



PART II - GENERAL TERMS AND CONDITIONS

1. PAYMENT OF REAP FUNDS

- A. The Oklahoma Department of Commerce agrees to pay to the Contractor, pursuant to 62 O.S. § 2011(C), an initial payment of not to exceed five percent (5%) of the Rural Economic Action Plan (REAP) funds contained in the account established for the Contractor by 62 O.S. § 2006, to which an appropriation has been made and recorded in Senate Bill No. 1866, of the Second Regular Session of the 51st Oklahoma Legislature.
- B. Contractor agrees to use the above funds for payment or reimbursement of planning expenses of the Contractor incurred in the development of the REAP program within its jurisdiction.
- C. The Oklahoma Department of Commerce (ODOC) and the Contractor mutually agree that these funds shall be construed as an expenditure of public funds in furtherance of governmental functions and for the purpose of conferring general and uniform benefits resulting from the expenditures upon the residents and other legal entities located in areas subject to the jurisdiction of the Contractor.

2. AVAILABILITY OF FUNDS

- A. Payments pursuant to this contract are to be made only from monies made available to ODOC by the State of Oklahoma for the program under which this contract is awarded. Notwithstanding any other provisions, payments to the Contractor by ODOC are subject to the availability of such funds to ODOC as determined by State action and/or law. ODOC may take any action necessary in accordance with such determination.
- B. Funds for this contract are paid to ODOC in equal increments of 1/12th of the contract amount as approved by the Director of State Finance. The funds for this contract are available for disbursement after services are rendered pursuant to 74 O.S. § 85.44B. Claims for funds cannot exceed the actual expenditures or the cumulative 1/12th monthly allocation to date for this contract. Claims exceeding the 1/12th monthly allocation will be rejected by ODOC and returned to the contractor.
- C. ODOC shall have the right to terminate this contract if the Legislature fails to allocate sufficient funds to maintain this contract or, in the alternative, to reduce the compensation clause proportionately to reflect the reduction in funding allocated to this contract.

3. MODIFICATION (AMENDMENT)

- A. This contract is subject to such modification as may be required by federal or State law or regulations. Any such modification may be done unilaterally by ODOC.
- B. Except as otherwise provided in this contract, the work and services to be performed and the total contract amount may be modified only



upon written agreement of the duly authorized representatives of both parties.

- C. Revisions to the contract and the attached budget, which is a part of this contract, must be approved in writing in advance by ODOC.
- D. A waiver by ODOC of any provision of this contract must be in writing and signed by the Director of ODOC or his designee.

4. ODOC

ODOC will provide funding for the project up to the total contract amount.

5. CONTRACTOR

- A. The Contractor will provide the necessary personnel, facilities, supplies, equipment, and/or related resources and skills to accomplish all projects in accordance with the terms and conditions of this contract. The Contractor agrees to perform those duties, obligations and representations contained in this contract, any referenced subcontract and all amendments to this contract and referenced subcontracts submitted to and accepted by ODOC, and to be bound by the provisions of all subcontracts, said subcontracts being incorporated herein and made a part hereof by reference.
- B. All of the work and services required shall be performed by the Contractor or under the Contractor's supervision, and all personnel engaged therein must be fully qualified and authorized under State and local law to perform such work and services.
- C. None of the work and services covered by this contract may be subcontracted without prior written approval of ODOC.
- D. In no event will any subcontract incur obligation on the part of ODOC.

6. SUBCONTRACTOR

Subcontractor must be a county government, an incorporated municipal entity or the Contractor acting as Subcontractor. No other entity may act as a Subcontractor under this agreement.

7. PROJECTS

Once the Council of Government (COG) implements their application process, they will submit to ODOC a list of projects to be funded. Projects listed shall be for economic development purpose described under Section 3 of House Bill 3192, 2008(A). These include, but are not limited to:

- A. Rural water quality project including acquisition, treatment, distribution, and recovery of water for consumption by humans or animals;
- B. Rural solid waste disposal, treatment or similar projects;
- C. Rural sanitary sewer construction or improvement projects;



- D. Rural road or street construction or improvement project;
- E. Provision of rural fire protection services and public safety services;
- F. Expenditures designed to increase the employment level within the jurisdiction of the entity;
- G. Provision of health care services, including emergency medical care, in rural areas;
- H. Construction or improvement of telecommunications facilities or systems;
- I. Improvement of municipal energy distribution systems; and
- J. Community buildings, courthouses, town halls, senior nutrition centers, meeting rooms or similar public facilities.

At least 80% of the project funds shall be expended for items A through F.

Such list shall include descriptions of each project that shall be sufficiently specific to allow an audit of the project. It shall also state the county in which each project will be performed; the Subcontractor for each project; the amount of REAP funds which will be devoted to each project pursuant to this contract, and the amount and character of non-REAP funds devoted to each project, if any. All projects involving construction shall state the public entity that owns the property on which the construction will occur and, if the property is privately owned, the length of the lease, name of the lessor and lessee, and expected life of the project.

