submit an audit and any corrective action taken on the audit findings.

6) **Single Audit/A-133 Compliance**— Single Audit/Section A-133 is the bible by which City and federal auditors conduct their work for all federal grants, irrespective of ARRA or not.

Maintaining files in accordance with the information detailed above in Items 1) – 5) of this Phase 3 will proactively mitigate any auditing risks arising out of the guaranteed A-133 Compliance and Single Audit. For completeness the general requirements are outlined below.

All files should contain documentation evidencing compliance with the following general concerns. Requirements 1 through 14 will **not** apply to all grants. Some of the documentation necessary to establish A-133 Compliance and Single Audit Compliance may be the same as the items required under items 1) – 5) of this Phase 3.

Please refer to www.whitehouse.gov/OMB/circulars/a133_compliance, as well as Cara Lindsey and Adam Telem to determine which of the following compliance requirements pertains to your grant.

General Requirements of Single Audit/A-133 Compliance

1. Activities Allowed or Unallowed

To provide reasonable assurance that federal awards are expended only for allowable activities and that the costs of goods and services charged to federal awards are allowable and in accordance with the applicable cost principles.

No ARRA funds may be used for:

- Casino or other gambling establishment
- Aquarium
- Zoo
- Golf Course
- Swimming Pool

No ARRA funds may be expended or used for the construction or repair of a public building unless all of the iron, steel, and manufactured goods used in the project were produced in the United States.

2. Allowable Costs/ Cost Principles

- Costs should not be documented solely by memorandum
- Bi-Annual Certifications maintained for employees working 100% on grant
- Personal activity reports supporting amounts charged (to grants) for employees working on multiple activities or cost objectives maintained

The department should certify the hours worked and timesheets from the contract agency should be made available for audit. Timesheets should be kept on file along with the corresponding invoice that will also be subject for review/audit.

3. Cash Management

To provide reasonable assurance that the drawdown of federal cash is only for immediate needs, states comply with applicable Treasury agreements, and recipients limit payments to sub recipients to immediate cash needs.

4. Davis-Bacon Act

To provide reasonable assurance that contractors and subcontractors were properly notified of the Davis-Bacon Act requirements and the required certified payrolls were submitted to the non-federal entity.

5. Eligibility

To provide reasonable assurance that only eligible individuals and organizations receive assistance under federal award programs, that sub awards are made only to eligible sub recipients, and that amounts provided to or on behalf of eligibles were calculated in accordance with program requirements.

6. Equipment & Real Property Management

Proper records are maintained for equipment acquired with federal awards, equipment is adequately safeguarded and maintained, disposition or encumbrance of any equipment or real property is in accordance with federal requirements, and the federal awarding agency is appropriately compensated for its share of any property sold or converted to non-federal use.

7. Matching, Level of Effort & Earmarking

Matching, level of effort or earmarking requirements are met using only allowable funds or costs which are properly calculated and valued.

8. Period of Availability of Federal Funds

Federal funds are used only during the authorized period of availability.

9. Procurement, Suspension & Debarment

Procurement of goods and services are made in compliance with the provisions of the A-102 Common Rule or OMB Circular A-110, as applicable, and that covered transactions (as defined in the suspension and debarment common rule) are not made with a debarred or suspended party.

No ARRA funds may be expended or used for the construction or repair of a public building unless all of the iron, steel, and manufactured goods used in the project were produced in the United States.

10. Program Income

Program income is correctly earned, recorded, and used in accordance with the program requirements.

11. Real Property Acquisition & Relocation Assistance

Compliance with the real property acquisition, appraisal, negotiation, and relocation requirements.

Equipment purchased with grant funds MUST be used for grant related activities.

12. Reporting

Reports of Federal awards submitted to the Federal awarding agency or pass-through entity include all activity of the reporting period, are supported by underlying accounting or performance records, and are fairly presented in accordance with program requirements.

13. Subrecipient Monitoring

Federal award information and compliance requirements are identified to subrecipients, subrecipient activities are monitored, subrecipient audit findings are resolved, and the impact of any subrecipient noncompliance on the pass-through entity is evaluated. Also,

the pass-through entity should perform procedures to provide reasonable assurance that the subrecipient obtained required audits and takes appropriate corrective action on audit findings.

14. Special Test & Provisions

The specific requirements for Special Tests and Provisions are unique to each Federal program and are found in the laws, regulations, and the provisions of contract or grant agreements pertaining to the program.

Central Contractor Registration

The Recovery Act requires recipients of Recovery Act funds, including those receiving funds directly from the Federal government, to register in the Central Contractor Registration (CCR) database.

Buy American

Projects funded by the Recovery Act, for the construction, alteration, maintenance, or repair of a public building or public work use American iron, steel, and manufactured goods in the project unless one of the specified exemptions applies.

Separate Accounting

To maximize the transparency and accountability of funds authorized under the Recovery Act, recipients agree to maintain records that identify adequately the source and application of Recovery Act funds. Recipients should understand their responsibilities with respect to tracking, accounting and reporting transactions during the award and in preparing audit documentation and reports.

Waste, Fraud and Abuse

Each grantee or sub-grantee awarded funds made available under the Recovery Act shall promptly refer to the 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 of interest, bribery, gratuity, or similar misconduct involving those funds.

Whistleblower Protection

An employee of any non-federal employer receiving covered funds 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 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 such other person working for the employer who has the authority to investigate, discover, or terminate misconduct), a court or grand jury, the head of a federal agency, or their representatives, information that the employee reasonably believes is evidence of:

