City of FRESNO **REPORT TO THE CITY COUNCIL**

AGENDA ITEM NO. 1 S
COUNCIL MEETING: 04/28/2011
APPROVED BY
DEPARTMENT DIRECTOR
CITY MANAGER

April 28, 2011

FROM: MARK SCOTT, Interim Director
Development and Resource Management Department

THROUGH: KEITH BERGTHOLD, Assistant Director
Development and Resource Management Department

BY: JOSEPH W. OLDHAM, Sustainability Manager
Sustainable Fresno Division, Development and Resource Management Department

SUBJECT: **AUTHORIZE THE DIRECTOR OF THE DEVELOPMENT AND RESOURCE MANAGEMENT DEPARTMENT TO ENTER INTO A COOPERATIVE AGREEMENT WITH THE COUNTY OF FRESNO IN AN AMOUNT NOT TO EXCEED $488,000 TO PROVIDE PROGRAM IMPLEMENTATION SERVICES IN FRESNO COUNTY FOR THE FRESNO REGIONAL COMPREHENSIVE RESIDENTIAL RETROFIT PROGRAM FUNDED BY THE CALIFORNIA ENERGY COMMISSION - DEVELOPMENT AND RESOURCE MANAGEMENT DEPARTMENT**

RECOMMENDATIONS

Staff recommends that the City Council authorize the Director of the Development and Resource Management Department to enter into a cooperative agreement with the County of Fresno in an amount not to exceed $488,000 for program implementation services in Fresno County for the Fresno Regional Comprehensive Residential Retrofit (FRCRR) Program funded by the California Energy Commission.

EXECUTIVE SUMMARY

On June 17, 2010, the City Council authorized the Director of the Development and Resource Management Department to enter into an intergovernmental contract with the California Energy Commission (CEC) for the City of Fresno to receive up to $1.9 million in funding to implement a two-county pilot residential energy efficiency retrofit project called the Fresno Regional Comprehensive Residential Retrofit (FRCRR) Program. Contracts were signed and returned to the CEC on October 1, 2010. On October 21, 2010, the City Council adopted the 39th Amendment to the Annual Appropriation Resolution (AAR) No. 2010-138 appropriating $1,545,000 of ARRA, U.S. Department of Energy, California Energy Commission, Energy Efficiency and Conservation Block Grant funding for implementation of a comprehensive residential energy efficiency retrofit program in Fresno and Kern Counties. Successful program implementation requires that the City of Fresno enter into a cooperative agreement with the County of Fresno for program administration services in the unincorporated portions and smaller cities of Fresno County.

The Sustainable Fresno Division of the Development and Resource Management Department developed the attached cooperative agreement with the County of Fresno and the agreement has been approved to form by County Counsel and the City Attorney's Office. The Fresno County Board of Supervisors approved the agreement on April 5, 2011.

Staff recommends that the City Council authorize the Director of the Development and Resource Management Department to enter into a cooperative agreement with the County of Fresno in an amount not to exceed $488,000 for program implementation services in Fresno County for the Fresno Regional Comprehensive Residential Retrofit (FRCRR) Program funded by the California Energy Commission.

BACKGROUND

On June 17, 2010, the City Council authorized the Director of the Development and Resource Management Department to enter into an intergovernmental contract with the California Energy Commission (CEC) for the City of Fresno to receive up to $1.9 million in funding to implement a two-county pilot residential energy efficiency retrofit project called the Fresno Regional Comprehensive Residential Retrofit (FRCRR) Program. Contracts were signed and returned to the CEC on October 1, 2010. On October 21, 2010, the City Council adopted the 39th Amendment to the Annual Appropriation Resolution (AAR) No. 2010-138 appropriating $1,545,000 of ARRA, U.S. Department of Energy, California Energy Commission, Energy Efficiency and Conservation Block Grant funding for implementation of a comprehensive residential energy efficiency retrofit program in Fresno and Kern Counties.

As the scope of work for the two-county program was being established in collaboration with the CEC, the City of Fresno engaged the County of Fresno Office of Economic Development in discussions on how the County could support the City of Fresno in the project. Out of those discussions came the scope of work and budget for the attached cooperative agreement. The County of Fresno will focus on providing support for the FRCRR program by assisting with data collection from homeowners, scheduling training sessions for contractors, collecting permit data related to retrofits from the unincorporated areas and smaller cities within Fresno County, and marketing of the program throughout the Fresno County area. Fresno County will also provide program coordination with all of the smaller jurisdictions through their existing committees for economic development and assist with outreach about the program to Kern County.

The Sustainable Fresno Division of the Development and Resource Management Department developed the attached cooperative agreement in consultation with the County of Fresno. The agreement has been reviewed and approved as to form by the City Attorney and County Counsel and approved by the Fresno County Board of Supervisors on April 5, 2011.

FISCAL IMPACT

All costs for this cooperative agreement with the County of Fresno for Program Implementation Services are paid for through funding from the California Energy Commission, U.S. Department of Energy, Energy Efficiency and Conservation Block Grant program. There is no impact to the General Fund from this project.

ATTACHMENTS

Cooperative Agreement with the County of Fresno for Program Implementation Services for the Fresno Regional Comprehensive Residential Retrofit Program

COOPERATIVE AGREEMENT

BETWEEN THE

CITY OF FRESNO

AND

THE COUNTY OF FRESNO

REGARDING

SUBCONTRACT OF CALIFORNIA ENERGY COMMISSION EECBG FUNDING

(Comprehensive Residential Building Energy Efficiency Program)

The City of Fresno (City) and the County of Fresno (County), enter into this Agreement dated for convenience as of April 5, 2011.

WHEREAS, federal Energy Efficiency and Conservation Block Grant (EECBG) funds under the American Recovery and Reinvestment Act of 2009 (ARRA) are available through the California Energy Commission's EECBG Program ("Program") for eligible local governments to carry out cost-effective energy efficiency projects; and

WHEREAS, pursuant to City of Fresno Resolution No. 2010-123, the City has applied for and received Program funding to implement a residential building energy efficiency retrofit program within Fresno and Kern counties, Grant No. DE-EE0000905, Standard Agreement No. 400-09-032, including all Contract documents, Guidelines and Terms and Conditions, all provided to the County herewith or available from the City and all incorporated herein (collectively the "Contract Documents"), which variously earmark subcontract funding for the County; and

WHEREAS, the City has allocated and has available fiscal year 2010 - 2011 EECBG Program contract funds earmarked to the County in the sum of up to four hundred eighty-eight thousand dollars ($488,000.00), which funds are available for the Program purposes and uses specific in this agreement, upon the terms and conditions herein; and

WHEREAS, the City and the County desire to enter this Agreement in furtherance of the State EECBG Program and funding from the California Energy Commission and subject thereto, upon the terms and conditions herein.

I. Purpose and Scope

A. Scope or Work, Schedule and Budget.

County shall use the EECBG funds provided by this Agreement solely for purposes of the Scope of Work set out in Exhibit A, pursuant to the Schedule set out in Exhibit B, and according to the Budget set out in Exhibit C, all incorporated herein by this reference. Administration and program implementation shall without limitation follow the rules set forth in the attached Exhibit D - City of Fresno Regional Comprehensive Residential Retrofit Program Policy and Procedures, incorporated herein.

II. Term and Termination

A. Term

This Agreement shall be effective as of _____ and shall continue for the Program duration specified in the Contract Documents between the California Energy Commission and the City of Fresno [Grant No. DE-EE0000905, Standard Agreement No. 400-09-032], subject to earlier termination as provided in subsection "B" below, and

provided that those covenants, conditions and provisions which by their terms survive expiration shall so survive.

B. Termination

This Agreement may be terminated by either party upon 30 days prior written notice to the other, subject to financial obligations then due and owing. Any unearned Program funds including any interest earned thereon shall immediately be returned to the City. Any property purchased by the County with Program funds shall revert to the City if/as required by the Contract Documents.