8. EMPLOYEE BENEFITS

The Contractor has full responsibility for payment of Workers' Compensation insurance, unemployment insurance, social security, State and federal income tax and any other deductions required by law for its employees.

9. CERTIFICATIONS BY CONTRACTOR

- A. The Contractor expressly agrees to be solely responsible to ensure that the use of monies received under this contract complies with all State statutes and other legal authority, including ODOC policies and procedures that affect the use of said monies. The Contractor recognizes that it is responsible for assuring financial and programmatic compliance by its subcontractors.
- B. The Contractor specifically certifies and assures that:
 - (1) It meets the requirements relating to board composition, i.e., that at least two-thirds (2/3) of the voting membership of the board of the Substate Planning District shall be composed of the elected officials of conservation districts, incorporated towns, cities or counties within the planning jurisdiction or the designees of said officials.



- (2) It will adhere to State regulations pertaining to nondiscrimination.
- (3) It will not compel any county, city or other political subdivision of the State of Oklahoma to be a member of or participate in said Substate District.
- (4) It will maintain fiscal controls and accounting procedures adequate to ensure the proper disbursement and accounting for all funds received pursuant to this program.

C. The Contractor certifies that it is in compliance with O.S. § 1313(B).

10. HOLD HARMLESS CLAUSE

The Contractor shall, within limitations placed on such entities by State law, save harmless the State of Oklahoma, its agents, officers and employees from all claims and actions and all expenses defending same that are brought as a result of any injury or damages sustained by any person or property in consequence of any act or omission by the Contractor. The Contractor shall, within limitations placed on such entities by State law, save harmless the State of Oklahoma, its agents, officers, and employees from any claim or amount recovered as a result of infringement of patent, trademark or copyright or from any claim or amounts arising or recovered under Workers' Compensation Law or any other law. In any agreement with any subcontractor or any agent for the Contractor, the Contractor will specify that such subcontractors or agents shall hold harmless the State of Oklahoma, its agents, officers, and employees for all the hereinbefore-described expenses, claims, actions or amounts recovered.

11. POLITICAL ACTIVITY

- A. No portion of the contract funds may be used for any political activity or to further the election or defeat of any candidate for public office.
- B. No portion of the contract funds may be used for lobbying activities.

12. PAYMENTS TO COMPANIES

- A. No contract funds shall be paid to any corporation, limited liability company, partnership, proprietor or other private entity except for services provided pursuant to an approved contract.
- B. No contract funds shall be loaned to any corporation, limited liability company, partnership, proprietor or the legal entity.

13. NO-CONFLICT COVENANT

The Contractor covenants that no members or employees of any governing board of the Contractor have any interest, direct or indirect, and that none shall acquire any such interest that would conflict with the full and complete execution of this contract. The Contractor further covenants that in the performance of this contract no person having any such interest



will be employed.

14. PUBLICATIONS AND OTHER MATERIALS

- A. No material produced in whole or in part under this contract shall be subject to copyright in the United States or any other country. ODOC shall have unrestricted authority to publish, disclose, distribute and otherwise use, in whole or in part, any reports, data or other materials prepared under this contract.
- B. Any publication or other material produced as a result of this contract shall include in a prominent location near the beginning the following statement:

This (type of material) was financed in whole or in part by funds from the State of Oklahoma as administered by the Oklahoma Department of Commerce.

15. COMPENSATION TO CONTRACTOR (PROJECT FUNDS)

- A. Project funds made available pursuant to this contract shall be used only for expenses incurred during the period funded as specified in this contract for the purposes and activities approved and agreed to by ODOC. No contract funds may be used for expenses incurred either prior to or after the time period specified.
- B. Funds shall be limited to the cumulative amounts based on the 1/12 allocation schedule. Funds provided under this section shall not be used to pay for any administrative/planning expenses of the entity requesting the funds or any Subcontractor, or any expenses of the Contractor or Subcontractor in preparation of this project. This provision shall not apply to funds provided pursuant to 62 O.S. § 2011(C).
- C. If a question arises as to the validity of any claim made under this contract, ODOC may suspend further payments until the question is resolved. The decision of ODOC to allow or disallow any claim shall prevail.

16. TRAVEL AND PER DIEM

No travel related costs, including per diem, shall be paid from these funds.

17. PROCUREMENT

Procurement of goods and services and the management and disposition of personal property acquired with contract funds shall be governed by the principles of the Oklahoma Central Purchasing Act, 74 O.S. 85.1, et seq., and ODOC policy.

18. RECORDS, REPORTS, DOCUMENTATION

- A. The Contractor shall maintain records and accounts, including property, personnel and financial records that properly document and account for all project funds. Some specific types and forms of records may be required by ODOC.



- B. The Contractor shall furnish ODOC with narrative reports, statistical reports and financial reports related to this contract in the forms and at such times as may be required by ODOC.
- C. Section 3 of House Bill 3192, 2008(C) sets forth that an electronic report shall be submitted to ODOC listing projects funded.
- D. The Contractor shall retain all books, documents, papers, records and other materials involving all activities and transactions related to this contract for at least five (5) years from the date of submission of the Final Expenditure Report or until all audit findings have been resolved, whichever is later, or as otherwise required by law. The Contractor shall, as ODOC deems necessary, permit authorized representatives of ODOC and the State of Oklahoma to have full access to and the right to fully examine all such materials.
- E. The Contractor has not paid, given or donated or agreed to pay, give or donate to any officer or employee of the State of Oklahoma any money or other thing of value, either directly or indirectly, in the procuring of this contract.