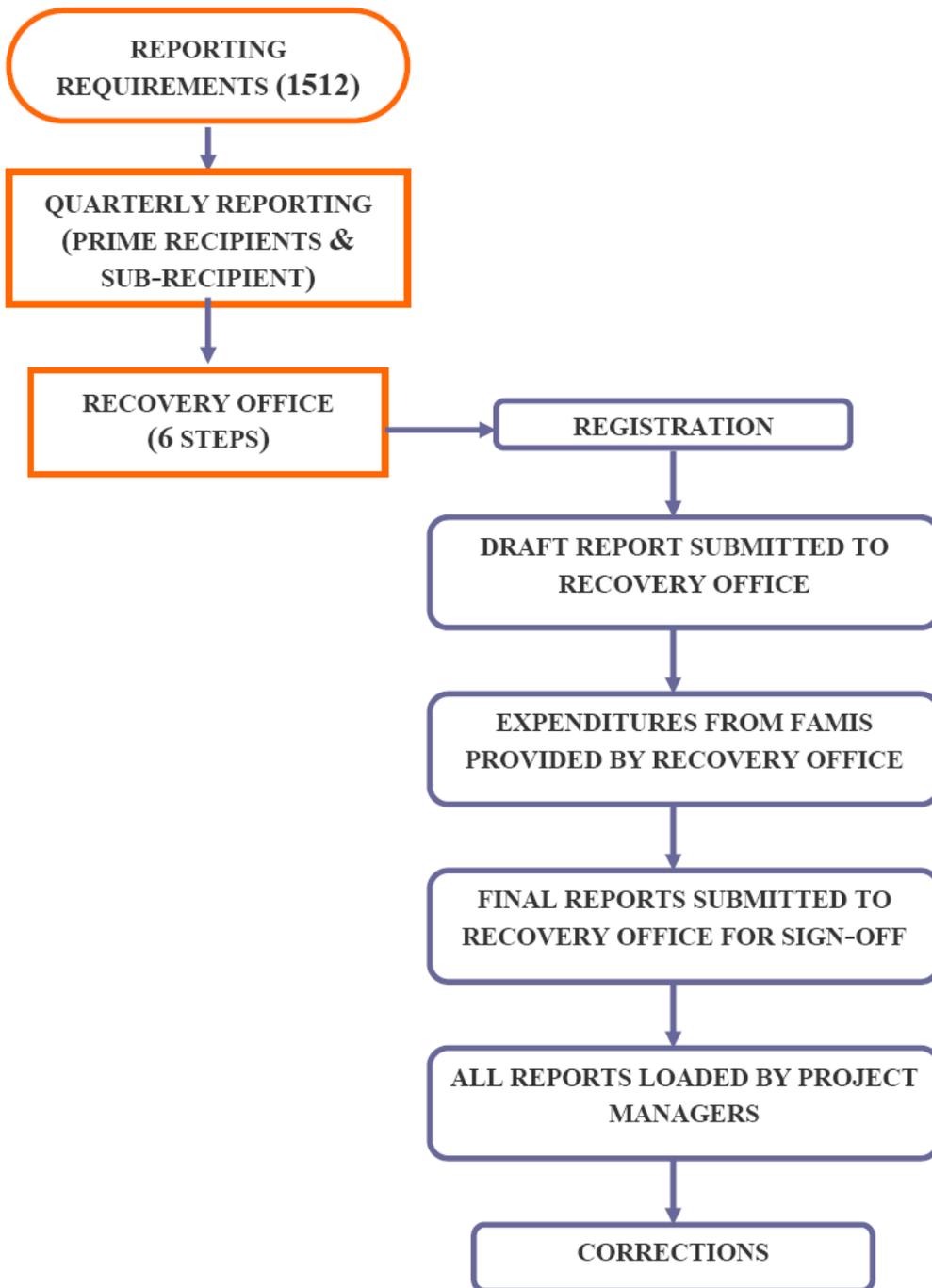
1. Gross mismanagement of an agency contract or grant relating to covered funds.
2. Gross waste of covered funds.

3. A substantial and specific danger to public health or safety related to the implementation or use of covered funds.
4. An abuse of authority related to the implementation or use of covered funds.
5. A 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.

Post-Certifications

With respect to covered funds made available to state or local governments for infrastructure investments, the governor, mayor, or other chief executive, shall certify 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.

Phase 4 – Quarterly Reporting Policies & Procedures



Phase 4 – Quarterly Reporting Policies & Procedures

The City, in its role as either the prime or sub-recipient, is required by Section 1512 of ARRA to provide quarterly reports to federal or state agencies on, amongst other things:

- Who is receiving ARRA dollars and in what amounts?
- What projects or activities are being funded with Recovery Act dollars?
- What is the completion status of such projects or activities?
- What is the impact on job creation and retention?

These details are published on www.recovery.gov website as well as being summarized on the City's website. Accuracy is essential.

The Recovery Office has established procedures and milestones that all ARRA grants awarded to the City must follow. No 1512 report shall be filed on reporting.gov or with the State without the express, written approval of the Recovery Office.

Contact the Recovery Office if you are unclear or unsure about 1512 reporting requirements.

2010 Reporting Quarters



Prior to the start of each quarter the Recovery Office will send a memo to Policy Managers for circulation to all staff within their department working on ARRA setting out the procedures and milestones for that quarter.

Below is an outline of the key procedures and milestones for the June 30 quarter.

ARRA 1512 RECIPIENT REPORTING CHECKLIST

1.	<p>REGISTRATION JUNE 15 ONWARDS. For grants awarded after March 31, 2010, you must register with www.federalreporting.gov/federalreporting/registration.do</p>	<input type="checkbox"/>
2.	<p>DRAFT REPORT(S) SUBMITTED TO RECOVERY OFFICE BY JUNE 25 Complete report (using 1512 excel spreadsheet template) excluding financial information. And provide roster/calculator of jobs created or retained.</p>	<input type="checkbox"/>
3.	<p>RECOVERY OFFICE REIVEWS DRAFT REPORTS BETWEEN JUNE 25 AND JUNE 30.</p>	<input type="checkbox"/>
4.	<p>EXPENDITURES FROM FAMIS PROVIDED BY RECOVERY OFFICE JUNE 30 - JULY 02 AND DEPARTMENTS TO PROVIDE EVIDENCE OF PAYMENTS TO SUBRECIPIENTS/VENDORS. Financial information as of 30 June will be provided to Policy Managers for the final 1512 report. Department to confirm evidence of payment with FAMIS screenshots.</p>	<input type="checkbox"/> <input type="checkbox"/>
5.	<p>FINAL REPORTS SUBMITTED TO RECOVERY OFFICE FOR SIGN-OFF ON OR BEFORE JULY 06. Final reports including financial information as of June 30 and job rosters to be submitted. Signed verification to also be submitted.</p>	<input type="checkbox"/>
6.	<p>ALL REPORTS LOADED BY PROJECT MANAGERS ON JULY 08. All final and approved reports uploaded to www.federalreporting.gov or submitted to the State.</p> <p>Evidence of providing the report to federal or state governments emailed to the Recovery Office.</p>	<input type="checkbox"/> <input type="checkbox"/>
7-8.	<p>CORRECTIONS. Continuous corrections can be made from JULY 04 throughout the quarterly period. Send a note of corrections sought by federal agencies to the Recovery Office. PUBLICATION ON JULY 31, 2010.</p>	<input type="checkbox"/>

Phase 5 – Close-Out Requirements

This will be determined when federal guidelines are released.

THE RECOVERY ACT IN PHILADELPHIA

ANNEX A



Recovery
CITY OF PHILADELPHIA
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THE CITY OF PHILADELPHIA

AUGUST 2010

Annex A

- 1. Roles and Responsibilities**
- 2. Grant Template for submission to Steering Committee**
- 3. OEO Liaison List**
- 4. Addendum to Contract for Non-Competitive Bid Contracts**
- 5. Addendum to Contract for Competitive Sealed Bid**
- 6. Biannual Certification**
- 7. OMB Full Time Equivalent Guidance**

DRAFT AUDIT, CONTROL AND COMPLIANCE ROLES AND FUNCTIONS FOR ARRA

To ensure accountability and compliance with the myriad of new and existing federal, state and City rules for the American Recovery and Reinvestment Act (ARRA) the Inspector General and Chief Integrity Officer, working in partnership with the Recovery Office are developing a proactive control and compliance program that all three offices will adhere to and act within. This paper clarifies the roles and remit of the respective Offices in the exercise of their duties.

In this context the role of the **Recovery Office** is to:

- Provide guidance, technical assistance and quality assurance to City officials in fulfilling their federal, state and City obligations, most notably through quarterly 1512 reporting;
- Coordinate and centralize requests to City officials, including on the control and compliance program, with the aim of minimizing burdens
- Working with officials to identify and remove barriers to delivery (red-tape) so as to help the City spend both expeditiously and wisely;
- Monitor and report on performance of ARRA grants to the Project Team, Steering Committee and other senior leaders in the City;
- To lead and support the provision of training for all ARRA project and grant managers;
- To identify and manage risks to the Recovery Program and implementation of individual grants.