III. Contract Funds Disbursement

Contract funds may be disbursed to County only in accordance with the Contract Documents and the City approved Scope of Work, Schedule, and Budget attached hereto, provided that in no event shall funding hereunder exceed in the aggregate, the lesser of four hundred eighty-eight thousand dollars ($488,000.00) or City's available and allocated Program funds, as follows:

a. Upon invoice to City and within 30 days thereof, and further provided that the City's receipt of substantiating invoices, accounts, documents and records for each and all preceding disbursement(s) shall all be express condition precedent to any payment obligation by City.

b. Except to the extent expressly provided for herein, all cost/expenses incurred by County shall be the sole responsibility and liability of County.

c. All funds are paid contingent upon County's continuous compliance with all Program requirements.

d. County shall use the Program funds only for the eligible purposes provided for herein.

e. County acknowledges and agrees that the EECBG funding hereunder is subject to the control of the California Energy Commission (CEC) and may be encumbered, withdrawn, or otherwise made unavailable to the City (whether earned or promised to, or by, County). County shall not be paid such funds unless and until they are made available for payment to the City by CEC. No other funds owned or controlled by the City shall be obligated under this Agreement unless specifically approved and permitted by the Fresno City Council. Nothing herein constitutes a pleading or obligating of City funds, its General Fund, or any real and personal property taxes, sales taxes or any other tax revenues.

IV. Administrative Requirements

Without waiving or limiting the Contract Documents, the County shall comply with the following:

a. On-Site Monitoring. Authorized representatives of CEC or the City shall have the right to monitor County's performance under this Agreement. Such monitoring may include inspection activities and review of financial records.

b. Records. County shall maintain all necessary books and records with respect to disbursement of money, to property, and to personnel in accordance with usual and customary business accounting practices. County shall document all expenditures under this Agreement with properly executed payroll, time records, invoices, contracts, vouchers, or other official documentation evidencing the nature and propriety of the charges. All such materials shall be retained by County for a period of not less than five (5) years from termination of this Agreement.

c. Reports. County shall, at such time and in such forms as the Contract Documents, the City or the CEC may require, furnish statements, records, data, copies, and information pertaining to matters covered by this Agreement. The City has the right, upon request, to inspect and copy all County documents and records pertaining to this Agreement.

d. Governmental and Program Compliance. County will be responsible for all aspects of the Governmental and Program compliance and contract award and management including 10 CFR Part 600, including any required advertising for bids, prevailing wage, and procurement guidelines issued under 10 C.F.R. 600.236, and including the federal cross-cut provisions, as applicable, set forth in 10 CFR Part 600, Subpart F, Appendix A, attached hereto as Exhibit E and incorporated herein.

e. Discrimination Prohibited. County agrees to comply with the City's Fair Employment Practices and shall not employ discriminatory practices in the provision of services, employment of personnel, or in any other respect on the basis of race, color, religion, sex, national origin, ancestry, or physical or mental handicapped. More specifically, County agrees as follows:

(1) No person in the United States shall, on the grounds of race, color, religion, national origin, sex or sexual preference, ancestry, or physical or mental handicap be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity made possible by or resulting from this Agreement.

(2) County will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual preference, national origin, ancestry, or physical or mental handicap. County shall take affirmative action to ensure that applicants are employed, and the employees are treated during employment, without regard to their race, color, religion, sex, national origin, ancestry, or physical or mental handicap. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. County agrees to post in conspicuous places available to

employees and applicants for employment, notices setting forth the provision of this nondiscrimination clause.

(3) County will, in all solicitation or advertisements for employees placed by or on behalf of County, state all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual preference, national origin, ancestry or physical or mental handicap.

(4) County will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice advising such labor union or workers' representatives of County's commitment under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

f. County Certification.

(1) County certifies to the best of its knowledge and belief that no federally appropriated funds have been paid or will be paid by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, or a member of Congress, or an officer or employee of Congress, or an employee of a member of Congress, in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, or the extension, continuation, renewal, amendment or modification or any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than federally appropriated funds have been paid or will be paid to a person for influencing an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, County shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) County shall require that the language of the above certification be included in the documents for all subrecipient tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

(4) This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this Agreement.

V. Notice

All notices, requests, determinations, or other correspondence required or allowed by law of this Agreement to be provided by the parties shall be in writing and shall be

deemed given four (4) days following deposit in first-class mail postage prepaid (or upon receipt if personally delivered) at the following addresses:

TO CITY:

Joseph Oldham, Sustainability Manager
Sustainable Fresno Division
City of Fresno Development and Resource Management Department
2600 Fresno Street, Room 3065
Fresno, CA 93721-3604

TO COUNTY:

Jeanette Ishii, Economic Development Coordinator
Economic Development Unit
Fresno County Administrative Office
2220 Tulare St., 8th Floor
Fresno, CA 93721

By giving written notice in accordance with this Article V, either party may change its address for purposes of this MOU.

VI. Capacity of Parties

In the performance of their respective obligations hereunder, the parties shall act in an independent capacity and not as an officer, agent, servant, employee, joint venturer, partner, or associate of the other party. Each party shall retain the right to administer this Agreement so as to verify that the other party is performing its obligations in accordance with the terms and conditions hereof. Each party shall comply with all applicable provisions of law and the rules and regulations, if any, of governmental authorities having jurisdiction over the subject matters herein.

VII. Assignment

Neither party shall assign, transfer or sub-contract this Agreement, nor any of its respective rights or duties under this Agreement, without the prior written consent of the other party.

VIII. Amendment

The provisions of this Agreement may be modified only by written amendment signed by the authorized agent of both parties.

IX. Indemnification

A. County shall indemnify, hold harmless and defend City and each of its officers, officials, employees, agents and authorized volunteers from any and all loss,

liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage) incurred by City, County or any other person, and from any and all claims, demands and actions in law or equity (including attorney's fees and litigation expenses), arising or alleged to have arisen directly or indirectly from the negligent or intentional acts or omissions, or willful misconduct of County or any of its officers, officials, employees, agents or authorized volunteers in the performance of this Agreement; provided nothing herein shall constitute a waiver by County of governmental immunities including California Government Code Section 810 et seq.

B. City shall indemnify, hold harmless and defend County and each of its officers, officials, employees, agents and authorized volunteers from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage) incurred by the County, City or any other person, and from any and all claims, demands and actions in law or equity (including attorney's fees and litigation expenses), arising or alleged to have arisen directly or indirectly from the negligent or intentional acts or omissions, or willful misconduct of City or any of its officers, officials, employees, agents or authorized volunteers in the performance of this Agreement; provided nothing herein shall constitute a waiver by City of governmental immunities including California Government Code Section 810 et seq.

C. In the event of concurrent negligence on the part of County or any of its officers, officials, employees, agents or authorized volunteers, and City or any of its officers, officials, employees, agents or authorized volunteers, the liability for any and all such claims, demands and actions in law or equity for such losses, fines, penalties, forfeitures, costs and damages shall be apportioned under the State of California's theory of comparative negligence as presently established or as may be modified hereafter.

D. It is understood and acknowledged by the parties that the provisions of this Article IX shall survive termination or expiration of this Agreement.

X. Insurance

Without limiting the indemnification rights of each party under the immediately preceding Article IX, it is understood and agreed that County and City shall each maintain, at their sole expense, insurance policies or self-insurance programs including, but not limited to, an insurance pooling arrangement and/or Joint Powers Agreement to fund their respective liabilities throughout the term of this Agreement. Coverage shall be provided for general liability, automobile liability, and workers' compensation exposure. Evidence of Insurance, e.g., Certificates of Insurance or other similar documentation, shall not be required of either party under this Agreement.

XI. Certification of Authority

Each individual executing this Agreement in a representative capacity acknowledges that he or she has read and understands the contents of this Agreement and further hereby warrants and represents that he or she is fully authorized to execute this

Agreement on behalf of such party and thereby to bind said party with respect to its performance of the provisions hereof.

