ATTACHMENT 6

SAMPLE TASK ORDERING AGREEMENT NO. KA-3-22374-00**

UNDER

PRIME CONTRACT NO. DE-AC36-08GO28308

CONTRACTING PARTY:	ALLIANCE FOR SUSTAINABLE ENERGY, LLC MANAGEMENT AND OPERATING CONTRACTOR FOR THE NATIONAL RENEWABLE ENERGY LABORATORY (NREL)	
SUBCONTRACTOR: **ADDRESS:**		
TASK ORDERING AGREEMENT TITLE:	"MINOR CONSTRUCTION SERVICES"	
TYPE OF SUBCONTRACT:	FIRM FIXED PRICE – CONSTRUCTION TASK ORDERING AGREEMENT WITH OPTIONS	
PERIOD OF PERFORMANCE:	BASIC:	EXECUTION THROUGH 12 MONTHS
	OPTION I:	MONTH 13 THROUGH MONTH 24 (IF EXERCISED)
	OPTION II:	MONTH 25 THROUGH MONTH 36 (IF EXERCISED)
	OPTION III:	MONTH 37 THROUGH MONTH 48 (IF EXERCISED)
	OPTION IV:	MONTH 49 THROUGH MONTH 60 (IF EXERCISED)
NOT-TO-EXCEED AMOUNT FOR TASK ORDERING AGREEMENT:	BASIC:	$ 900,000.00
	OPTION I:	$ 900,000.00 (IF EXERCISED)
	OPTION II:	$ 900,000.00 (IF EXERCISED)
	OPTION III:	$ 900,000.00 (IF EXERCISED)
	OPTION IV:	$ 900,000.00 (IF EXERCISED)
	TOTAL	$ 4,500,000.00
PAYMENT TERMS:	NET 30	
SUBCONTRACTOR'S REMITTANCE NAME AND ADDRESS:	*****	
FUNDED AMOUNT AND TASK CHARGE NUMBER:	$0.00 – TO BE DESIGNATED ON INDIVIDUAL TASK ORDER(S)	

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TASK ORDERING AGREEMENT NO. KA-3-22374-00**

BETWEEN

ALLIANCE FOR SUSTAINABLE ENERGY, LLC

MANAGEMENT AND OPERATING CONTRACTOR FOR THE

NATIONAL RENEWABLE ENERGY LABORATORY

AND

(SUBCONTRACTOR)

SCHEDULE

INTRODUCTION

THIS TASK ORDERING AGREEMENT is effective upon execution by the Alliance for Sustainable Energy, LLC, manager and operator of the National Renewable Energy Laboratory and is between the Alliance for Sustainable Energy, LLC whose principal office is located in Golden, Colorado, and ********** (hereinafter called "Subcontractor"), whose principal offices are located in ********.

The Alliance for Sustainable Energy, LLC (hereinafter called “Alliance”) has entered into Contract No. DE-AC36-08GO28308 (hereinafter called "Prime Contract") with the Department of Energy (hereinafter called "DOE"), an agency of the U.S. Government (hereinafter called "Government"), for the management and operation of the National Renewable Energy Laboratory (hereinafter called “NREL”). All references to “NREL” in this subcontract shall mean the Alliance for Sustainable Energy, LLC.

The text of some of the Applicable Documentation incorporated into this Task Ordering Agreement, including but not limited to “Specifications,” contains construction industry standard text that may not accurately reflect the actual relationship of the parties to this Task Ordering Agreement. The following substitutions shall be made as appropriate in the text of the Applicable Documentation incorporated into this Subcontract;

(1) “Alliance for Sustainable Energy, LLC” for “NREL” to identify the Prime Contractor to the US Department of Energy;
(2) “Alliance for Sustainable Energy, LLC” for “Owner” to identify the Prime Contractor as the representative of the “Owner,” the US Department of Energy;
(3) “Subcontractor” for “Contractor” or “General Contractor” or “Construction Contractor” to identify the Subcontractor (or Design-Build Team) that is the lead contracting party to this Subcontract;
(4) “Subcontract” for “Contract” to identify that this Subcontract is subordinate to the Prime Contract;
(5) “Lower-Tier Subcontractor” for “Subcontractor” to identify the “trades” and “vendors” providing goods and services to the Subcontractor (or Design-Build Team) that is the lead contracting party to this Subcontract.

This Task Ordering Agreement is entered into in furtherance of the performance of the work provided for in the Prime Contract.