The role of the **Integrity Office**, whose functions will largely be fulfilled by the Deputy Integrity Officer, Adam Telem, is to:

- Provide guidance and support to Grant Managers in maintaining robust, complete and reliable files and records for reporting and auditing purposes;
- Assist Grant Managers in assessing and ensuring that vendors and sub-recipients remain compliant with their respective contracts, including OEO ranges and performance, and 1512 reporting requirements notably FTE counting ;
- Support the Recovery Office in providing guidance, technical assistance, and quality assurance for quarterly 1512 reporting. This means Adam will be the person coordinating the 1512 quarterly reporting on Maari's behalf;
- To work with Policy Managers to take a proactive approach to identify risk factors across the program and how these can be best avoided, managed or mitigated;
- To support the Recovery Office in accelerating contracting processes where deemed necessary by both the Recovery Office and relevant Policy Manager;
- Periodic site visits will be performed at decentralized locations (including sub-recipients) and checks performed to ensure compliance with City and federal ARRA rules.
- To provide outreach and training to all project managers in fraud prevention and detection.
- Assisting Grant managers to comply with any applicable close-out requirements when established by the federal authorities.

The role of the **Inspector General's Office**, whose functions will largely be fulfilled by the Chief Financial Investigator, Cara Lindsey, is to:

- To assist in the provision of guidance for Policy and Grant Managers in maintaining robust and reliable files and records for audit purposes;
- To work with Policy Managers to take a proactive approach to identifying financial control issues with their grants and advising on corrective action. In this capacity Cara will be looking to ensure:
 - Transactions are properly recorded and accounted for to:
 - (i) permit the preparation of reliable financial statements and Federal reports
 - (ii) Maintain accountability over assets
 - (iii) Demonstrate compliance with laws, regulations and other compliance requirements
 - Transactions are executed in compliance with laws, regulations and the provisions of contract or grant agreements that could have a direct and material effect on a Federal program and other laws and regulations that are identified in A-133 compliance supplement
- Periodic site visits will be performed at decentralized locations (including sub-recipients) and checks performed to determine only eligible individuals or organizations receive assistance under Federal award programs
- To provide outreach and training to all project managers in fraud prevention and detection.
- Assisting Grant managers to comply with any applicable close-out requirements when established by the federal authorities

And, acting in accordance with the **Chief Integrity Officer** and **Inspector General's** independent roles Adam and Cara have the ability to;

- Monitor and investigate any complaints and reporting of possible fraud;
- Undertake a review/investigation of any grant, at any time and provide officials with written confirmation of compliance and/or corrective action to take;
- Report any misconduct and control and compliance issues to the Recovery Officer, Chief Integrity Officer and Inspector General.

**City of Philadelphia
American Recovery and Reinvestment Act (ARRA) of 2009
(Insert Agency Name Here)
Program Summary**

Program Name: _____

Point of Contact: _____

Program Description

Information on the project should be included here. Information includes 1) the grant name, 2) the program that these funds will be applied to, 3) the maximum amount of funds applied for, 4) the funds you have been awarded, 5) and points of contact.

1) 2) 3) 4) 5)

Rationale

What was the thought process in applying for the funds for this program?

--

Project Objectives/What are your plans for these funds?

Provide a brief, concise list of what the project is to accomplish.

--

Job Creation

Provide the anticipated number of jobs this program is expected to create.

--

Office of Economic Opportunity Department Liaison List

Last Updated: July 20, 2010

If you do not find your department listed below, please contact Alice Dungee (alice.dungee@phila.gov, 215-686-6397).

Julie Simmons, julie.simmons@phila.gov, 215-683-2083

- Department of Behavioral Health
- Office of Housing and Community Development
- Department of Human Services
- Department of Licenses and Inspections
- Department of Public Health
- Office of Supportive Housing
- Philadelphia Prisons Systems
- Procurement Department
- Department of Parks and Recreation (Recreation and Fairmount Park)
- Streets Department
- Free Library

Chevelle Harrison, chevelle.harrison@phila.gov, 215-683-2078

- Board of Pensions and Retirement
- City Treasurer's Office
- Finance Department
- Law Department
- Managing Director's Office
- Revenue
- Office of Risk Management
- Office of Sustainability
- Water Department
- Water Revenue
- Division of Technology

Danielle Snead, danielle.snead@phila.gov 215-683-2082

- Bureau of Revision of Taxes
- Philadelphia City Planning Commission
- Fire Department
- Mayor's Office of Community Services
- Office of Human Resources / Personnel
- Office of Fleet Management
- Police Department
- Department of Public Property
- Records
- Cultural Bond Projects
- Philadelphia Industrial Development Corporation- Naval Yard Development

Deneen Wilson, deneen.wilson@phila.gov 215-683-2080

- Division of Aviation
- City Representative's Office
- Commerce Department

**ADDENDUM TO CONTRACT
SUPPLEMENTAL TERMS AND CONDITIONS FOR ARRA FUNDED NON-
COMPETITIVELY BID CONTRACTS**

Background

The City of Philadelphia (the “City”) has entered into a certain grant agreement (the “Grant Agreement”) with the Commonwealth of Pennsylvania (the “Commonwealth”) or the federal government to carry out services and/or provide materials specified therein pursuant to the ARRA, as defined herein, subject to certain terms and conditions. This Contract between Provider and the City is funded in whole or in part with funds received by the City under the Grant Agreement, under and subject thereto. In carrying out services and/or providing materials funded with ARRA funds under this Contract, Provider shall comply with all applicable provisions of the Grant Agreement, a copy of which is incorporated herein and made a part hereof by reference, and any Applicable Law(s) referenced therein. Copies of the full Grant Agreement are available upon request. The following terms and conditions shall supplement the General Provisions, as defined herein, and any other Contract Document evidencing this Contract.

1. **Definitions.** The following definitions shall apply to this Addendum:

A. “ARRA” or “Act” means the American Recovery and Reinvestment Act of 2009, Pub. Law 111-5.

B. “ARRA Funds” means funds expended or obligated from appropriations authorized by the ARRA.

C. “Authorized Parties” has the meaning set forth in Paragraph 5 of this Addendum.

D. Capitalized terms not defined in this Addendum shall have the meaning attributed to them in the General Provisions.

2. **Prohibition on Use of ARRA Funds.** Provider acknowledges that it is familiar with the ARRA and the expenditures authorized under that Act to be paid for with ARRA Funds. Provider, for itself and its Subcontractor(s), agrees that no ARRA funds paid to Provider under this Contract shall be used for any casino or other gambling establishment, aquarium, zoo, golf course, or swimming pool, or for any other item, or activity prohibited by the ARRA.

3. **Prohibition Against Misuse of Funds, Dishonest Practices and other Forms of Misconduct.** Provider agrees, for itself and any Subcontractor(s) engaged by Provider, that the following best practices and ethical standards shall govern the performance of work and the provision of any services or materials under this Contract:

(A) All compensation paid under this Contract shall only be used to reimburse for actual, bona fide work, services or materials authorized by, and provided pursuant to this Contract or any Amendment thereto.

(B) All payments made by Provider to any Subcontractor(s) or other entities in any way related to this Contract shall be made only for bona fide services or materials provided in the ordinary course of such Subcontractor’s business and shall be supported by invoices and related documentation. Such invoices shall provide

sufficient detail to determine the nature, scope or quantity of the services or materials. Subject to prior City approval, Provider may utilize brokers or middle persons to arrange for work, services, supplies, goods, materials or equipment in furtherance of this Contract; however Provider shall not utilize any brokers or middle persons that are not acting in the ordinary course of their bona fide ongoing business concerns in brokering such services or materials. Provider shall inform all Subcontractors and other entities receiving payments under this Contract that such payments will be publicly disclosed and will be subject to possible investigation and audit as provided in Paragraph 5 of this Addendum.