XII Extent of Agreement.

Each party acknowledges that they have read and fully understands the contents of this Agreement. This Agreement and the documents and instruments incorporated herein represent the entire and integrated agreement between the parties with respect to the subject matter hereof and supersedes all prior negotiations, representations and agreements, either written or oral.

XIII Precedence of Documents.

In the event of any conflict between the Contract Documents, the body of this Agreement, and any exhibit to this Agreement, the terms and conditions of the Contract Documents shall control and take precedence over the body of this Agreement, and the body of this Agreement shall control and take precedence over the exhibit.

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year set out below.

CITY OF FRESNO

By: _____ _____
Date

Name:
Title:

FRESNO COUNTY

By: Phil Larson 4/5/11
Date

Name: Phil Larson
Title: Chairman, Board of Supervisors

ATTEST:

BERNICE E. SEIDEL, Clerk
Board of Supervisors

By Kelly McCrory
Deputy

CITY OF FRESNO

Rebecca E. Klisch
City Clerk

By: _____
Deputy

Approved as to Form:

James C. Sanchez
City Attorney

By: R 4-13-11
Deputy Coyle

COUNTY OF FRESNO

Attest:

Bernice E. Seidel
Clerk to the Board of Supervisors

By: _____

Reviewed and Recommended for Approval:

John Navarrette
County Administrative Officer

By: _____

Approved as to Legal Form:

Kevin Briggs
County Counsel

By: Susan F. Coberly
Deputy

Approved as to Accounting Form:

Vicki Crow, C.P.A.
Auditor-Controller/Treasurer-Tax Collector

By: _____

Attachments:	Exhibit A	:	Scope of Work
	Exhibit B	:	Schedule
	Exhibit C	:	Budget
	Exhibit D	:	City of Fresno Regional Comprehensive Residential Retrofit Program Policy and Procedures
	Exhibit E	:	Federal Program Cross-Cut Provisions

EXHIBIT A

SCOPE OF WORK

The City of Fresno ("City") will contract with the County of Fresno ("County"), providing specific funding for the following activities and functions:

2.1 Overall Program Development and Management

a. Implementation Plan

Implement the Fresno Regional Comprehensive Residential Retrofit Program ("Program") Implementation Plan as it relates to the territory within the County but outside the City ("Project Area").

b. Partnership Management

- Provide partner coordination (point person to work with partners and ensure smooth relationships, positive progress, issue resolution)
- Track and report performance, accomplishments, milestones, and deliverables produced by Program partners and subcontractors within Fresno County
- Monitor the implementation status of the Program within Fresno County and report in monthly progress reports
- Coordinate training schedules and workforce deployment within Fresno County and report in monthly progress reports

c. Program Accounting and Reporting

- Draft comprehensive schedule of reporting requirements and deadlines
- Determine applicability of Davis-Bacon Act ("DBA") to Program participants and ensure compliance as applicable
- Develop accounting templates
- Develop monthly and final accounting reports

d. Risk Management and Deployment Schedule

- Develop monthly risk management reports to identify perceived risks and actions taken (or to be taken) to mitigate these risks and report in monthly progress reports

2.2 Program Assessment and Infrastructure Development

2.2.1 Financing

- Assist the City in identifying and connecting with key financing providers in order to maximize the use of all financing options

2.2.2 Rebates

- Assist the City in identifying all rebates, tax credits or program incentives (including local retail and manufacturers rebates) available to participants in the Project Area and report in monthly progress reports

- Provide the City with information related to changes in available rebates

- Once established, update the Program portion of the County webpage monthly with any changes to available rebates

2.2.3 Free HERS Ratings/Energy Audits (Test-in)

- Assist the City in identifying qualifying local HERS II raters in the Project Area for the purposes of entering into contracts with the City to perform HERS II ratings/energy audits (test-in) for participating homeowners to develop a market for home energy efficiency upgrades in the San Joaquin Valley

- Develop monthly reports of how many homes have been tested, square footage, estimated energy savings per home, what action has been taken since the test-in report (based on permit data) and the amount of any loans in the Project Area

2.3 Workforce Development and Contractor and Rater Training and Support

- Identify and assess training needs for installation contractors and HERS II raters participating in the Program in the Project Area

- Identify existing and applicable training being conducted by the utilities, Green Jobs Training programs, colleges, Workforce Investment Boards, HERS II Providers, BPI Training affiliates or other sources in the Project Area

- Identify training gaps and collaborate with training and workforce providers to fill the gaps, which may include, but not be limited to, production of multi-lingual training videos and hosting of training sessions; collaborate through implementation of MOUs with training providers and Workforce Development organizations

- Provide feedback to workforce development organizations regarding the effectiveness of their respective training programs in meeting the needs of local contractors in the Project Area

- Contact installation contractors and HERS II raters in the Project Area to identify needs for additional training, technical assistance, or small business development support, and ways current training programs can be modified to increase the placement of graduates

2.4 Program Marketing and Communication

2.4.1 Marketing Strategy

- Identify fairs, trade shows, and community events in the Project Area in which to participate

- Assist the City in developing the Program webpage and develop and maintain a webpage on the County website

2.4.2. Marketing Collateral

- Coordinate logo with statewide branding effort in collaboration with the City and the Energy Commission

- Assist the City in developing and printing informational collateral targeted to homeowners (e.g. program fliers, doorknob hangers, yard signs, customer satisfaction surveys, etc.) in Fresno and Kern counties based on input and feedback from local jurisdictions, stakeholders and the San Joaquin Valley Clean Energy Organization ("SJVCEO")

- Assist the City in developing and printing informational collateral targeted to retrofit contractors/HERS II raters (e.g. marketing collateral that can be customized and downloaded from the website, retrofit contractor survey, etc.) in Fresno and Kern counties based on input and feedback from local jurisdictions, stakeholders and the SJVCEO

2.4.3. Marketing Outreach

- Assist the City in identifying entities in the Project Area with existing programs as well as retrofit contractor and community organizations that would be candidates to create partnerships for co-branding

- Coordinate media buys with partners throughout Fresno and Kern counties

- Assist the City in identifying organizations in the Project Area that can perform direct outreach

- Coordinate and organize neighborhood events in the Project Area highlighting the Program

2.5 Testing and Implementation of HERS II Beta Energy Audit Tool

- Create a data management plan that includes methods for handling of confidential or sensitive data

2.6 Program Recruitment

2.6.1. Homeowner Recruitment

- Participate in community events in the Project Area to discuss Program services with residents

- Solicit feedback on Program services in the Project Area including twice-a-year surveys of homeowners that received audits to inquire as to what work was done following the audit

- Provide homeowners in the Project Area with access to all available information on the *Energy Upgrade California* program and utility incentive/rebate programs and how they can use the Program to accomplish proper installation of cost-effective measures

2.6.2. Contractor Recruitment

- Use Program marketing collateral to recruit retrofit contractor participation in Project Area

- Partner with local union or trade groups in the construction industry to promote the Program in the Project Area

- Attend industry events in the Project Area

- Collaborate with existing utility programs available in the Project Area to recruit potential Program retrofit contractors

Exhibit B

COOPERATIVE AGREEMENT

BETWEEN THE

CITY OF FRESNO

AND

THE COUNTY OF FRESNO

REGARDING

SUBCONTRACT OF CALIFORNIA ENERGY COMMISSION EECBG FUNDING

(Comprehensive Residential Building Energy Efficiency Program)