AGREEMENT

NOW, THEREFORE, the parties hereto agree to the following terms and conditions:

ARTICLE 1 – THE WORK TO BE PERFORMED

A. The Subcontractor shall perform the work specified for each individual task order authorized and issued by NREL under this Task Ordering Agreement. The effort required by individual task orders authorized and issued by NREL under this Task Ordering Agreement may include, but is not necessarily limited to, the type of work generally described in Appendix A, Statement of Work, entitled “Minor Construction Services", attached hereto and made a part hereof, pursuant to the provisions of this Task Ordering Agreement.

B. Specific deliverables, quantities, due dates, reporting requirements, and addresses will be specified in the Statement of Work for each individual task order authorized and issued by NREL under this Task Ordering Agreement.

ARTICLE 2 – THE PERIOD OF PERFORMANCE, OPTION TO EXTEND THE TERM OF THE TASK ORDERING AGREEMENT, AND DAVIS-BACON WAGE DETERMINATIONS (OCTOBER 2007)

A. The period of performance under this Task Ordering Agreement shall be as follows:

Basic Period:	Execution through 12 months
Option I:	Month 13 through Month 24 (if exercised)
Option II:	Month 25 through Month 36 (if exercised)
Option III:	Month 37 through Month 48 (If exercised)
Option IV:	Month 49 through Month 60 (If exercised)

NREL will make a decision, based on its sole judgment, whether or not to continue and exercise each Option of this Task Ordering Agreement, prior to the completion date of each period. If all Options are exercised by NREL, the total period of performance for the Basic Period and all Options will be sixty (60) months. If NREL should decide not to exercise an Option, the Task Ordering Agreement shall be considered complete upon acceptance of the final deliverables for any individual task order(s) issued during the preceding Basic Period or Option.

In the event that NREL exercises one or more Options under this Task Ordering Agreement, the NREL Subcontract Administrator will incorporate the Department of Labor’s Davis-Bacon wage determination(s) applicable at the exercise of each Option. The applicable wage determination(s) shall be effective without further revision for the complete period of performance of individual task orders issued during each Option period. The NREL Subcontract Administrator will make no adjustment in the ceiling amount of this Task Ordering Agreement, the price of any individual task order, or the fully burdened labor rates specified for any Option period to cover any increases or decreases in wages and benefits as a result of incorporation of the Department of Labor’s wage determination applicable at the exercise of each Option.

B. The period of performance for each individual task order authorized and issued by NREL shall be specified in that task order. If the period of performance for an individual task order authorized and issued by NREL during the TOA’s period of performance extends beyond the completion date for this TOA, then this TOA’s terms and conditions shall continue in effect for the term of the task order.

ARTICLE 3 – PRICE, PAYMENT, AND INVOICES

A. In full consideration of the Subcontractor's performance of each individual task order authorized and issued by NREL under this Task Ordering Agreement, The Subcontractor shall be paid the firm, fixed price specified in the individual task order in accordance with the payment schedule for that specific task order. Nothing in this Task Ordering Agreement shall be construed to state or imply any agreement by NREL to place task orders with the Subcontractor.

B. The total amount of all individual task orders issued under this Task Ordering Agreement shall not exceed the ceiling amount of $5,000,000.00. The ceiling amount is as follows:

Basic Period:	$ 900,000.00
Option I:	$ 900,000.00 (if exercised)
Option II:	$ 900,000.00 (if exercised)
Option III:	$ 900,000.00 (if exercised)
Option IV:	$ 900,000.00 (if exercised)
Total	$4,500,000.00 (if all options are exercised)

No single individual task order shall be issued under this Task Ordering Agreement that exceeds $900,000.00.

C. Invoices

1. Invoices for work accomplished under each individual task order authorized and issued by NREL shall be submitted in an original and one copy to:

National Renewable Energy Laboratory
Attn: Ron Kohel, MS RSF030
15013 Denver West Parkway
Golden, CO 80401-3305

2. Each invoice shall reference the specific individual task order number, and the basic Task Ordering Agreement number, which will appear on the cover sheets of each document. Payments under each individual task order will be made by NREL in accordance with each individual task order's payment schedule, and the payment terms and to the remittance name and address shown on the cover sheet of this Task Ordering Agreement. To facilitate processing and payment each invoice must contain the following information:

a) date of invoice,
b) individual task order and Task Ordering Agreement numbers,
c) total amount of invoice,
d) any other information or documentation required by other provisions of the individual task order and Task Ordering Agreement.