(C) Provider will adhere to the highest standards of ethics, transparency and accountability in the performance of this Contract and will make best efforts to ensure that such standards are upheld by Provider's principals, directors, employees, Subcontractors and agents. Provider will immediately report any suspected acts of fraud, corruption, abuse, conflict of interest, bribery or similar misconduct involving ARRA funds under this Contract to the Inspector General of the City of Philadelphia. By way of illustration and not in limitation of the ethical standards to be upheld in the performance of this Contract, the following are examples of conduct that will be considered in violation of such standards:

- (i) Attempts to bribe City employees or officials;
- (ii) Submission of inflated or otherwise fraudulent invoices;
- (iii) Falsification of any documents or records related to this Contract;
- (iv) Fraud by Contract personnel to gain business advantage;
- (v) Collusive purchasing practices by personnel on this Contract;
- (vi) Theft or embezzlement of City funds by Contract personnel;
- (vii) Use of Contract funds to pay ghost employees or ghost Subcontractors;
- (viii) Provider collusion with City employees or officials;
- (ix) Actions that constitute a false claim under the U.S. False Claims Act, 31 U.S.C. Section 3729 *et seq.*

4. **Reporting Requirements / Maintenance of Records.** Provider understands and acknowledges that the City must comply with all current and future reporting requirements established by the ARRA and the federal or Commonwealth of Pennsylvania agencies having jurisdiction over ARRA Funds. Provider agrees that it will cooperate with the City and provide to the City any data and information necessary to comply with ARRA Section 1512 as well as, in addition, any other information requested by the City.

5. **Investigation, Audit and Access to Records.** Provider acknowledges and agrees that the Commonwealth of Pennsylvania, the United States Comptroller General or representative, the appropriate Inspector General appointed under Section 3 or 8G of the United States Inspector General Act of 1978, the Inspector General of the City of Philadelphia, the Chief Integrity Officer of the City of Philadelphia and/or their designees, or any other person appointed by the Mayor of the City of Philadelphia to a position relating to the promotion and assurance of integrity, ethics, transparency and accountability in the City's contracting process ("Authorized Parties") shall have the same rights of investigation and access to Provider's records as are set forth in the

General Provisions pertaining to Provider's obligations to maintain and provide access to contract-related documents. Provider shall fully cooperate with any investigation related to this Contract initiated by any of the Authorized Parties. By way of supplementation and not in limitation of these rights, the investigative, audit and review rights and privileges held by the Authorized Parties in fulfilling their responsibilities to promote integrity in the City's contracting process shall include the following:

(A) Access to any records of Provider, or those of its Subcontractors, and any state or local agency administering this Contract that pertain or relate to this Contract; and

(B) Access to interview any officer, director, employee or agent of the Provider or any of its Subcontractors, at their place of employment or at such other reasonable location as the Authorized Parties shall determine.

6. **Invoice Retention.** In addition to any records retention requirement provided in the General Provisions, Provider shall maintain all invoices related to this Contract for a period of five (5) years following expiration or termination of this Contract. Such invoices shall provide sufficient detail to determine what the Provider has purchased and the scope or quantity of the services or materials. However, if any litigation, claim or audit is commenced prior to expiration of said five (5) year period, then the invoices shall be retained until all litigation, claims or audit findings have been completely terminated or resolved, without right of further appeal, or if Applicable Law requires a longer period, then the invoices shall be retained for such longer period.

7. **Events of Default.** In addition to Events of Default set forth in the General Provisions, violations of any of the provisions of this Addendum shall constitute an Event of Default entitling the City to pursue, in its sole discretion, the remedies set forth in the General Provisions or such remedies as are available at law or in equity. In addition, misuse of Contract proceeds or other acts in violation of Paragraphs 2, 3, 4 and 5 of this Addendum shall entitle the City to pursue, in its sole discretion, the additional remedies set forth in Paragraph 8 of this Addendum pertaining to the City's recovery of liquidated damages. In the interest of promoting timely compliance with the requirements of the ARRA and protecting the integrity of any investigation initiated by the Authorized Parties, Provider shall not have the opportunity of notice and cure as is otherwise provided under this Contract for violations of the provisions of Paragraphs 2, 3 and 5 of this Addendum.

8. **Liquidated Damages.** In addition to all remedies available to the City under this Contract or at law and in equity, the City shall have the additional remedies provided in this Paragraph in connection with Events of Default for violation of the provisions contained in Paragraphs 2, 3, 4 and 5 of this Addendum. Provider acknowledges that ensuring the use of ARRA Funds in compliance with the ARRA (Paragraphs 2 and 4) and promoting the integrity of the City's contracting process (Paragraphs 3 and 5) are important objectives to the City and that misuse of proceeds paid to Provider, and any Subcontractor under this Contract, or other improper conduct by Provider, and any Subcontractor, in violation of these provisions, poses a risk of damages incurred by the City that are unpredictable or incapable of precise measurement (for example, loss of future federal and state funds, damage to the City's reputation; damage to the morale of City employees; reduced participation by the business community in City contracts). Therefore, Provider and the City agree that the following calculations of damages shall serve as liquidated damages, and not a penalty, intended as a reasonable forecast of just compensation for which Provider shall be liable to the City for any Event of Default

arising under Paragraphs 2, 3, 4 or 5, as the case may be, of this Addendum:

A. If Provider is determined to have made payments or committed acts or omissions in violation of Paragraphs 2, 3, 4 or 5 of this Addendum, then Provider shall pay liquidated damages to the City in the aggregate amount of ten percent (10%) of the amount of compensation authorized under this Contract and any Change Order or Amendment thereto.

B. The amount of liquidated damages due under this Paragraph 8 shall not exceed Fifty Thousand Dollars (\$50,000); except that this limitation shall not apply if the City is determined to be ineligible for future funds by any federal or Commonwealth of Pennsylvania agency having jurisdiction over ARRA Funds, for the failure to meet any ARRA-related obligation, in whole or in part because of Provider's failure to perform its obligations under Paragraphs 2, 3, 4 or 5 of this Addendum.

C. In addition to the payment of liquidated damages provided above, if it is determined that Provider has violated the provisions contained in Paragraph 2, 3, 4 or 5 of this Addendum, Provider shall reimburse the City for the City's costs of any investigation and/or prosecution undertaken or initiated by the Authorized Parties, and shall repay to the City the full amount of funds misused or inadequately documented.

D. In the case of any damages for which Provider is liable under this Paragraph 8, the City may apply the amount of such damages as a credit against pending or future invoices under this Contract, and may declare any such damages not so credited to be immediately due and payable to the City.

9. **Wage Rate Requirements.** Provider agrees that it and any Subcontractors shall comply with ARRA Section 1606 and that, notwithstanding any other provision of law and in a manner consistent with other provisions of ARRA, 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 ARRA and shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the United States Secretary of Labor in accordance with Subchapter IV of Chapter 31 of Title 40, United States Code (Davis-Bacon Act). It is understood that the Secretary of Labor has the authority and functions set forth in Reorganization Plan Numbered 14 or 1950 (64 Stat. 1267; 5 U.S.C. App) and Section 3145 of Title 40, United States Code.