2.1	Program implementation schedule	06/01/2011
	Copies of Contracts with all subcontractors that are receiving ARRA funding, including contribution of leverage funding and/or sub-grants from those subcontractors	07/15/2011
	Program partner tracking and reporting	Monthly
	Implementation status of the FRCRR Program within Fresno County to be included in the monthly progress reports	Monthly
	Coordinated training schedules and workforce deployment within Fresno County, to be included in the monthly progress reports	Monthly
	Schedule of reporting requirements and deadlines	06/01/2011
	Davis-Bacon Act compliance report, if applicable	N/A
	Accounting templates	05/01/2011
	Monthly and final accounting reports	Monthly
	Monthly risk management reporting to identify perceived risks and actions taken (or to be taken) to mitigate these risks, to be included in progress reports	Monthly
2.2.2	List of all rebates in Monthly Progress Reports	Monthly
	Monthly updates of FRCRR Program portion of the Fresno County webpage once established	Monthly
2.2.3	Monthly reporting of how many homes have been tested, square footage, estimated energy savings per home, what action has been taken since the test-in report, amount of loans	Monthly
2.3	List of added training curriculum and resources provided by FRCRR Program and report on how those are being incorporated by local workforce development providers	06/01/2011 for initial list, schedule revisions will be noted in monthly reports
	List of training events hosted by FRCRR Program and/or provided by workforce development providers	06/01/2011 for initial list; schedule revisions will be noted in monthly reports
	Data tracking of the number of contractors by certification type in Fresno county, to be included in the monthly progress reports	Monthly
	Summary of the feedback that is given to workforce development organizations included in monthly progress reports	Monthly

2.4.1	Marketing Strategy Plan to include: o Details of broad-based general campaign in collaboration with the City to inform homeowners of the program o Details of direct community/homeowner outreach	06/01/2011
2.4.2	Program logo to be coordinated with the statewide branding effort in collaboration with the City and the Energy Commission	06/01/2011
	Homeowner collateral o Program fliers (Partner, Events, Neighborhood) o Doorknob hangers o Yard signs o Customer satisfaction survey	08/01/2011
	Contractor/rater collateral o Marketing collateral that can be customized and downloaded from the website o Contractor Survey	08/01/2011
	Program website design	08/01/2011
2.4.3	Summary of all events attended and planned, including pertinent details such as dates and locations, to be included in the monthly progress reports	Monthly
2.5	Data management plan	06/01/2011
2.6.1	Monthly Progress Report will include report of all homeowner recruiting activities	Monthly
	Analysis of reasons why homeowner used or didn't use FRCRR Program services	Monthly
2.6.2	Lists of all participating contractors to be included in the monthly progress reports	Monthly
	Contractor recruitment activity report to be included in the monthly progress reports	Monthly

Exhibit C

COOPERATIVE AGREEMENT

BETWEEN THE

CITY OF FRESNO

AND

THE COUNTY OF FRESNO

REGARDING

SUBCONTRACT OF CALIFORNIA ENERGY COMMISSION EECBG FUNDING

(Comprehensive Residential Building Energy Efficiency Program)

Budget for ARRA Reimbursement to Major Subcontractor #2		Personnel Services		Project Operating Expenses					Indirect Costs			ARRA Reimb.Task Costs for Sub #2
County of Fresno		Direct Labor	Fringe Benefits	Materials	Equipment	Travel	Misc.	Sub-contractors	Indirect Overhead	G&A	Profit [1]	
1.0	**Project Administration Activities**											
	Administration Activities Subtotals	0	0	0	0	0	0		0	0	0	0
	Project Technical Activities (Delete or add rows as necessary)											
2.1	**Overall Program Development and Management**	6,620	2,015						660			9,295
2.2	Program Assessment and Infrastructure Development	6,620	2,015						660			9,295
2.3	**Workforce Development and Contractor and Rater Training and Support**	73,165	41,705			8,750			7,315			130,935
2.4	**Program Marketing and Communication**	14,940	6,175	75,815			9,755		1,495			108,180
2.5	**Testing and Implementation of HERS II beta energy audit tool**	18,290	10,425						1,830			30,545
2.6	**Program Recruitment**	107,400	55,360			26,250			10,740			199,750
	Technical Activities Subtotals	227,035	117,695	75,815	0	35,000	9,755	0	22,700	0	0	488,000

Major Subcontractor #2	Direct Labor	Fringe Benefits	Materials	Equipment	Travel	Misc.	Minor Subcon-tractors	Indirect Overhead	G&A	Profit	Major Sub #2 ARRA Reimburs-able Cost
ARRA Reimbursable Totals	227,035	117,695	75,815	0	35,000	9,755	0	22,700	0	0	488,000
Percent of the Total	47%	24%	16%	0%	7%	2%	0%	5%	0%	0%	100%
						Total project expenses =	120,570		Total overhead & profit =	22,700	

EXHIBIT D

FRCRR Program Policy and Procedures

1. CONTRACT MANAGEMENT

A. The County of Fresno's (County) Project Manager is responsible for the day-to-day project status, decisions, and communications with the City of Fresno's (City) Contract Manager. The County may change its Project Manager by giving written notice to the City, but the City reserves the right to approve any substitution of the County Project Manager.

B. The City may change its Contract Manager at any time by giving written notice to the County. The City's Contract Officer will sign the written notice.

C. City staff may work side by side with the County's staff, to the extent and under conditions that may be directed by the City's Contract Manager. In this connection, the City staff will be given access to all data, working papers, etc., that the County may seek to utilize.

D. The County will not be permitted to utilize City personnel for the performance of services that are the County's responsibility, unless the City's Contract Manager agrees to such utilization in writing and an appropriate adjustment in price is made. No charge will be made to the County for the services of City employees while performing, coordinating or monitoring functions.

2. STANDARD OF PERFORMANCE

The County shall be responsible in the performance of it and its sub-awardee and vendor's work under this Agreement for exercising the degree of skill and care required by customarily accepted good professional practices and procedures. Any costs for failure to meet these standards, or otherwise defective services, which require reperformance, as directed by City Contract Manager or its designee, shall be borne in total by the County/sub-awardee/vendor and not the City of Fresno. In the event the County/sub-awardee/vendor fails to perform in accordance with the above standard, the following will apply. Nothing contained in this section is intended to limit any of the rights or remedies that the City may have under law.

A. The County/sub-awardee/vendor will re-perform, at its own expense, any task that was not performed to the reasonable satisfaction of the City Contract Manager. Any work reperformed pursuant to this paragraph shall be completed within the time limitations originally set forth for the specific task involved. The County/sub-awardee/vendor shall work any overtime required to meet the deadline for the task at no additional cost to the City.

B. The City shall provide a new schedule for the reperformance of any task pursuant to this paragraph in the event that reperformance of a task within the original time limitations is not feasible.

C. If the City directs the County not to reperform a task, the City Contract Manager and County shall negotiate a reasonable settlement for satisfactory services rendered.

3. **PROCUREMENT**

When procuring property and services with funds awarded under this Agreement, the County and sub-awardees shall follow the following procurement policies and procedures of 10 Code of Federal Regulations (CFR) Part 600: DOE Financial Assistance Regulations (http://ecfr.gpoaccess.gov), which are incorporated by reference:

A. State governments shall follow the same policies and procedures they use for procurements from their non-Federal funds.

B. Local governments shall follow 10 CFR Section 600.236(b) through (i). Procurement for all other services or goods shall be consistent with the requirements for competitive bid as provided in 10 CFR Section 600.236(b) through (i).

C. Institutions of higher education, hospitals, and other nonprofit organizations shall follow 10 CFR Sections 600.140 through 600.149.

D. For-profit organizations shall follow 10 CFR Section 600.331.

4. **SUBAWARDS**

The County shall enter into agreements with the following firms and/or individuals, and shall manage their performance.

Printing Companies, Marketing Firms, Media and any other entities as necessary pursuant to this Agreement.

A. Nothing contained in this Agreement or otherwise, shall create any contractual relationship between the City and any sub-awardees or vendors, and no sub-award shall relieve the County of its responsibilities and obligations under this Agreement. The County agrees to be as fully responsible to the City for the acts and omissions of its subawardees or vendors and/or persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by the County. The County's obligation to pay its subawardees or vendors is an independent obligation from the City's obligation to make payments to the County. As a result, the City shall have no obligation to pay or to enforce the payment of any monies to any sub-awardee or vendor.