3. The payment terms of this Task Ordering Agreement shall mean net days from the date of receipt of an acceptable invoice or the date of receipt and acceptance of all deliverables, reporting requirements or closeout documentation for the period covered by the invoice, whichever is later.

4. The Subcontractor shall submit its invoices in reasonable detail in accordance with the payment schedule contained in the individual Task Order showing the total fixed price invoiced and the cumulative fixed price for that Task Order. There are two separate certifications below; Certification A shall be used for Non-Recovery Act funded invoices, and Certification B shall be used for Recovery Act funded invoices. An official of the Subcontractor shall sign one of the following certifications on each invoice/vouchers submitted for payment.

   For invoices for work effort supported by Non-Recovery Act funds, the following certification should be included and signed on each invoice submitted for payment:

   > "I hereby certify, to the best of my knowledge and belief that, (1) the amounts requested are only for performance in accordance with the specifications, terms and conditions of the subcontract; (2) payments to lower-tier subcontractors and suppliers have been made from previous payments received under this subcontract, and timely payments will be made from the proceeds of the payment covered by this certification, in accordance with lower-tier subcontract agreements and the requirements of Chapter 39 of Title 31, United States Code; (3) this request for progress payments does not include any amounts which the Subcontractor intends to withhold or retain from a lower-tier subcontractor or supplier in accordance with the terms and conditions of the lower-tier subcontract; and, (4) this invoice/voucher is correct and proper for payment, and payment for this amount has not and will not be received under any other Government contract or TOA or other source of Government funds.
>
> _____
>
> _____
>
> Authorized Official Date"

5. The Subcontractor is hereby notified that NREL may withhold payment on invoices submitted, if the Subcontractor has failed to comply with or is delinquent in the submission of the reporting or deliverable requirements under the individual task order associated with the fixed price payment, until such time as the Subcontractor has complied or submitted such reporting or deliverable requirements.

D. <u>Release of Claims</u>

The Subcontractor shall execute and deliver at the completion of each individual task order, a release of claims discharging the Government and NREL, their officers, agents, and employees of and from all liabilities, obligations, and claims arising out of or under this Task Ordering Agreement, subject only to the following exceptions:

1. Specified claims, in stated amounts or in estimated amounts, where the amounts are not susceptible to exact statement by the Subcontractor.

2. Claims, together with reasonable incidental expenses, based upon the liabilities of the Subcontractor to third parties arising out of performing the individual task order(s) under this Task Ordering Agreement, that are not known to the Subcontractor on the date of the execution of the release, and of which the Subcontractor gives notice in writing to the Subcontract Administrator not more than six (6) years after the date of the release or the date of any notice to the Subcontractor that NREL is prepared to make final payment, whichever is earlier.

3. Claims for reimbursement of costs (other than expenses of the Subcontractor by reason of its indemnification of NREL against patent liability), including reasonable incidental expenses, incurred by the Subcontractor under the terms of this Task Ordering Agreement relating to patents.

E. Refunds

The Subcontractor agrees that any refunds, rebates, or credits (including any related interest) accruing to or received by the Subcontractor (or any successor in interest to this Task Ordering Agreement) that arise under the expenses portion of this Task Ordering Agreement and for which the Subcontractor has received reimbursement, shall be paid by the Subcontractor to NREL. The Subcontractor (or any successor in interest to this Task Ordering Agreement) shall execute and deliver, at the time of and as a condition precedent to final payment under each individual task order, an assignment to NREL of such refunds, rebates, or credits (including any interest) in form and substance satisfactory to the Subcontract Administrator.

F. Tax-Exemption

The Subcontractor is hereby authorized to use the NREL State of Colorado Tax Exempt Number 98-19771-0000 and NREL City of Lakewood Tax Exemption Certificate Number 47856 for any use or sales tax which would otherwise apply for the acquisition of any materials or equipment that is required in the performance and delivery for each individual task order issued under this Task Ordering Agreement.