10. **Whistleblower Protection.** Provider agrees that both it and any subcontractors shall comply with Section 1553 of the ARRA, which prohibits all non-federal contractors from discharging, demoting or otherwise discriminating against any employee for disclosures by the employee that the employee reasonably believes are evidence of (1) gross mismanagement of a contract relating to ARRA funds; (2) gross waste of ARRA funds; (3) a substantial and specific danger to public health or safety related to the implementation or use of ARRA funds; (4) an abuse of authority related to implementation or use of ARRA funds; or (5) a violation of law, rule or regulation related to an agency contract (including the competition for or negotiation of a contract) awarded or issued relating to ARRA funds. Provider agrees that it and any subcontractors shall post notice of the rights and remedies available to employees under Section 1553 of Title XV of Division A of the ARRA.

11. **Current and Future Requirements.** Provider understands and acknowledges that the federal recovery funding process is still evolving and that new requirements for ARRA compliance may be forthcoming from the federal government, the

Commonwealth and/or the City. In such event, any such new requirement(s) will automatically become a material part of this Addendum. Provider hereby agrees that both it and any Subcontractors will be bound by and shall comply with all current ARRA requirements, whether or not specifically set forth herein and any such future requirements during the term hereof without the necessity of either party executing any further legal instrument(s).

12. **Required Use of American Iron, Steel and Other Manufactured Goods.** Provider agrees that in accordance with ARRA, Section 1605, neither it nor its subcontractors will use ARRA funds for a project for the construction, alteration, maintenance or repair of a public building or public work unless all of the iron, steel and manufactured goods used in the project are produced in the United States in a manner consistent with United States obligations under international agreements. This requirement may be waived only by the ARRA granting federal department as set forth in ARRA Section 1605.

13. **Availability of Funding.** Provider acknowledges that Services or Materials supported with temporary federal funds made available by the ARRA will not be continued with Commonwealth of Pennsylvania or City financed appropriations once the temporary ARRA funds are expended.

14. **Effect of this Addendum.** Except as provided by this Addendum, the remaining terms and conditions of this Contract shall be and remain in full force and effect. In the event of any conflict between the terms and conditions stated in this Addendum and the terms and conditions stated elsewhere in this Contract, the terms and conditions stated in this Addendum shall prevail.

**ADDENDUM TO CONTRACT
SUPPLEMENTAL TERMS AND CONDITIONS FOR ARRA FUNDED
CONTRACTS SUBJECT TO COMPETITIVE SEALED BID BY CITY'S
PROCUREMENT DEPARTMENT**

Background

The City of Philadelphia (the "City") has entered into a certain grant agreement (the "Grant Agreement") with the Commonwealth of Pennsylvania (the "Commonwealth") or the federal government to carry out services and/or provide materials specified therein pursuant to the ARRA, subject to certain terms and conditions. This Contract is funded in whole or in part with funds received by the City under the Grant Agreement, under and subject thereto. In carrying out services and/or providing materials funded with ARRA funds under this Contract, Contractor shall comply with all applicable provisions of the Grant Agreement, a copy of which is incorporated herein and made a part hereof by reference and any Applicable Law(s) referenced therein to the extent applicable. Copies of the full Grant Agreement are available upon request.

1. **Definitions.** The following definitions shall apply to this Addendum:
 - A. "ARRA" or "Act" means the American Recovery and Reinvestment Act of 2009, Pub. Law 111-5.
 - B. "ARRA Funds" means funds expended or obligated from appropriations authorized by the ARRA.
 - C. "Authorized Parties" has the meaning set forth in Paragraph 5 of this Addendum.
 - D. Capitalized terms not defined in this Addendum shall have the meaning attributed to them in the General Provisions.

2. **Prohibition on Use of ARRA Funds.** Contractor acknowledges that it is familiar with the ARRA and the expenditures authorized under that Act to be paid for with ARRA Funds. Contractor, for itself and its Subcontractor(s), agrees that no ARRA funds paid to Contractor under this Contract shall be used for any casino or other gambling establishment, aquarium, zoo, golf course, or swimming pool, or for any other item, or activity prohibited by the ARRA.

3. **Prohibition Against Misuse of Funds, Dishonest Practices and other Forms of Misconduct.** Contractor agrees, for itself and any Subcontractor(s) engaged by Contractor, that the following best practices and ethical standards shall govern the performance of work and the provision of any services or materials under this Contract:
 - (A) All compensation paid under this Contract shall only be used to reimburse for actual, bona fide work, services or materials authorized by, and provided pursuant to this Contract or any Amendment thereto.
 - (B) All payments made by Contractor to any Subcontractor(s) or other entities in any way related to this Contract shall be made only for bona fide services or materials provided in the ordinary course of such Subcontractor's business and shall be supported by invoices and related documentation. Such invoices shall provide sufficient detail to determine the nature, scope or quantity of the services or materials. Subject to prior City

approval, Contractor may utilize brokers or middle persons to arrange for work, services, supplies, goods, materials or equipment in furtherance of this Contract; however Contractor shall not utilize any brokers or middle persons that are not acting in the ordinary course of their bona fide ongoing business concerns in brokering such services or materials. Contractor shall inform all Subcontractors and other entities receiving payments under this Contract that such payments will be publicly disclosed and will be subject to possible investigation and audit as provided in Paragraph 5 of this Addendum.

(C) Contractor will adhere to the highest standards of ethics, transparency and accountability in the performance of this Contract and will make best efforts to ensure that such standards are upheld by Contractor's principals, directors, employees, Subcontractors and agents. Contractor will immediately report any suspected acts of fraud, corruption, abuse, conflict of interest, bribery or similar misconduct involving ARRA funds under this Contract to the Inspector General of the City of Philadelphia. By way of illustration and not in limitation of the ethical standards to be upheld in the performance of this Contract, the following are examples of conduct that will be considered in violation of such standards:

- (i) Attempts to bribe City employees or officials;
- (ii) Submission of inflated or otherwise fraudulent invoices;
- (iii) Falsification of any documents or records related to this Contract;
- (iv) Fraud by Contract personnel to gain business advantage;
- (v) Collusive purchasing practices by personnel on this Contract;
- (vi) Theft or embezzlement of City funds by Contract personnel;
- (vii) Use of Contract funds to pay ghost employees or ghost Subcontractors;
- (viii) Contractor collusion with City employees or officials;
- (ix) Actions that constitute a false claim under the U.S. False Claims Act, 31 U.S.C. Section 3729 *et seq.*

4. **Reporting Requirements / Maintenance of Records.** Contractor understands and acknowledges that the City must comply with all current and future reporting requirements established by the ARRA and federal or Commonwealth of Pennsylvania agencies having jurisdiction over ARRA Funds. Contractor agrees that it will cooperate with the City and provide to the City the data and information necessary to comply with ARRA Section 1512 as well as, in addition, any other information requested by the City.

5. **Investigation, Audit and Access to Records.** Contractor acknowledges and agrees that the Commonwealth of Pennsylvania, the United States Comptroller General or representative, the appropriate Inspector General appointed under Section 3 or 8G of the United States Inspector General Act of 1978, the Inspector General of the City of Philadelphia, the Chief Integrity Officer of the City of Philadelphia and/or their designees, or any other person appointed by the Mayor of the City of Philadelphia to a position relating to the promotion and assurance of integrity, ethics, transparency and accountability in the City's contracting process ("Authorized Parties") shall have the same rights of investigation and access to Contractor's records as are set forth in the Contract pertaining to Contractor's obligations to maintain and provide access to contract-related documents. Contractor shall fully cooperate with any investigation related to this Contract initiated by any of the Authorized Parties. By way of supplementation and not in limitation of these rights, the investigative, audit and review rights and privileges held by the Authorized Parties in fulfilling their responsibilities to

promote integrity in the City's contracting process shall include the following:

(A) Access to any records of Contractor, or those of its Subcontractors, and any state or local agency administering this Contract that pertain or relate to this Contract; and

(B) Access to interview any officer, director, employee or agent of the Contractor or any of its Subcontractors, at their place of employment or at such other reasonable location as the Authorized Parties shall determine.