B. The County shall be responsible for establishing and maintaining contractual agreements with and the reimbursement of each of the subawardees or vendors for work performed in accordance with the terms of this Agreement. The County shall be responsible for: (1) scheduling and assigning subawardees or vendors to specific tasks in the manner described in this Agreement; (2) coordinating sub-awardee or vendor accessibility to City staff; and (3) submitting completed products to the City Contract Manager.

C. Required Sub-award Provisions

All subawards shall contain the following:

1) The provisions of California Energy Commission Contract #400-09-032 Exhibit E. Vendor subawards must contain the provisions in California Energy Commission Contract #400-09-032 Attachment 7 of Exhibit E (Exhibit E Vendor Flow-Down Provisions).

2) The provisions required by 10 CFR Section 600.236(i).

3) The "Recordkeeping and Inspection of Records" paragraph of this Exhibit (Exhibit D).

4) A provision that further assignments shall not be made to any third or subsequent tier sub-awardee without additional written consent of the City Contract Manager.

5) The confidentiality provisions in the "Reports" paragraph of this Exhibit (Exhibit D).

6) The audit rights, indemnification, and non-discrimination provisions stated in Section 4 Administrative Requirements and Section 9 Indemnification.

7) If applicable, a provision that directs subawardees to submit copies of executed subawards and applicable prevailing wage determinations to the County Project Manager, pursuant to the "Sub-award Documentation" paragraph of this Exhibit (Exhibit D).

8) If applicable, a provision that the City must approve of executed subawards and prevailing wage determinations prior to the commencement of any work under a sub-award, pursuant to the "Sub-award Documentation" paragraph of this Exhibit (Exhibit D).

D. Prevailing Wages

1) The County must ensure that any subawardees or vendors under this Agreement are paid in compliance with federal prevailing wage law as provided in Paragraph 2.M of California Energy Commission Contract #400-09-032 Exhibit E ("Davis-Bacon Act and Contract Work Hours and Safety Standards Act"), and with state prevailing wage law as provided below. When advertising for a public contract opportunity, the County and its sub-awardees or vendors must attach the applicable wage determinations to the solicitation, assistance agreement, and resulting contract or grant.

2) The County agrees to pay not less than the specified general prevailing wage rates to all workers employed in the execution of the contract subject to the requirements of California Labor Code Section 1770 et seq. The County is responsible for ascertaining and complying with all current general prevailing wage requirements and rates for crafts and any rate changes that occur during the life of the contract. Information on all prevailing wage rates and all rate changes are to be posted at the job site for all workers to view. The County is further responsible to keep accurate payroll records and comply with all other administrative requirements provided in the California Labor Code.

3) The City is directed to include the provisions regarding prevailing wage in this Exhibit D and in California Energy Commission Contract # 400-09-032 Exhibit E by the terms of the federal award. However, as provided in the Scope of Work in Exhibit A, no funds under this Agreement are used to fund or subsidize activities or other work considered to be labor or construction within the meaning of Section 1606 of ARRA. Therefore, it is acknowledged that County and its sub-awardees or vendors do not need to apply these prevailing wage provisions to their activities funded by this Agreement. This exemption from the Davis-Bacon Act is limited to this Agreement due to the particular Scope of Work in this Agreement; County may be subject to federal or state wage requirements according to the law applicable to other funds used for such labor or construction.

E. Sub-award Documentation

1) Subawards and Prevailing Wage Determinations

(a) The County must submit the following to the City Contract Manager within thirty (30) days or less of execution of any sub-award under this Agreement:

(1) The complete, executed sub-award; and
(2) The applicable wage determinations for all labor and mechanic work to be performed under the sub-award.

The City must approve the executed sub-award and applicable wage determinations prior to the commencement of any work under the sub-award. Execution of this Agreement does not constitute the City's approval of prevailing wage rates identified by the County prior to execution of the Agreement. The City will review executed sub-awards and prevailing wage determinations after this Agreement has been approved and executed. Installation costs incurred by the County prior to the City's approval of the sub-award and wage determinations are not reimbursable under this Agreement.

(b) The County must include provisions in all sub-awards that:

(1) Direct its subawardees to submit copies of executed sub-awards and applicable wage determinations to the County Project Manager; and

(2) State that the City of Fresno must approve the executed sub-awards and applicable wage determinations prior to the commencement of any work under the sub-award.

(c) The requirements specified in (a) and (b) above apply to sub-awards funded in whole or in part with cost share funds, where the purpose of such sub-awards is to carry out or support any portion of this Agreement.

2) Certified Payrolls

The County must submit to the City on a weekly basis a copy of all certified payrolls prepared in accordance with 29 CFR Section 5.5 (a)(3)(ii) for all subawardees that are subject to the Davis-Bacon Act. See Paragraph 2.M of California Energy Commission Contract #400-09-032 Exhibit E, "Davis-Bacon Act and Contract Work Hours and Safety Standards Act."

3) Solicitations and Proposals/Bids

The County shall maintain the following sub-award documentation and provide it to the City Contract Manager or Contract Officer, upon request:

(a) All solicitations for services or products required to carry out the terms of this Agreement.

(b) Copies of solicitation proposals or bids received.

(c) *If the County has issued a noncompetitive proposal*, justification and cost analysis for noncompetitive proposals in accordance with 10 CFR Section 600.236(d)(4) specifying why competitive

procurement was infeasible and which of the following circumstances applies:

(1) The item is available only from a single source;
(2) The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;
(3) The U.S. Department of Energy authorizes noncompetitive proposals; or
(4) After solicitation of a number of sources, competition is determined inadequate.

F. Assignment of Sub-awards

The County shall not allow any sub-awardees or vendors to assign any portion of a sub-award related to this Agreement to a third party or subsequent tier subawardees or vendors without first obtaining the written consent of the City Contract Manager and following the procedures below in the "Process for Additions, Removal or Substitutions of Subawardees or Vendors" paragraph of this Exhibit.

G. Bureau of State Audits

All sub-awards entered into pursuant to this Agreement shall be subject to examination and audit by the California Bureau of State Audits for a period of three (3) years after final payment under the Agreement.

H. Notification of Sub-award Termination

Upon the termination of any sub-award, the County shall notify the City Contract Manager and Contract Officer immediately in writing.

I. Process for Offering Work; Process for Adding or Substituting People Listed in the Agreement

If the City or County requires the replacement or substitution of a person listed in the Agreement to provide a particular service, or requires that a new person is added, the County shall:

1) First offer the work to qualified persons already listed in this Agreement (either an employee of the County or a sub-awardee or vendor).

2) If there is no available person listed in this Agreement who can perform the work, then the County shall provide documentation from all the persons who were offered and declined the work to the City Contract Manager. Then, the County may request to add a new person to the Agreement. A person added to the Agreement is thereafter treated as a person listed in this Agreement and can be offered future work without first offering it to originally listed people.

3) If the person added is an employee of the County or an existing sub-awardee or vendor, the County shall provide the added employee's pay rate, classification and resume to the City Contract Manager, and the City Contract Manager may approve the new person and rate. The City Contract Manager approval is only valid if made in writing. In addition, any added person must fit within a classification and corresponding rate already listed in the Agreement. Adding classifications and/or higher rates requires a formal amendment and cannot be accomplished through this process.

4) If the person to be replaced or substituted was identified in the Agreement as a Disabled Veteran Business Enterprise (DVBE) firm, refer to the "Disabled Veteran Business Enterprise (DVBE) Requirements" paragraph below for changes to DVBEs.

5) If the person added is a new sub-awardee or vendor, the County shall use the process outlined below.