ARTICLE 4 – TASK ORDERING PROCESS

The process for issuing individual task orders under this Task Ordering Agreement shall be as follows:

A. NREL shall request a proposal from the Subcontractor for each individual task order. The Subcontractor shall prepare and submit an individual task order proposal that includes the following elements:

1. A technical proposal that indicates the acceptance of the proposed individual task order's Statement of Work (SOW).

2. A firm fixed price proposal that consists of the following sections:

   a. Direct Materials – A breakdown of all direct materials required by the Subcontractor to perform the effort.

b. Fully Burdened Fixed Rate Direct Labor - A breakdown of the Subcontractor's personnel and their lower-tier subcontractor personnel who are proposed to perform work under this individual task order broken down by individual or category, hours, the fixed labor rates as specified in Paragraph F. below, and total proposed labor amount.

c. Equipment – A list of all equipment and its related cost required by the Subcontractor to perform the effort.

d. Lower-tier Subcontractors – Identify each proposed lower-tier subcontractor's amount. Include a proposal from the lower-tier subcontractor that contains the same information as required by the Subcontractor. Note that the lower-tier subcontractor shall be required to submit complete, current cost or pricing data to substantiate its proposed direct and indirect costs.

e. Cost of Performance and Payment Bonds – for individual task orders over $30,000.00.

f. Total Amount.

3. A proposed period of performance to complete the work shall be described in the individual task order SOW.

4. All individual task orders with a period of performance of thirty (30) calendar days or less will be processed for one (1) payment upon 100% completion of the individual task order requirement and acceptance by NREL.

B. Each individual task order's proposal shall be reviewed by NREL, and negotiations for that individual task order shall be conducted between the NREL Subcontract Administrator and the Subcontractor.

C. Upon conclusion of the negotiations, the NREL Subcontract Administrator will issue an individual task order for execution and return. Each individual task order shall become a binding subcontract upon final execution. Individual task orders in excess of $30,000.00 shall require a performance and payment bond from the Subcontractor prior to starting work.

D. Upon final acceptance and award of each individual task order, the Subcontractor shall commence the effort.

E. The Subcontractor shall utilize the following fully burdened labor rates which include direct labor, direct labor overhead, general and administrative (G&A) rates, and profit to prepare proposals for individual task orders. Individual task orders that require classification not listed below may be proposed by the Subcontractor for review and acceptance by NREL.

F. For the purpose of expediting negotiations of equitable adjustments for task order modifications that may occur, the following rate factors will be applied as and when appropriate for the entire period of performance:

Description	Rate
Overhead Rate	
G & A Rate	
Profit Rate	
Handling Fee on Materials	
Handling Fee on Lower-Tier Subcontractors	

G. The spreadsheet below reflects the negotiated basic period rates and the negotiated option period rates:

BURDENED LABOR RATES

LABOR CATEGORY	BASIC PERIOD	OPTION PERIOD 1	OPTION PERIOD 2	OPTION PERIOD 3	OPTION PERIOD 4
Project Manager					
Field Supervisor					
Administrative Support					
Scheduler					

H. Notwithstanding any provision herein to the contrary, nothing in this Task Ordering Agreement shall prevent NREL from soliciting competitive proposals to perform work within the scope of work described in Appendix A, Statement of Work.

ARTICLE 5 - APPLICABLE DOCUMENTATION

In addition to the terms and conditions contained in this Schedule, the following documents are attached hereto and made a part of this Task Ordering Agreement:

A. Appendix A, Statement of Work entitled “Minor Construction Services” dated 10/08/2012

B. Appendix B-4, entitled “Standard Terms and Conditions for Construction Subcontracts”, dated 08/01/2012;

C. Appendix C-3, entitled “Intellectual Property Provisions”, dated 03/26/2012;

D. Appendix D-1, entitled “Terms and Conditions for Subcontracts in Excess of $ 650,000.00”, dated 08/01/2012;

E. Appendix G, “Davis Bacon Wage Determination Nos. CO120007, Mod. No. 8, dated 08/31/2012 (Building); and CO2010018, Mod. No. 02, dated 08/10/2012 (Highway); and, CO20100012, Mod. No. 9, dated 08/31/2012 (Heavy.)”

F. Subcontractor's technical proposal number (*****) dated *****, together with any other revisions, are incorporated by reference. In the event there is a conflict between the Subcontractor's technical proposal and any other provisions of this subcontract, the latter shall prevail.