6. **Invoice Retention.** In addition to any records retention requirement otherwise provided in the Contract, Contractor shall maintain all invoices related to this Contract for a period of five (5) years following expiration or termination of this Contract. Such invoices shall provide sufficient detail to determine what the Contractor has purchased and the scope or quantity of the services or materials. However, if any litigation, claim or audit is commenced prior to expiration of said five (5) year period, then the invoices shall be retained until all litigation, claims or audit findings have been completely terminated or resolved, without right of further appeal, or if Applicable Law requires a longer period, then the invoices shall be retained for such longer period.

7. **Events of Default.** In addition to Events of Default otherwise set forth in the Contract, violations of any of the provisions of this Addendum shall constitute an Event of Default entitling the City to pursue, in its sole discretion, the remedies set forth in the Contract or such remedies as are available at law or in equity. In addition, misuse of Contract proceeds or other acts in violation of Paragraphs 2, 3, 4 and 5 of this Addendum shall entitle the City to pursue, in its sole discretion, the additional remedies set forth in Paragraph 8 of this Addendum pertaining to the City's recovery of liquidated damages. In the interest of promoting timely compliance with the requirements of the ARRA and protecting the integrity of any investigation initiated by the Authorized Parties, Contractor shall not have the opportunity of notice and cure as is otherwise provided under this Contract for violations of the provisions of Paragraphs 2, 3 and 5 of this Addendum.

8. **Liquidated Damages.** In addition to all remedies available to the City under this Contract or at law and in equity, the City shall have the additional remedies provided in this Paragraph in connection with Events of Default for violation of the provisions contained in Paragraphs 2, 3, 4 and 5 of this Addendum. Contractor acknowledges that ensuring the use of ARRA Funds in compliance with the ARRA (Paragraphs 2 and 4) and promoting the integrity of the City's contracting process (Paragraphs 3 and 5) are important objectives to the City and that misuse of proceeds paid to Contractor, and any Subcontractor under this Contract, or other improper conduct by Contractor, and any Subcontractor, in violation of these provisions, poses a risk of damages incurred by the City that are unpredictable or incapable of precise measurement (for example, loss of future federal and state funds, damage to the City's reputation; damage to the morale of City employees; reduced participation by the business community in City contracts). Therefore, Contractor and the City agree that the following calculations of damages shall serve as liquidated damages, and not a penalty, intended as a reasonable forecast of just compensation for which Contractor shall be liable to compensate the City for any Event of Default arising under Paragraphs 2, 3, 4 or 5, as the case may be, of this Addendum:

A. If Contractor is determined to have made payments or committed acts or omissions in violation of Paragraphs 2, 3, 4 or 5 of this Addendum, then Provider shall pay liquidated damages to the City in the aggregate amount of ten percent (10%) of the

amount of compensation authorized under this Contract and any Change Order or Amendment thereto.

B. The amount of liquidated damages due under this Paragraph 8 shall not exceed Fifty Thousand Dollars (\$50,000); except that this limitation shall not apply if the City is determined to be ineligible for future funds by any federal or Commonwealth of Pennsylvania agency having jurisdiction over ARRA Funds, for the failure to meet any ARRA-related obligation, in whole or in part because of Contractor's failure to perform its obligations under Paragraphs 2, 3, 4 or 5 of this Addendum.

C. In addition to the payment of liquidated damages provided above, if it is determined that Contractor has violated the provisions contained in Paragraph 2, 3, 4 or 5 of this Addendum, Contractor shall reimburse the City for the City's costs of any investigation and/or prosecution undertaken or initiated by the Authorized Parties, and shall repay to the City the full amount of funds misused or inadequately documented.

D. In the case of any damages for which Contractor is liable under this Paragraph 8, the City may apply the amount of such damages as a credit against pending or future invoices under this Contract, and may declare any such damages not so credited to be immediately due and payable to the City.

9. **Wage Rate Requirements.** Contractor agrees that it and any of its Subcontractors shall, to the extent applicable, comply with ARRA Section 1606 and that, notwithstanding any other provision of law and in a manner consistent with other provisions of ARRA, 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 ARRA and shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the United States Secretary of Labor in accordance with Subchapter IV of Chapter 31 of Title 40, United States Code (Davis-Bacon Act). It is understood that the Secretary of Labor has the authority and functions set forth in Reorganization Plan Numbered 14 or 1950 (64 Stat. 1267; 5 U.S.C. App) and Section 3145 of Title 40, United States Code.

10. **Whistleblower Protection.** Contractor agrees that both it and any subcontractors shall comply with Section 1553 of the ARRA, which prohibits all non-federal contractors from discharging, demoting or otherwise discriminating against any employee for disclosures by the employee that the employee reasonably believes are evidence of (1) gross mismanagement of a contract relating to ARRA funds; (2) gross waste of ARRA funds; (3) a substantial and specific danger to public health or safety related to the implementation or use of ARRA funds; (4) an abuse of authority related to implementation or use of ARRA funds; or (5) a violation of law, rule or regulation related to an agency contract (including the competition for or negotiation of a contract) awarded or issued relating to ARRA funds. Contractor agrees that it and any subcontractors shall post notice of the rights and remedies available to employees under Section 1553 of Title XV of Division A of the ARRA.

11. **Current and Future Requirements.** Contractor understands and acknowledges that the federal recovery funding process is still evolving and that new requirements for ARRA compliance may be forthcoming from the federal government, the Commonwealth and/or the City. In such event, any such new requirement(s) will automatically become a material part of this Addendum. Contractor hereby agrees that both it and any Subcontractors will be bound by and shall comply with all current ARRA

requirements, whether or not specifically set forth herein and any such future requirements during the term hereof without the necessity of either party executing any further legal instrument(s).

12. Required Use of American Iron, Steel and Other Manufactured Goods.

Contractor agrees that in accordance with ARRA, Section 1605, neither it nor its subcontractors will use ARRA funds for a project for the construction, alteration, maintenance or repair of a public building or public work unless all of the iron, steel and manufactured goods used in the project are produced in the United States in a manner consistent with United States obligations under international agreements. This requirement may be waived only by the ARRA granting federal department as set forth in ARRA Section 1605.

Subsections I and II below apply in the alternative:

1. The following shall apply for Projects using ARRA funds for the construction, alteration, maintenance, or repair of a public building or public work when:

- The estimated value of the project is less than \$7,443,000; or
- The procurement is being conducted by local governments and municipalities; or
- The specific item being procured is not covered under the World Trade Organization Agreement on Government Procurement or other international procurement agreement. (e.g., mass transit or highway procurements, dredging service procurements, or national defense-related procurements).

(a) Requirement. All iron, steel, and other manufactured goods used as construction material for the construction, alteration, maintenance, or repair of a public building or public work must be produced in the United States. This requirement shall be applied in a manner that is consistent with the laws and agreements of the United States and the Commonwealth of Pennsylvania.