J. Process for Additions, Removal or Substitutions of Sub-awardees or Vendors

The City reserves the right to replace a sub-awardee or vendor, request additional sub-awardees or vendors, and approve additional sub-awardees or vendors requested by the County. Such changes shall be subject to the following conditions:

1) If the City or County requires the replacement, substitution or addition of a sub-awardee or vendor, the sub-awardee or vendor shall be selected using either: (a) A competitive bid process with written evaluation criteria by obtaining three (3) or more bids and advertising the work to a suitable pool of sub-awardees or vendors including without limitation: California Contracts Register; the County's mailing lists; mass media; professional papers or journals; posting on websites; and telephone or email solicitations; or (b) Non-competitive bid (sole source) process with a specific sub-awardee or vendor.

2) The County may also need to comply with Disabled Veteran Business Enterprise requirements for the proposed subawardees or vendors.

3) When a sub-awardee or vendor is proposed to be added, under either a competitive or non-competitive process, the County Project Manager shall complete and submit to the City Contracts Officer a "Sub-awardee or Vendor Add" form. This form identifies the new sub-awardee or vendor, resumes, what bidding method was used to obtain the sub-awardee or vendor (competitive or non-competitive), and rates. The proposed sub-award can be executed only after the City Contract Officer approves the "Sub-awardee or Vendor Add" form.

K. Separation of Duties from Monitoring, Verification, and Evaluation Contractor

The California Energy Commission has retained KEMA Inc. to serve as the monitoring, verification, and evaluation (MV&E) contractor for all of the California Energy Commission's ARRA-funded projects, including projects funded through contracts, grants, or loans under the State Energy Program, the Energy Efficiency and Conservation Block Grant Program, the State Energy Efficient Appliance Rebate Program, and the Energy Assurance Planning Program. In order to achieve the California Energy Commission's policy requiring separation of duties between the MV&E contractor and any projects that it evaluates, the County is prohibited from including KEMA Inc. or its subsidiary known as KEMA Services Inc. as a participant in this project, where KEMA Inc. or KEMA Services Inc. are paid either from funds of this Agreement as a sub-awardee or from other funds the County has included as cost share to achieve the objectives of this Agreement.

5. DISABLED VETERAN BUSINESS ENTERPRISE (DVBE) REQUIREMENTS

A. Reporting

If the County made a commitment to achieve DVBE participation for this Agreement, the County must within sixty (60) days of receiving final payment under this Agreement, certify in a report to the City Contract Officer: (1) the total amount the County received under this Agreement; (2) the name and address of the DVBE(s) that participated in the performance of the Agreement; (3) the amount each DVBE received from the County; (4) that all payments under the Agreement have been made to the DVBE(s); and (5) the actual percentage of DVBE participation that was achieved. Pursuant to California Military and Veterans Code Section 999.5(d), a person or entity that knowingly provides false information shall be subject to a civil penalty for each violation.

B. Substitution of DVBE

The County shall use each DVBE identified in its proposal or listed in this Agreement. The County understands and agrees that if DVBEs were identified in its proposal or listed in this Agreement, award of this Agreement is based in part on its commitment to use the DVBE subcontractor(s). If the County believes an identified DVBE must be replaced or substituted, the County shall inform the City Contract Manager and Contract Officer in writing of the reason for the DVBE replacement. Pursuant to California Military and Veterans Code Section 999.5 (e), a DVBE subcontractor may only be replaced by another DVBE subcontractor and must be approved by the California Department of General Services. The County shall complete revised DVBE certification forms (provided by the City Contract Officer) identifying the new DVBE.

C. Amendment

This Agreement shall be amended if: a DVBE must be substituted and City has given approval; or there are changes to the scope of work that impact the DVBE subcontractor(s) identified in the proposal or listed in this Agreement.

D. Grounds for Termination; Damages; Penalties

Failure of the County to seek substitution and adhere to the DVBE participation level identified in the proposal or listed in this Agreement may be cause for: (1) termination of this Agreement; (2) recovery of damages under rights and remedies due to the State; and (3) penalties as outlined in California Military and Veterans Code Section 999.9 and California Public Contract Code Section 10115.10.

6. RECORDKEEPING AND INSPECTION OF RECORDS

The County shall retain backup source documentation for audit purposes, and make the documentation available to the City, the State, and the Federal government upon request. In accordance with 10 CFR Part 600, the County's accounting records must be supported by documentation that includes but is not limited to cancelled checks, paid bills, payrolls, time and attendance records, and contract and sub-grant award documents. Pursuant to 10 CFR Section 600.242, the County agrees to maintain records that directly pertain to, and involve transactions relating to, this Agreement for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated. The County shall include appropriate provisions in each of its subawards to secure adequate backup documentation to verify all sub-awardee and vendor services and expenses invoiced for payment under this Agreement.

In accordance with Sections 902, 1514 and 1515 of the American Recovery and Reinvestment Act of 2009 (ARRA), the County agrees that it shall permit the State of California, the United States Comptroller General or his representative, or the appropriate Inspector General appointed under Section 3 or 8G of the United States Inspector General Act of 1978 or his representative to: (1) examine any records that directly pertain to, and involve transactions relating to, this Agreement; and (2) interview any officer or employee of the County or any of its sub-awardees or vendors regarding the activities funded with funds appropriated or otherwise made available by ARRA. The County shall include this provision in all of its agreements with its sub-awardees, and vendors from whom it acquires goods or services in its execution of ARRA-funded work.

7. REPORTS

A. **Federal Reporting Requirements:** The County shall submit progress reports to the City of Fresno in accordance with Exhibit A and Contract # 400-09-032 Exhibit E.

B. **Additional Reporting Requirements:**

1) **Progress Reports**: The County shall prepare progress reports summarizing all activities conducted by the County to date on a schedule as provided in Exhibit B.

2) **Title:** The County's name shall only appear on the cover and title page of reports as follows:

   County of Fresno
   Project Title
   Contractor Number
   By (Contractor)

3) **Ownership**: Each report shall become the property of the City of Fresno.

4) **Non-disclosure**: The County will not disclose data or disseminate the contents of any progress report without written permission of the City Contract Manager, except as provided in 6, below. Permission to disclose information on one occasion or at public hearings held by the City of Fresno relating to the same shall not authorize the County to further disclose and disseminate the information on any other occasion. The County will not comment publicly to the press or any other media regarding its report, or the City's actions on the same, except to City staff, the County's own personnel involved in the performance of this Contract, or at a public hearing, or in response to questions from a legislative committee. Notwithstanding the foregoing, in the event any public statement is made by the City or any other party, based on information received from the City as to the role of the County or the content of any preliminary or final draft progress report, the County may, if it believes the statement to be incorrect, state publicly what it believes is correct.

5) **Confidentiality:** Neither the County, its employees, or any tier of subawardees may disclose any record that has been designated as confidential or is the subject of a pending application of confidentiality, except as provided in 20 California Code of Regulations (CCR), Sections 2506 and 2507, unless disclosure is ordered by a court of competent jurisdiction (20 CCR Sections 2501, et seq.). At the election of the County Project Manager, the County's employees, and any sub-awardee shall execute a "Confidentiality Agreement," supplied by the County Project Manager. Each sub-award shall contain provisions similar to the foregoing related to the confidentiality and nondisclosure of data.

6) **Disclosure**: Ninety (90) days after any document submitted by the County is deemed by the California Energy Commission to be a part of the public

records of the State, the County may, if it wishes to do so at its own expense, publish or utilize a report or written document but shall include the following acknowledgement and disclaimer:

"This material is based upon work supported by the City of Fresno, the California Energy Commission and the U.S. Department of Energy under Award Number(s) DE-EE0000905."

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

8. **PURCHASE OF EQUIPMENT**

A. Equipment identified in this Agreement is approved for purchase.

B. Equipment not identified in this Agreement shall be subject to prior written approval from the City Contract Manager.

C. All equipment purchased with Federal funds shall be subject to the provisions of Title 10 CFR Part 600.

D. All equipment purchased with City funds shall be subject to the following terms and conditions:

1) Title to all non-expendable equipment purchased in whole or in part with City funds shall remain with the City. Non-expendable equipment is defined in accordance with Section 7.29 of the California State Contract Manual as items of equipment that have a normal life expectancy of one year or more and an approximate unit price of $5,000 or more.

