

SPECIAL PROVISIONS FOR GRANTS AND CONTRACTS FUNDED WITH FEDERAL STIMULUS MONEY

The following terms should be included in any grant or contract, which is funded in whole or in part with federal money from the American Recovery and Reinvestment Act of 2009. These terms include the terms required for all contracts involving federal funds as listed in the Attorney General's Contract Manual, which can be found at <http://attorneygeneral.wyo.gov/> . Please consult the manual or your assistant attorney general for additional guidance.

- A. **American Recovery and Reinvestment Act of 2009.** The source of payment for this Contract are funds either in whole or part from the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5 (the Act). [Subrecipient/Contractor] agrees to comply with requirements of the Act as necessary, including but without limitation ,the following;
1. **Access to Information.** Pursuant to Sections 902 and 1515 of the Act, [Subrecipient/Contractor] shall permit the Comptroller General and/or the Inspector General of any federal agency through which the Act's funding originated to examine any records of the [Subrecipient/Contractor] or any of its subcontractors, or any State or local agency administering such contract, that directly pertain to, and involve transactions relating to, the contract or subcontract; and to interview any officer or employee of the [Subrecipient/Contractor] or any of its subcontractors, or of any State or local government agency administering the contract, regarding such transactions.
 2. **Limitation on Use of Funds.** Pursuant to Section 1604 of the Act, no funds shall be used for any casino or other gambling establishment, aquarium, zoo, golf course, or swimming pool.
 3. **Buy American.** Pursuant to Section 1605 of the Act, no funds shall be used for the purchase of iron, steel and manufactured goods manufactured outside of the United States for construction, maintenance, repair or alteration of any public building or public works under this Contract, unless an exception to this requirement allows such purchase.
 4. **Wage Rate Requirements.** Pursuant to Section 1606 of the Act, 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 this Act shall be paid wages at rates not less than those prevailing on projects of a

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character similar in the locality as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code.

5. Whistleblower Protection. Pursuant to Section 1533 of the Act, 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 for 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) a 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; or

(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.

6. Registration and Posting Job Openings Requirement. The Contractor shall register, and post all job openings, which result from its work under this Contract, with its local Department of Workforce Services Workforce Center. The Contractor shall also require all Sub-Contractors working under this Contract to register, and post all job openings, which result from work under this Contract, with their local Department of Workforce Services Workforce Center.

B. Kickbacks. [Subrecipient/Contractor] certifies and warrants that no gratuities, kickbacks, or contingency fees were paid in connection with this agreement, nor were any fees, commissions, gifts, or other considerations made contingent upon the award of this agreement. If [Subrecipient/Contractor] breaches or violates this warranty,

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Agency may, at its discretion, terminate this agreement without liability to Agency, or deduct from the agreed upon price or consideration, or otherwise recover, the full amount of any commission, percentage, brokerage, or contingency fee.

[Optional language]: [Include the following language under the Kickbacks provision if, and ONLY if, the contract involves a construction project.] The [Subrecipient/Contractor] shall comply with the Copeland "Anti-Kickback" Act (18 USC 874) as supplemented in the Department of Labor Regulations (29 CFR, Part 3). This Act provides that the [Subrecipient/Contractor] is prohibited from inducing by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he is otherwise entitled.

C. Suspension and Debarment. By signing this agreement, [Subrecipient/Contractor] certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction nor from federal financial or non-financial assistance, nor are any of the participants involved in the execution of this agreement suspended, debarred, or voluntarily excluded by any federal department or agency in accordance with Executive Order 12549 (Debarment and Suspension) and CFR 44 Part 17, or are on the disbarred vendors list at www.epls.gov. Further, [Subrecipient/Contractor] agrees to notify Agency by certified mail should it or any of its agents become debarred, suspended, or voluntarily excluded during the term of this agreement.

NOTE: [We recommend that each department review their outstanding contracts and sub-recipient agreements to determine if the suspension and debarment clause is included. If the contract/agreement does not include the clause, they should check the *Excluded Parties Listing System* (<http://epls.arnet.gov/>) and document the results of their search.]

D. Nondiscrimination. The [Subrecipient/Contractor] shall comply with the Civil Rights Act of 1964, the Wyoming Fair Employment Practices Act (Wyo. Stat. § 27-9-105 et seq.), the Americans With Disabilities Act (ADA), 42 U.S.C. § 12101, et seq., and the Age Discrimination Act of 1975 and/or any properly promulgated rules and regulations thereto and shall not discriminate against any individual on the grounds of age, sex, color, race, religion, national origin, or disability in connection with the performance under this agreement.