(b) Definitions.

1. "Building or work" means construction, maintenance, alteration, or repair. The terms include, without limitation, buildings, structures, and improvements of all types, such as 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, canals, dredging, shoring, rehabilitation and reactivation of plants, scaffolding, drilling, blasting, excavating, clearing, and landscaping. The manufacture or furnishing of materials, articles, supplies, or equipment (whether or not a Federal or State agency acquires title to such materials, articles, supplies, or equipment during the course of the manufacture or furnishing, or owns the materials from which they are manufactured or furnished) is not "building" or "work" within the meaning of this definition unless conducted in connection with and at the site of such building or work as is described in the foregoing sentence, or under the United States Housing Act of 1937 and the Housing Act of 1949 in the construction or development of the project.

2. "Construction material" means an article, material, or supply brought to the construction site by the Contractor or any Subcontractor for incorporation into the building or work. The term also includes an item brought to the site preassembled from articles, materials, or supplies. However, emergency life safety systems, such as emergency lighting, fire alarm, and audio evacuation systems, that are discrete systems

incorporated into a public building or work and that are produced as complete systems, are evaluated as a single and distinct construction material regardless of when or how the individual parts or components of those systems are delivered to the construction site. Materials purchased directly by the Government are supplies, not construction material.

3. "Domestic construction material" means:

- (i) An unmanufactured construction material mined or produced in the United States; or
- (ii) A construction material manufactured in the United States.

4. "Foreign construction material" means a construction material other than a domestic construction material.

5. "Manufactured good or product" means a good or product used as construction material in a project that is the result of processing materials by way of machinery and/or labor that produce a substantially different article. Where the basic character, function, or kind of material processed remains the same, it is not manufactured.

6. "Manufactured construction material" means any construction material that is not manufactured construction material".

7. "Public building or public work" means building or work, the construction, alteration, maintenance, or repair of which is carried on directly by authority of, or with funds of, a Federal agency to serve the interest of the general public regardless of whether title thereof is in a Federal agency.

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

9. "Unmanufactured construction material" means raw material brought to the construction site for incorporation into the building or work that has not 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.

10. "United States" means the 50 States, the District of Columbia,

(c) Domestic preference.

1. This Contract implements Section 1605 of ARRA, by requiring that all iron, steel, and other manufactured goods used as construction material in the project are produced in the United States.

2. The Contract shall use only domestic construction material in performing this project, except as provided in paragraph (c)(3) and (c)(4) of this term and condition.

3. This requirement does not apply to the construction material or components listed by the Government as follows:

[City to list applicable excepted materials or indicate "none"]

4. The award official may add other foreign construction material to the list in paragraph (c)(3) of this requirement if the Federal government determines that:

- (i) The cost of domestic construction material would be unreasonable. The cost of domestic iron, steel, or other manufactured goods used as construction material 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 construction material is not mined, 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 ARRA to a particular construction material would be inconsistent with the public interest.

(d). Request for determination of inapplicability of Section 1605 of ARRA.

1. (i) Any request to use foreign construction material in accordance with paragraph (c)(4) of this clause shall include adequate information for Government evaluation of the request, including-

- (a) A description of the foreign and domestic construction materials;
 - (b) Unit of measure;
 - (c) Quantity;
 - (d) Price;
 - (e) Time of delivery or availability;
 - (f) Location of the construction project;
 - (g) Name and address of the proposed supplier; and
 - (h) A detailed justification of the reason for use of foreign construction materials cited in accordance with paragraph (b)(4) of this clause.
- (ii) A request based on unreasonable cost shall include a reasonable survey of the market and a completed price comparison table in the format in paragraph (e) of this clause.
 - (iii) The price of construction material shall include all delivery costs to the construction site and any applicable duty.
 - (iv) Any request for a determination submitted after award shall explain why the Contractor could not reasonably foresee the need for such determination and could not have requested the determination before award. If the recipient does not submit a satisfactory explanation, the award official need not make a determination.

2. If the Federal government determines after award that an exception to section 1605 of ARRA applies, the award official will amend the award to allow use of the foreign construction material. When the basis of the exception is non-availability or public interest, the amended award shall reflect adjustment of the award amount or redistribution of budgeted funds, as appropriate, to cover costs associated with acquiring or using the foreign construction material. When the basis for the exception is the unreasonable price of a domestic construction material, the award official shall adjust the award amount or redistribute budgeted funds, as appropriate, by at least the differential established in 2 CFR 176.11 O(a).

3. Unless the Federal government determines that an exception to section 1605 of ARRA applies, use of foreign construction material is noncompliant with section 1605 of ARRA.

(e) Data. To permit evaluation of requests under paragraph (d) of this clause 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 Construction Materials Price Comparison

Construction Material Description	Unit of Measure	Quantity	Price (Dollars)*
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Item 1:

Foreign construction material

Domestic construction material

Item 2:

Foreign construction material

Domestic construction material

1. [List name, address, telephone number, email address, and contact for suppliers surveyed. Attach copy of response; !f oral, attach summary.]
2. [Include other applicable supporting information.]
3. [* Include all delivery costs to the construction site.]

II. The following shall, in addition to the Pennsylvania Steel Products Procurement Act, 73 P.S. Sections 1881-1887, apply for Projects using ARRA funds for the construction, alteration, maintenance, or repair of a public building or public work with an estimated value of \$7,443,000 or more:

(a) Requirement. All iron and steel used in the construction, reconstruction, alteration or repair of a public building or public work must be manufactured in the United States. All other manufactured goods used as construction material for the construction, alteration, maintenance, or repair of a public building or public work must be produced in the United States or a designated country. This requirement shall be applied in a manner that is consistent with the laws and agreements of the United State and the Commonwealth of Pennsylvania.

(b) Definitions. As used in this Contract:

1. "Building or work" includes, without limitation, buildings, structures, and improvements of all types, such as 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, canals, dredging, shoring, rehabilitation and reactivation of plants, scaffolding, drilling, blasting, excavating, clearing, and landscaping. The manufacture or furnishing of materials, articles, supplies, or equipment (whether or not a Federal or State agency acquires title to such materials, articles, supplies, or equipment during the course of the manufacture or furnishing, or owns the materials from which they are manufactured or furnished) is not "building" or "work" within the meaning of this definition unless conducted in connection with and at the site of such building or work as is described in the foregoing sentence, or under the United States Housing Act of 1937 and the Housing Act of 1949 in the construction or

development of the project.

2. "Construction material" means iron, steel, and other manufactured goods used as construction material brought to the construction site by the Contractor for incorporation into the building or work. The term also includes an item brought to the site preassembled from articles, materials, or supplies. However, emergency life safety systems, such as emergency lighting, fire alarm, and audio evacuation systems, that are discrete systems incorporated into a public building or work and that are produced as complete systems, are evaluated as a single and distinct construction material regardless of when or how the individual parts or components of those systems are delivered to the construction site. Materials purchased directly by the Government are supplies, not construction material.

3. "Designated country" means: Aruba, Australia, Austria, Belgium, Bulgaria, Chile, 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.

4. "Designated country construction material" means a construction material that

- (i) Is wholly the growth, product, or manufacture of a designated country; or
- (ii) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a designated country into a new and different construction material distinct from the materials from which it was transformed.

5. "Domestic construction material" means:

- (i) An unmanufactured construction material mined or produced in the United States; or
- (ii) A construction material manufactured in the United States.