19. CLOSING OUT OF PERIOD FUNDED

- A. The Contractor shall promptly return to ODOC any funds received under this contract that are not obligated as of the final date of the period funded. Funds shall be considered obligated only if goods and services have been received as of the final date of the period funded.
- B. The Contractor shall submit closeout documents no later than sixty (60) days after the final date of the period funded. Said closeout documents may be accompanied by the Final Expenditure Report.
- C. When actual expenditures total less than the contract amount, the contract will be automatically de-obligated to the actual expenditures as shown in the closeout documents.
- D. Deobligated Rural Economic Action Plan funds amassed by a Contractor may be obligated for any project pre-approved by ODOC upon written notification of such obligation by the Contractor to ODOC. Such funds may be obligated for a new project upon approval of a contract for such project by ODOC.

20. INTEREST

- A. Interest earned on Rural Economic Action Plan funds by the Contractor shall not be used for any project without the written approval of ODOC, nor shall interest on such funds be used for any purpose other than projects approved by ODOC and for payment to the ODOC for any monitoring expense incurred pursuant to 62 O.S. § 2011.
- B. Interest earned by a Contractor on Rural Economic Action Plan funds may be obligated for any project pre-approved by ODOC upon written notification of such obligation by the Contractor to ODOC. Such funds may be obligated for a new project upon approval of a



contract for such project by ODOC.

21. AUDITING, DISALLOWED COSTS

- A. The Contractor shall comply with ODOC's Audit Policies and Audit Procedures, which are incorporated herein and made a part hereof.
- B. The cost of the audit of contract funds may be paid from this contract.
- C. In the event the audit results in the determination that the Contractor has expended contract funds on unallowable costs, the Contractor shall reimburse ODOC in full for all such costs.
- D. The Contractor may obtain and review audits of the Subcontractors to fulfill its responsibility to ensure that all projects funded through Contractor comply with the provisions of this agreement. Such an audit of the project may be performed coincidental to any required annual financial audit of the Subcontractor.
- E. In the alternative, the Contractor may collect documentation on all the projects it funds and have that documentation audited to ensure that those projects have been performed in compliance with the provisions of this contract. Such an audit of those projects may be performed in conjunction with any required annual financial audit of the Contractor.

22. INTERPRETATION, REMEDIES

- A. In the event the parties fail to agree on changes or interpretations of this contract, the decision of ODOC shall prevail.
- B. In the event of any disagreement between the Contractor and ODOC relating to the technical competence of the work and services being performed and its conformity to the requirements of this contract, the decision of ODOC shall prevail.
- C. Neither forbearance nor payment by ODOC shall be construed to constitute waiver of any remedies for any default or breach by the Contractor that exists or occurs later.

23. TERMINATION OR SUSPENSION

- A. This contract may be terminated or suspended in whole or in part at any time by written agreement of the parties.
- B. This contract may be terminated or suspended by ODOC, in whole or in part, for cause, after notice and an opportunity for Contractor to present reasons why such action should not be taken. Procedures for such a process shall be in accordance with the General Rules of Practice and Procedure of the Department. Grounds constituting cause include but are not limited to:
 - (1) Contractor fails to comply with provisions of this contract or with any applicable laws, regulations, guidelines or procedures, including ODOC policies and issuances, or is unduly dilatory in executing its commitments under this contract.



- (2) Purposes for the funds have not been or will not be fulfilled or would be illegal to carry out.
- (3) Contractor has submitted incorrect or incomplete documentation pertaining to this contract.
- (4) The Contractor is unduly dilatory in executing its commitments under a prior contract with ODOC, including, but not limited to, submission of any audits due, resolution of audit findings and monitoring results.

C. In the event of termination or suspension, the Contractor shall be entitled to payment for otherwise valid and allowable obligations incurred in good faith prior to notice of such action and to reimbursement for reasonable and necessary expenses. The Contractor shall reduce to the minimum possible all obligations, prepaid expenses and other costs.

D. The Contractor shall not be relieved of liability to ODOC for damages sustained by ODOC by virtue of any breach of this contract by Contractor. ODOC may withhold payments due under this contract pending resolution of the damages.

24. ENTIRE AGREEMENT

This contract constitutes the entire agreement between the ODOC and is final and complete. No evidence of alleged prior dealings, course of dealing or performance not specifically set out herein shall be deemed in any sense relevant to supply any unexpressed term to supplement or qualify this contract or to add any stipulation or obligation different from or inconsistent with the express provisions of the contract.

25. SEVERABILITY CLAUSE

If any provision under this contract or its application to any person or circumstance is held invalid by any court of competent jurisdiction, such invalidity does not affect any other provision of this contract or its application that can be given effect without the invalid provision or application.