ARTICLE 6 - ORDER OF PRECEDENCE

Any inconsistency in this Task Ordering Agreement shall be resolved by giving precedence in the following order:

A. This Schedule;

B. Statement of Work (Appendix A);

C. Standard Terms and Conditions for Construction Subcontracts (Appendix B-4);

D. Intellectual Property Provisions (Appendix C-3);

E. Terms and Conditions for Subcontracts in Excess of $650,000.00 (Appendix D-1);

F. Davis Bacon Wage Determination Nos. CO120007, Mod. No. 8, dated 08/31/2012-Building; and CO2010018, Mod. No. 02, dated 08/10/2012-Highway; and, CO20100012, Mod. No. 9, dated 08/31/2012-Heavy.
(Appendix G);

G. Other provisions of this Task Ordering Agreement whether incorporated by reference or otherwise; and,

H. The Subcontractor's technical proposal, if incorporated in this Task Ordering Agreement by reference or otherwise.

ARTICLE 7 - RIGHTS TO PROPOSAL DATA

Except for technical data contained on pages (*****) of the Subcontractor's proposal dated **/**/** which are asserted by the Subcontractor as being proprietary data, it is agreed that, as a condition of the award of this Task Ordering Agreement, and notwithstanding the provisions of any notice appearing on the proposal, the Government and NREL shall have the right to use, duplicate, disclose and have others do so for any purpose whatsoever, the technical data contained in the proposal upon which this Task Ordering Agreement is based.

ARTICLE 8 - SUBCONTRACT ADMINISTRATION RESPONSIBILITIES (SUBCONTRACT FOR DESIGN/BUILD, CONSTRUCTION, A&E SERVICES, AND SERVICES – SITE OPERATIONS) (SEPTEMBER 2007)

A. **Signature Authority**:

This Task Ordering Agreement, and the individual task orders issued hereunder, may only be modified or changed by a binding direction signed by an authorized official of NREL.

B. **Subcontract Administration Responsibilities**:

1. The authorized official of NREL has designated George Nolte as the Subcontract Administrator for this Task Ordering Agreement with the responsibilities for administering the subcontract and directing binding modifications and changes to this Task Ordering Agreement and the individual task orders issued hereunder. The Subcontract Administrator's telephone number is 303/384-7328.

2. The Subcontract Administrator is the only individual authorized to direct to the Subcontractor binding modifications and changes under this Task Ordering Agreement or any individual task orders issued hereunder and such authority shall remain solely with the Subcontract Administrator regardless of any other provisions of this Task Ordering Agreement or any individual task orders issued hereunder. With Project Manager's concurrence, the Subcontract Administrator shall direct such binding modifications and changes in writing to the Subcontractor. The Subcontractor shall address all contractual and administrative correspondence directly to the Subcontract Administrator.

3. Except for changes resulting from an emergency described in subparagraph 4 below, no written or verbal statement from the Project Manager or any other individual shall be construed to be a binding direction unless or until the Subcontract Administrator directs to the Subcontractor a written modification or change to this Task Ordering Agreement or any individual task orders issued hereunder. **The Subcontractor assumes the risk and sole expense of any such unauthorized changes and hereby waives all rights to costs and time extensions that stem directly from changes made without prior written direction from the Subcontract Administrator. NREL shall make no adjustment to the subcontract price and/or performance period for changes made by the Subcontractor without the binding direction of the Subcontract Administrator.**

4. In the event that the Subcontractor is directed by the Project Manager or any individual to make a change resulting from an emergency that requires the Subcontractor to take immediate action, the Subcontractor shall be entitled to an equitable adjustment in subcontract price and performance period (if any) covering only that period up to and no later than the second working day after the date on which the emergency occurred.

C. **Project Management Responsibilities**:

1. Project Manager Responsibilities: The authorized official of NREL will designate a Project Manager for each individual task order with the responsibilities of monitoring the technical work and or services to be performed under this TOA. The Subcontractor shall address all technical project performance correspondence to the Project Manager, with an informational copy sent to the Subcontract Administrator.

2. The Project Manager is accountable for stewardship of the Subcontractor's technical project performance, but is not authorized to direct to the Subcontractor binding modifications and changes to the Subcontractor's technical project performance, including scope of work, schedule, budget, performance period, or terms and conditions of the individual task orders issued under this Task Ordering Agreement.

3. **Except for changes resulting from an emergency that requires the Subcontractor to take immediate action, any change made by the Subcontractor based on a statement from the Project Manager shall be at the risk and sole expense of the Subcontractor.** The Subcontractor shall immediately refer all such changes to the Subcontract Administrator designated in Paragraph B above.

ARTICLE 9 - KEY PERSONNEL

A. It having been determined that the individuals, whose names appear below, are necessary for the successful performance of this Task Ordering Agreement and individual task orders issued hereunder, the Subcontractor agrees to assign or have assigned such individuals to the performance of the work under this Task Ordering Agreement and shall not reassign or remove any of them without the consent of the Subcontract Administrator by modification to this Task Ordering Agreement:

Name	Project Title	Telephone No.