2) The County shall maintain an inventory record of each piece of non-expendable equipment purchased or built with City funds. The inventory record shall include the date the equipment was acquired, total cost, serial number, model identification, and any other information or description necessary to identify the equipment.

3) The County shall assume all risk for maintenance, repair, destruction and damage to equipment while in the County's possession or subject to its control. The County is not expected to repair or replace equipment that is intended to undergo significant modification or testing to the point of damage/destruction as part of the work described in Exhibit A, Scope of Work.

E. Upon termination or completion of this Agreement, the City Manager, or designee, may:

1) Authorize the continued use of such equipment.

2) By mutual agreement with the County, allow the County to purchase equipment for an amount not to exceed the residual value of the equipment as of the date of termination or completion of this Agreement.

3) Request delivery of the equipment to the City of Fresno, with any costs incurred for such return to be borne by the City of Fresno.

9. **INTELLECTUAL PROPERTY RIGHTS OF PARTIES**

If intellectual property will be used or developed under this Agreement, the following provisions apply.

A. California Energy Commission Contract # 400-09-032 Exhibit E, Attachment 5 contains the intellectual property rights between the California Energy Commission and the U.S. Department of Energy (DOE), which has funded this Agreement.

B. The County shall obtain the same rights for the City of Fresno, California Energy Commission and DOE from all sub-awardees, vendors, and others who produce copyrightable material, data, works of art, works of fine art or subject inventions under this Agreement. The County shall incorporate these paragraphs, modified appropriately, into its agreements with subawardees and vendors. No sub-award shall be entered into without these rights being assured to the City of Fresno, California Energy Commission and DOE from the sub-awardee or vendor.

C. Rights to DOE

1) The County grants to DOE for all copyrightable work a royalty-free, nonexclusive and irrevocable right to reproduce, publish or otherwise use the work for Federal purposes, and to authorize others to do so.

2) The County acknowledges and agrees that DOE has the right to:
   (a) Obtain, reproduce, publish or otherwise use the data first produced under the Agreement; and
   (b) Authorize others to receive, reproduce, publish, or otherwise use such data for Federal purposes.

D. Rights to California Energy Commission

1) The County grants to the California Energy Commission for all copyrightable material, work of art and original work of authorship first produced, composed or authored in the performance of this Agreement a royalty-free, paid-up, non-exclusive, irrevocable, nontransferable, worldwide license to produce, translate, publish, use, dispose of, reproduce, prepare derivative works based on, distribute copies of, publicly perform, or publicly display a work of art or fine art, and to authorize others to produce, translate, publish, use, dispose of, reproduce, prepare derivative works based on, distribute copies of, publicly perform, or publicly display a work of art or fine art.

2) The County grants to the California Energy Commission a no-cost, nonexclusive, nontransferable, irrevocable license to use or have practiced for or on behalf of the State of California for governmental purposes any subject invention(s) first produced in the performance of this Agreement.

3) The County grants to the California Energy Commission the no-cost use of any technical data first produced or specifically used in the performance of this Agreement.

4) The County grants to the California Energy Commission, for all marks developed and first used under this Agreement, a no-cost, irrevocable license to use the marks for purposes of furthering programs funded under this Agreement or other related or successor programs implemented by the California Energy Commission. For purposes of this paragraph, "marks" include logos, symbols, service marks, trademarks, registered marks, or other indicia of origin, whether or not registered.

E. "Data" as used in this Agreement means recorded information, regardless of form or characteristic, of a scientific or technical nature. It may, for example, document research or experimental, developmental or engineering work, or be usable or be used to define a design or process, or to support a premise or conclusion asserted in any deliverable document required by this Agreement. The data may be graphic or pictorial delineations in media, such as drawings or photographs, data or information, etc. It may be in machine form, such as

punched cards, magnetic tape or computer printouts, or may be retained in computer memory.

F. "Deliverable data" is that data which, under the terms of this Agreement, is required to be delivered to the City and shall belong to the City.

G. "Proprietary data" is such data as the County has identified in a satisfactory manner as being under the County's control prior to commencement of performance of this Agreement, and which the County has reasonably demonstrated as being of a proprietary nature either by reason of copyright, patent or trade secret doctrines in full force and effect at the time when performance of this Contract is commenced. The title to "proprietary data" shall remain with the County throughout the term of this Agreement and thereafter. The extent of the City access to, and the testimony available regarding, the proprietary data shall be limited to that reasonably necessary to demonstrate, in a scientific manner to the satisfaction of scientific persons, the validity of any premise, postulate or conclusion referred to or expressed in any deliverable for this Agreement.

H. "Generated data" is that data, which a County has collected, collated, recorded, deduced, read out or postulated for utilization in the performance of this Agreement. Any electronic data processing program, model or software system developed or substantially modified by the County in the performance of this Agreement at the City's expense, together with complete documentation thereof, shall be treated in the same manner as "generated data." "Generated data" shall be the property of the City, unless and only to the extent that it is specifically provided otherwise in this Agreement.

I. As to "generated data" which is reserved to the County by the express terms hereof, and as to any pre-existing or "proprietary data" which has been utilized to support any premise, postulate or conclusion referred to or expressed in any deliverable hereunder, the County shall preserve the same in a form which may be introduced as evidence in a court of law at the County's own expense for a period of not less than three (3) years after receipt by the California Energy Commission of the Final Report by the City.

J. Before the expiration of the three (3) years, and before changing the form of or destroying any data, the County shall notify the City of any contemplated action and the City may, within thirty (30) days after notification, determine whether it desires the data to be preserved. If the City so elects, the expense of further preserving data shall be paid for by the City of Fresno. The County agrees that the City may at its own expense, have reasonable access to data throughout the time during which data is preserved.

K. The County agrees that it shall not use or allow subcontractors or other third parties to use any deliverable or generated data owned by the City and in the

possession or control of the County, subcontractor, or third party after termination of this Agreement. Neither the County, subcontractors, nor other third parties have a license to use the data after termination of this Agreement. The County, subcontractor, and other third parties may use the data to the same extent as other members of the public if the California Energy Commission makes the data publicly available after termination of this Agreement.

L. The County agrees that it shall return all deliverable and generated data owned by the City to the City within thirty (30) days of termination of this Agreement, including any backup copies of the data. The County shall destroy the data if its return is infeasible. "Destroy" means to physically or electronically eliminate or ruin the data beyond all possible recovery.

Destruction of the data is subject to the City's approval. The County must provide the City written notice of its intent to destroy any deliverable or generated data owned by the City within fifteen (15) days of termination of this Agreement. The notice of intent must identify the data and specify the reason that its return is infeasible. The City will notify the County of its decision regarding destruction of the data within thirty (30) days of receipt of the notice of intent. The County shall provide the City with a written certification of destruction within five (5) days of destruction of the data.

10. RECOGNITION OF ARRA FUNDING

The County shall publicly recognize ARRA as a source of funding for project(s) funded under this Agreement. The City Contract Manager shall provide the County with instructions on how to publicly recognize ARRA funding.

11. "ENERGY UPGRADE CALIFORNIA" IDENTITY MARK AND LOGO

It is important for all ARRA-funded programs administered by the California Energy Commission to provide consistent and clear messaging and branding for the State of California's consumers. A single identifying brand lends authority and reliability to the multiple statewide programs offered by various private and public local, regional, and state entities. The California Energy Commission is implementing a statewide branding effort called "Energy Upgrade California". The branding effort will include development of a statewide ARRA Energy Upgrade California Identity Mark and Logo (Identity Mark/Logo) for use in conjunction with marketing, promotional, and educational materials, and development of a central Energy Upgrade California website portal for purposes of disseminating program information and interconnecting program participants. No portion of any website developed by the County under this Agreement shall overlap, contradict, or supplant any portion of the Energy Upgrade California Program website portal. Energy Upgrade California is being developed in conjunction with the statewide branding efforts of the California Public Utilities Commission.