[Optional language:] [Use the following only if subcontracts are permitted under the agreement.] Federal law requires the [Subrecipient/Contractor] to include all Special Conditions for ARRA fund contracts

relevant special provisions of this agreement in every subcontract awarded over Ten Thousand Dollars (\$10,000.00) so that such provisions are binding on each subcontractor.

- E. Monitoring Activities.** Agency shall have the right to monitor all activities related to this agreement that are performed by [Subrecipient/Contractor] or its subcontractors. This shall include, but not be limited to, the right to make site inspections at any time and with reasonable notice; to bring experts and consultants on site to examine or evaluate completed work or work in progress; to examine the books, ledgers, documents, papers, and records pertinent to this agreement; and, to observe personnel in every phase of performance of the related work.
- F. Limitations on Lobbying Activities.** By signing this agreement, [Subrecipient/Contractor] certifies and agrees that, in accordance with P.L. 101-121, payments made from a federal grant shall not be utilized by [Subrecipient/Contractor] or its subcontractors in connection with lobbying Congressmen, or any other federal agency in connection with the award of a federal grant, contract, cooperative agreement, or loan.
- [Optional language]: [Used primarily in construction contracts.]*
[Subrecipient/Contractor] and subcontractors may also be required to submit an additional certification statement and disclosure form acceptable to the Agency before commencement of the work.
- G. Assumption of Risk.** The [Subrecipient/Contractor] shall assume the risk of any loss of state or federal funding, either administrative or program dollars, due to its failure to comply with state or federal requirements. The Agency shall notify the [Subrecipient/Contractor] of any state or federal determination of noncompliance.
- H. Publicity.** Any publicity given to the program or services provided herein, including, but not limited to, notices, information, pamphlets, press releases, research, reports, signs, and similar public notices prepared by or for [Subrecipient/Contractor] and related to the services and work to be performed under this agreement, shall identify [Agency Name and/or Federal Agency Name] as the sponsoring agency and shall not be released without prior written approval of Agency.
- I. Environmental Policy Acts.** [Subrecipient/Contractor] agrees all activities under this agreement will comply with the Clean Air Act, the Clean Water Act, the National

Environmental Policy Act, and other related provisions of federal environmental protection laws, rules or regulations.

- J. Federal Audit Requirements.** [This provision must be included in grant awards only.] Subrecipient agrees that if it expends an aggregate amount of \$500,000 or more in federal funds during its fiscal year, it must undergo an organization-wide financial and compliance single audit. Subrecipient agrees to comply with the audit requirements of the U.S. General Accounting Office Government Auditing Standards and OMB Circular A-133, Audits of States, Local Governments, and Non-Profit Organizations. If findings are made which cover any part of this Grant, Subrecipient shall provide one (1) copy of the audit report to Agency and require the release of the audit report by its auditor be held until adjusting entries are disclosed and made to Agency's records.
- K. Non-Supplanting Certification.** [This provision must be included in grant awards only.] Subrecipient hereby affirms that federal grant funds will be used to supplement existing funds, and will not replace (supplant) funds that have been appropriated for the same purpose. Subrecipient should be able to document that any reduction in non-federal resources occurred for reasons other than the receipt or expected receipt of federal funds under this agreement.
- L. Program Income.** [This provision must be included in grant awards only.] Subrecipient shall not deposit grant funds in an interest bearing account without prior approval of Agency. Any income attributable to the grant funds distributed under this agreement must be used to increase the scope of the program or returned to Agency.
- M. Copyright License and Patent Rights.** [This provision must be included in grant awards only.] Subrecipient acknowledges that [Federal Agency Name], the State of Wyoming, and Agency reserve a royalty-free, non-exclusive, unlimited, and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for federal and state government purposes: (1) the copyright in any work developed under this agreement; and (2) any rights of copyright to which Subrecipient purchases ownership using funds awarded under this agreement. Subrecipient must consult with Agency regarding any patent rights that arise from, or are purchased with, funds awarded under this agreement.
- N. Administration of Federal Funds.** [This provision must be included in grant awards only.] Subrecipient agrees its use of the funds awarded herein is subject to the
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Uniform Administrative Requirements of OMB Circulars A-102 and/or 2 C.F.R. Part 215; the cost principles set forth in OMB Circulars A-21, A-87 or A-122 and 48 C.F.R. Part 31; the audit requirements of OMB Circular A-133; and all applicable regulations published in the Code of Federal Regulations or other program guidance as provided to it by Agency.

O. Human Trafficking. As required by 22 U.S.C. 7104(g) and 2 C.F.R. Part 175, this agreement may be terminated without penalty if a private entity that receives funds under this agreement:

- (a) Engages in severe forms of trafficking in persons during the period of time that the award is in effect;
- (b) Procures a commercial sex act during the period of time that the award is in effect; or
- (c) Uses forced labor in the performance of the award or subawards under the award.