B. Whenever, for any reason, one or more of the designated key personnel designated above, is unavailable for assignment for work under this Task Ordering Agreement, the Subcontractor shall, with the approval of the Subcontract Administrator, replace such individual with an individual of substantially equal abilities and qualifications.

ARTICLE 10 – PUBLICITY RELEASE AND PUBLIC AFFAIRS

A. Publicity release of any nature in connection with this Task Ordering Agreement shall be coordinated as provided in the "Public Affairs" clause of Appendix B-4. The Subcontractor shall not make without prior review and approval of the NREL Subcontract Administrator, any publicity release of any nature of general, non-technical information in connection with this Task Ordering Agreement. For purposes of this Task Ordering Agreement, general, non-technical information means any information concerning the existence of the Task Ordering Agreement, the identity of the parties, and the scope and general character of the research or technical activity. As used in this Article, "publicity release" does not include a lawful inspection of the Subcontractor's records conducted pursuant to Federal or State public records access statutes. The Subcontractor may report specifics regarding the formation and execution of this Task Ordering Agreement in its internal publications without prior review and approval of the NREL Subcontract Administrator.

B. Data rights are set forth in Appendix C hereof.

ARTICLE 11 - WASTE DISPOSAL

In accordance with the clause entitled "Cleaning Up" of Appendix B-4 the Subcontractor shall be responsible for maintaining a clean and neat construction site and for removing and disposing of all scrap and waste (including any hazardous or toxic material) from the construction site in accordance with all applicable laws or regulations at no additional cost to NREL. The Subcontractor shall be responsible for disposing of all excess soil or waste material from excavations made by the Subcontractor, unless otherwise specified in this Task Ordering Agreement.

ARTICLE 12 - PROGRESS MEETINGS AND REPORTS

A. Preconstruction Meeting: A meeting may be conducted within one (1) week after receipt of the award for this Task Ordering Agreement. The Subcontractor and its principal lower-tier subcontractors, if any, shall attend this meeting. The purpose of the meeting is to coordinate all aspects of the Task Ordering Agreement and the special requirements for environmental, safety and security associated with performance of a construction Task Ordering Agreement on a Government-owned or leased facility.

B. Daily Log Reports: The Subcontractor shall prepare, and require its lower-tier subcontractors to prepare daily reports to be kept on file until individual task order closeout, recording all construction activities at all construction sites, including any safety issues or concerns. The NREL Subcontract Administrator or the NREL Project Manager may review these daily log reports, as requested, and may require the Subcontractor to submit two (2) copies of any daily log report to NREL (one copy for the Subcontract Administrator and one copy for the Project Manager).

C. Verbal Reports: The Subcontractor shall provide verbal reports to the NREL Project Manager, as requested, to ensure that NREL is informed of all progress made and any problems that might cause a delay in the completion of any individual task order. These verbal reports will ensure that NREL is afforded the opportunity to take appropriate action to avoid or mitigate any problems as they arise under the individual task orders.

D. Progress Meetings Upon Request: The Subcontractor shall be required to attend construction progress meetings, as considered necessary and requested by NREL. The Subcontractor shall ensure that any of its lower-tier subcontractors also attend these meetings, as required. The purpose of these meetings shall be to review current and proposed work schedules and progress, discuss and resolve problems, and resolve administrative matters.

ARTICLE 13 - EXISTING SERVICES AND UTILITIES (CONSTRUCTION TOA)(FEB 2008)

A. The term "services and utilities" as used here is defined as including, but not limited to, roads, ditches, electrical, sewer, water, fencing, etc.

B. If applicable to the performance of work under this Task Ordering Agreement, the locations of existing underground services and utilities as indicated on the drawings are approximate, and a utilities “locate” may be required.

C. The Subcontractor shall be responsible for the actual necessary connection(s) to any existing service or utility required in the performance of this Task Ordering Agreement.

D. **The Subcontractor is hereby notified that all underground electrical systems and other systems covered by the lockout/tagout program shall be de-energized and locked out during excavations within 5 feet of those systems.** Exceptions to this requirement must be approved in writing by the NREL Subcontract Administrator, after concurrence by the NREL Project Manager

and NREL EH&S representative. Such outage shall be coordinated with NREL's Project Manager in accordance with Paragraph (E) below.