The County shall participate in the California Energy Commission's statewide branding effort as specified in this section.

A. Identity Mark/Logo

The County shall use the Identity Mark/Logo on all marketing, promotional, and informational materials for programs and projects funded through this Agreement, including any printed or electronic collateral, websites, signage, or clothing.

B. Coordinating Use of Identity Mark/Logo

1) The County shall coordinate its required use of the Identity Mark/Logo with the City and the California Energy Commission before using the Identity Mark/Logo. This coordination may include the County's submission of its proposed marketing, promotional, and informational materials and websites to the City and the California Energy Commission for their review to ensure the Identity Mark/Logo is being used appropriately. If the City or the California Energy Commission require the County to submit such materials and websites for their review, the City will use its best efforts to approve all proposed uses of the Identity Mark/Logo in an expeditious manner. The City or the California Energy Commission may prohibit the County from using the Identity Mark/Logo if any of the proposed uses breach the terms of this Agreement.

2) Upon reasonable prior written notice, the County shall provide the City and the California Energy Commission unrestricted access to view its websites, so the City and the California Energy Commission may review the County's use of the Identity Mark/Logo.

C. Authorized Uses

1) The County may use, reproduce, display, and publish the Identity Mark/Logo only for purposes of marketing or promoting the ARRA-funded program or project(s) funded through this Agreement. The County may not use the Identity Mark/Logo for other purposes. The County may not use any other City or California Energy Commission mark or logo obtained from the either the City of Fresno's or the California Energy Commission's website, promotional materials, or any other source.

2) The County may use, reproduce, and display the Identity Mark/Logo on its website as a link to the California Energy's Commission's website. The County may not use the Identity Mark/Logo to link to any other website.

D. Unauthorized Uses

1) The County may not use the Identity Mark/Logo in a manner that expresses or implies the City's or the California Energy Commission's endorsement, approval, favoring, or sponsorship of the County or its products, services, or websites. Except to identify itself as a contractor of

the City or a subcontractor of the California Energy Commission, the County may not use the Identity Mark/Logo in a manner that implies either the City's or the California Energy Commission's affiliation with the County or its products, services, or websites.

2) The County may not use the Identity Mark/Logo in a manner that suggests the County's products, services, or websites are either the City of Fresno's or the California Energy Commission's products, services, or websites.

3) The County may not use the Identity Mark/Logo in a manner that damages, disparages, or diminishes the City or the California Energy Commission or their ARRA-funded programs or projects, including but not limited to uses that could be deemed obscene or that encourage unlawful activities.

4) The County may not authorize any other party to use the Identity Mark/Logo.

5) The County may not use the Identity Mark/Logo as a feature or design element of any other logo. The County may not use the Identity Mark/Logo in any trademark, service mark, service name, or other indicia of origin.

6) The County may not alter the Identity Mark/Logo in any manner, including proportions, colors, or elements, except as otherwise permitted by the City of Fresno and the California Energy Commission.

7) The County may not use the Identity Mark/Logo on any materials in which the City's and the California Energy Commission's name, logo, or product name does not also appear.

E. Ownership of Identity Mark/Logo

1) As between the City, the California Energy Commission and the County, the California Energy Commission is the exclusive owner of the Identity Mark/Logo. The California Energy Commission retains all rights and title to, and interest in, the Identity Mark/Logo. This Agreement does not transfer to the County, either the City of Fresno's or the California Energy Commission's service marks, copyrights, or other intellectual property interests.

2) The County may not register, adopt, or use any corporate name, trade name, trademark, domain name, service mark, certification mark, or other designation that violates the California Energy Commission's rights in the Identity Mark/Logo.

EXHIBIT E

TITLE 10--ENERGY

CHAPTER II--DEPARTMENT OF ENERGY (CONTINUED)

PART 600_FINANCIAL ASSISTANCE RULES

Subpart F_Eligibility Determination for Certain Financial Assistance Programs_General Statement of Policy

Sec. Appendix A to Part 600--Generally Applicable Requirements

Socioeconomic Policy Requirements

Nondiscrimination in Federally Assisted Programs, 10 CFR part 1040 (45 FR 40514, June 13, 1980), as proposed to be amended by 46 FR 49546 (October 6, 1981).

Nondiscrimination Provisions in Federally Assisted Construction Contracts, Part III of Executive Order 11246 (September 24, 1965), 3 CFR 1964--65 Comp., p. 345.

Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, as amended (42 U.S.C. 4581).

Drug Abuse Office and Treatment Act of 1972, as amended (21 U.S.C. 1174).

Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151 et seq.).

National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 et seq.), 40 CFR part 1500, as implemented by (45 FR 20694, March 28, 1980).

Sec. 306, Clean Air Act, as amended (42 U.S.C. 7606c).

Sec. 508, Federal Water Pollution Control Act of 1972 (33 U.S.C. 1251 et seq.); Executive Order 11738, September 12, 1973.

Title XIV, Public Health Service Act, as amended (42 U.S.C. 300f--et seq.).

Sec. 102(a), Flood Disaster Protection Act of 1973 (Pub. L. 93-234, 87 Stat. 975).

10 CFR part 1022, ``Protection of Wetlands and Floodplains."

Uniform Relocation Assistance and Land Acquisition Policies Act of 1970 (42 U.S.C. 4601 et seq.).

Coastal Zone Management Act of 1972, as amended (16 U.S.C. 1451 et seq.) (15 CFR part 930).

Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.).

Fish and Wildlife Coordination Act (16 U.S.C. 661 et seq.).

Sec. 106, National Historic Preservation Act of 1966, as amended (16

U.S.C. 470f); Executive Order 11593, ``Protection and Enhancement of the Cultural Environment," May 13, 1971, 3 CFR 1971 Comp., p. 154; Archaeological and Historic Preservation Act of 1966 (16 U.S.C. 469 et seq.); Protection of Historic and Cultural Properties, 36 CFR part 800.

Wild and Scenic Rivers Act of 1968, as amended (16 U.S.C. 1271 et seq.).

Protection of Human Subjects, 10 CFR part 745.

Federal Laboratory Animal Welfare Act (7 U.S.C. 2131 et seq.) (9 CFR parts 1, 2, and 3).

Lead-Based Paint Prohibition (42 U.S.C. 4831(b)).

Sec. 7(b), Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e(b)).

Cargo Preference Act of 1954 (46 U.S.C. 1241(b)) (46 CFR Sec. 381.7).

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International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 1517).

Executive Order 12138, ``Creating a National Women's Business Enterprise Policy and Prescribing Arrangements for Developing, Coordinating, and Implementing a National Program for Women's Business Enterprise," (May 18, 1979) 3 CFR 1979 Comp., p. 393.

Sec. 403(b), Power Plant and Industrial Fuel Use Act of 1978, (42 U.S.C. 8373(b)); Executive Order 12185 (December 17, 1979, 3 CFR 1979 Comp., p. 474).

Administrative and Fiscal Policy Requirements

The Hatch Act (5 U.S.C. 1501-1508).

Federal Reports Act, as amended by the Paperwork Reduction Act of 1980, Pub. L. 96-511 (44 U.S.C. 3501 et seq.).

OMB Circular A-111, Jointly Funded Assistance to State and Local Governments and Nonprofit Organizations--Policies and Procedures.

Federal Claims Collection Act of 1966, Pub. L. 89-508, 89 Stat. 309 (31 U.S.C. 951 et seq.).

OMB Circular A-88, Coordinating Indirect Cost Rates and Audit at Educational Institutions.

OMB Circular A-73, Audit of Federal Operations and Programs.

Single Audit Act of 1984, Pub. L. 98-502.

OMB Circular A-128, Audits of State and Local Governments.