6. "Foreign construction material" means a construction material other than a domestic construction material.

7. "Manufactured construction material" means any construction material that is not unmanufactured construction material."

8. "Public building or public work" means building or work, the construction, alteration, maintenance, or repair of which, as defined herein, is carried on directly by authority of, or with funds of, a Federal agency to serve the interest of the general public regardless of whether title thereof is in a Federal agency.

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

10. "Unmanufactured construction material" means raw material brought to the construction site for incorporation into the building or work that has not 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.

11. "United States" means the 50 States, the District of Columbia, and outlying areas including:

- (i) Commonwealths: (a) Puerto Rico; (b) The Northern Mariana Islands;
- (ii) Territories: (a) American Samoa; (b) Guam; (c) U.S. Virgin Islands; and
- (iii) Minor outlying islands: (a) Baker Island; (b) Howland Island; (c) Jarvis Island; (d) Johnston Atoll; (e) Kingman Reef; (f) Midway Islands; (g) Navassa Island; (h) Palmyra Atoll; (i) Wake Atoll.

(c) Construction materials.

1. This Contract implements:

(i) Section 1605(a) of the American ARRA, by requiring that all iron, steel, and other manufactured goods used as construction material 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 ARRA do not apply to designated country construction materials. The Buy American requirement in section 1605 shall not be applied where the iron, steel or manufactured goods used as construction material 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, or where the iron, steel or manufactured goods used as construction material in the project are from a least developed country. This obligation shall only apply to projects with an estimated value of \$7,443,000 or more.

2. The Contractor shall use only domestic or designated country construction material in performing the work funded in whole or part with this award, except as provided in paragraphs (c)(3) and (c)(4) of this document.

3. The requirement in paragraph (c)(2) of this term and condition does not apply to the construction materials or components listed by the Government as follows:

[City to list applicable excepted materials or indicate "none"]

4. The City may add other construction material to the list in paragraph (c)(3) of this award term and condition if the Federal government determines that:

- (i) The cost of domestic construction material would be unreasonable. The cost of domestic iron, steel, or other manufactured goods used as construction material 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 construction material is not mined, 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 ARRA to a particular construction material would be inconsistent with the public interest.

(d) Request for determination of inapplicability of section 1605 of ARRA or the Buy American Act.

1. (i) Any request to use foreign construction material in accordance with paragraph (c) (4) of this document shall include adequate information for Government evaluation of the request, including-

- (a) A description of the foreign and domestic construction materials;
- (b) Unit of measure;
- (c) Quantity;
- (d) Price;
- (e) Time of delivery or availability;
- (j) Location of the construction project;
- (g) Name and address of the proposed supplier; and
- (h) A detailed justification of the reason for use of foreign construction materials cited in accordance with paragraph(c)(4) of this clause.

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

(iii) The price of construction material shall include all delivery costs to the construction site and any applicable duty.

(iv) Any request for a determination submitted after award shall explain why the recipient could not reasonably foresee the need for such determination and could not have requested the determination before award. If the recipient does not submit a satisfactory explanation, the award official need not make a determination.

2. If the Federal government determines after award that an exception to section 1605 of ARRA applies and the award official will amend the award to allow use of the foreign construction material. When the basis of the exception is non-availability or public interest, the amended award shall reflect adjustment of the award amount or redistribution of budgeted

funds, as appropriate, to cover costs associated with acquiring or using the foreign construction material. When the basis for the exception is the unreasonable price of a domestic construction material, the award official shall adjust the award amount or redistribute budgeted funds, as appropriate, by at least the differential established in paragraph (c)(4)(i) of this Contract.

3. Unless the Federal government determines that an exception to the section 1605 of ARRA applies, use of foreign construction material other than designated country construction material is noncompliant with the applicable Act.

(e) Data. To permit evaluation of requests under paragraph (d) of this clause 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 CONSTRUCTION MATERIALS PRICE COMPARISON

Construction Material Description	Unit of Measure	Quantity	Price (Dollars)*
Item 1:			
Foreign construction material			
Domestic construction material			
Item 2:			
Foreign construction material			
Domestic construction material			

[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].]

13. **Availability of Funding.** Contractor acknowledges that Services or Materials supported with temporary federal funds made available by the ARRA will not be continued with Commonwealth of Pennsylvania or City financed appropriations once the temporary ARRA funds are expended.

14. **Effect of this Addendum.** Except as provided by this Addendum, the remaining terms and conditions of this Contract shall be and remain in full force and effect. In the event of any conflict between the terms and conditions stated in this Addendum and the terms and conditions stated elsewhere in this Contract, the terms and conditions stated in this Addendum shall prevail.

EMPLOYEE CERTIFICATION

I, _____, hereby certify that the hours I reported as funded by the American Recovery and Reinvestment Act (ARRA) for period of time commencing _____ and ending _____ (the "Reporting Period") are accurate and complete. I further certify that I have spent 100% of my time working on ARRA activities during the Reporting Period. I have submitted timesheets evidencing the hours reported to my supervisor in accordance with my department's standard operating procedures and all such timesheets were approved.

Signature

Date

Attachment A. ARRA Jobs Worksheet for Quarterly Reporting

PREFERRED

STEP 1: Calculate Quarterly Hours in a Full-Time Schedule.

- Start by determining the standard hours in a full-time work week schedule as illustrated below. This example uses 40 hours, but other standards are possible.
- Multiply this amount by 13 weeks to determine the quarterly number of hours for full-time work:

$$40 \text{ Hours in full-time work week} \times 13 \text{ weeks per year} = 520 \text{ Total Quarterly Hours}$$

STEP 2: Calculate the Full Time Equivalent (FTE) for this Quarter.

- Determine the number of hours worked in positions funded by the Recovery Act within the current quarter. For example, a full-time employee working 40 hours per week during the entire quarter will work 520 hours in the quarterly reporting period.
- Divide this number by the "Quarterly Hours in a Full-Time Schedule" number calculated in STEP 1. This calculation should be performed for each employee working under Recovery Act funding within the reporting quarter (add each together to calculate an FTE total):

$$\frac{520 \text{ Hours Worked and Funded by Recovery Act}}{520 \text{ Quarterly Hours in a Full-Time Schedule}} = 1.0 \text{ FTE}$$

For this example, the FTE figure "1.0" should be reported within the "Number of Jobs" data field in FederalReporting.gov.

(If Needed) Reflect Partial ARRA Funding.

- Count all hours worked on the project. In this example, a total of 520 hours were worked on the project and the total number of quarter hours in a full time schedule is 520 hours. The recipient determines the amount of hours, by employee, funded by the Recovery Act (in this case, 50%) and totals only those hours.
- Calculate FTE:

$$\frac{260 \text{ Hours Worked}}{520 \text{ Quarterly Hours in a Full-Time Schedule}} = 0.5 \text{ FTE}$$

For this example, the FTE figure "0.5" should be reported within the "Number of Jobs" data field in FederalReporting.gov.

OR the recipient does not have the information by employee, but knows the overall percentage of the work hours funded by the Recovery Act (in this case, 50%).

Calculate FTE:

$$\frac{520 \text{ Hours Worked}}{520 \text{ Quarterly Hours in a Full-Time Schedule}} = 1 \text{ FTE}$$

$$1 \text{ FTE} \times 50\% = 0.5 \text{ FTE}$$

For this example, the FTE figure "0.5" should be reported within the "Number of Jobs" data field in FederalReporting.gov.