E. No planned outage will be permitted without prior consent of the NREL Project Manager. The Subcontractor shall coordinate with NREL's Project Manager five (5) full NREL normal working days prior to any approved planned interruption of existing services and utilities required for performance of this Task Ordering Agreement. Interruption of existing services and utilities includes, but is not limited to, existing equipment, piping, electrical service or other utilities, which must be disconnected, shut off, relocated or otherwise modified. The Subcontractor shall be responsible for reconnecting and restoring to the original operating conditions any equipment that was disconnected or put out of service as a result of any interruption (planned or otherwise), unless otherwise specified by this Task Ordering Agreement. If significant fire protection system(s) will be impaired longer than eight (8) hours, specific approval shall be obtained from the NREL Project Manager, who shall coordinate with NREL EH&S representative. The Subcontractor shall attach a safety tag to the device which de-energizes the service (breakers, etc.) and lock or otherwise secure the device in the "off" position so as to prevent accidental reactivation. All utilities tie-in costs and premium time, if any, shall be included in the total individual task order price.

ARTICLE 14 - TEMPORARY STRUCTURES, OFFICES AND WORK AREAS

A. The Subcontractor shall be responsible for providing at its own expense, all temporary structures, utilities, and services required by it for use as offices, warehouses, shops, etc. The location and type of any temporary structure shall be approved and coordinated with the NREL Project Manager. Such temporary structures shall be removed by the Subcontractor at its own expense upon the completion of the Task Ordering Agreement. The Subcontractor shall hold and save NREL and the Government, their officers, employees, and agents free and harmless from liability of any nature associated herewith.

B. Only materials, appliances, and plans to be used for the performance of the individual task orders may be stored in stockpile areas or in warehouses and shop facilities (whether erected by the Subcontractor or not) located on Government-controlled land. If the Subcontractor abandons the performance of the individual task order work or if the Subcontractor's right to proceed is terminated pursuant to the clause entitled "Default (Fixed Price Construction)", the Subcontractor shall hold and save NREL and the Government and their officers and agents free and harmless from any liability of any nature or kind, arising from NREL's or the Government's entry into such stockpile areas, warehouses, or shop facilities and from NREL's or the Government's taking possession of and utilizing such materials, appliances, and plans in completing the individual task order work.

C. All operations of the Subcontractor, including storage of construction materials and equipment upon Government premises, shall be confined to areas authorized or approved by NREL. No unauthorized or unwarranted entry upon, or passage through, or storage or disposal of materials shall be made upon Government premises. The Subcontractor shall hold and save NREL and the Government, its officers and agents, free and harmless from liability of any nature or kind arising from any use, trespass, or damage occasioned by its operations on premises of third persons.

D. The Subcontractor shall use only established roadways or construct and use such temporary roadways as may be authorized by NREL. Where materials are transported in the prosecution of the work, vehicles shall not be loaded beyond the loading capacity recommended by the manufacturer of the vehicles or prescribed by an applicable Federal, state, or local law or regulation. When it is necessary to cross curbing or sidewalks or to operate heavily loaded vehicles on surfaced streets, sidewalks or developed areas, protection against damage shall be provided by the Subcontractor, and any damaged roads, curbing, sidewalks or developed areas shall be repaired by, or at the expense of, the Subcontractor.

E. The Subcontractor shall provide and maintain during the entire period covered by this Task Ordering Agreement a weather-tight bulletin board approximately 7 feet high by 8 feet long. It shall be mounted in a conspicuous place, as approved by the Project Manager, accessible to all employees of the Subcontractor and lower-tier subcontractors. The bulletin board will remain the property of the Subcontractor. All NREL or Government posters or notices, the Davis-Bacon Wage Rate Determination, Subcontractor's safety programs, and any publications in the interest of workers shall be displayed on this bulletin board.

ARTICLE 15 - RESPONSIBILITIES FOR SUPPLIES AND MATERIALS

Except as otherwise provided in this Task Ordering Agreement, the risk of loss of or damage to supplies or materials for the performance of the individual task orders shall remain with the Subcontractor until completion, inspection, and acceptance of the individual task order or completion, inspection and acceptance of any severable unit of the individual task order.

ARTICLE 16 - TIME EXTENSIONS (SEP 2000)

Time extensions for changes under individual task order modifications will depend upon the extent, if any, by which the changes cause delay in the completion of the various elements of construction. The individual task order modification granting a time extension may provide that the individual task order completion date will be extended only for those specific elements related to the changed work and that the remaining individual task order completion dates for all other portions of the work will not be altered. The individual task order modification also may provide an equitable readjustment of liquidated damages under the new completion schedule, if applicable.

ARTICLE 17 – PERFORMANCE AND PAYMENT BONDS – CONSTRUCTION

The Subcontractor shall provide a performance and payment bond to the Subcontract Administrator prior to starting work for each individual task order over $30,000.00.

ARTICLE 18 – PERFORMANCE OF WORK BY THE SUBCONTRACTOR

The Subcontractor shall perform on the site, and with its own organization, work equivalent to at least twenty (20) percent of the total amount of work to be performed under each individual task order. This percentage may be reduced by a modification to the individual task order if, during performing the work, the Subcontractor requests a reduction and the NREL Subcontractor Administrator determines that the reduction would be to the advantage of NREL.

ARTICLE 19 - LAYOUT OF WORK

The Subcontractor shall lay out its work from NREL-established base lines and benchmarks indicated on the drawings, and shall be responsible for all measurements in connection with the layout. The Subcontractor shall furnish, at its own expense, all stakes, templates, platforms, equipment, tools, materials, and labor required to lay out any part of the work. The Subcontractor shall be responsible for executing the work to the lines and grades that may be established or indicated by NREL. The Subcontractor shall also be responsible for maintaining and preserving all stakes and other marks established by NREL until authorized to remove them. If such marks are destroyed by the Subcontractor or through its negligence before their removal is authorized, NREL may replace them and deduct the expense of the replacement from any amounts due or to become due to the Subcontractor.

ARTICLE 20 – ALLOCATION OF LIABILITY AND RESPONSIBILITY FOR VIOLATIONS OF SAFETY AND ENVIRONMENTAL REQUIREMENTS (SPECIAL – CONSTRUCTION) (SEP 2008)

A. NREL and the Subcontractor commit to full cooperation with regard to safety and environmental requirements applicable to the performance of work under this Subcontract. This article allocates the liability and responsibility for violations of safety and environmental requirements applicable to the performance of work under this Subcontract. For purposes of this Subcontract, the term “safety requirements” means requirements imposed by the Department of Energy’s “Worker Safety and Health” rule codified at 10 CFR 851 and “environmental requirements” means requirements imposed by applicable Federal, State and local environmental laws and regulations, including without limitation, statutes, ordinances, regulations, court orders, consent decrees, administrative orders, compliance agreements, permits and licenses.

B. Liability and responsibility for civil fines or penalties arising from or related to violations of safety or environmental requirements shall be borne by the party causing the violation. In the event that the Subcontractor causes a violation of safety or environmental requirements, the Subcontractor shall not be entitled to reimbursement or equitable adjustment from NREL or the Government for civil fines or penalties associated with such violation.

C. Liability and responsibility for civil fines or penalties shall be borne by the causing party irrespective of the fact that the cognizant regulatory authority may assess any such fine or penalty upon either party or both parties (or the Government) without regard to the allocation of responsibility or liability under the Subcontract. This allocation of liability and responsibility for any such fine or penalty is effective regardless of which party signs permit applications, manifests, reports or other required documents, is a permitee, or is the named subject of an enforcement action or assessment of a fine or penalty.

D. In the event that the Subcontractor is deemed to be the primary party causing the violation, then the Subcontractor shall be afforded the opportunity to participate in negotiations to settle or mitigate the fines and penalties with the regulatory authority. If the Subcontractor is the sole party of the enforcement action, the Subcontractor shall take the lead role in the negotiations and NREL shall have sole discretion regarding its participation in such negotiations.

ARTICLE 21 - ALTERATIONS TO TERMS AND CONDITIONS

1. Appendix C-3, Intellectual Property Provisions for Large and Small Business, Nonprofit Organizations, Educational Institutions and Others (Non Research and Development) is modified to delete Clause 4, “Rights in Data – General” and replace it with the following:

CLAUSE 4 – RIGHTS IN DATA – SPECIAL WORKS

A. *Definitions*.

"Data," as used in this clause, means recorded information regardless of form or the medium on which it may be recorded. The term includes technical data and computer software. The term does not include information incidental to subcontract administration, such as financial, administrative, cost or pricing or management information.

"Unlimited rights," as used in this clause, means the right of NREL/Government to use, disclose, reproduce, prepare derivative works, distribute copies to the public, and perform publicly and

display publicly, in any manner and for any purpose whatsoever, and to have or permit others to do so.

B. *Allocation of Rights.*

1. The Government shall have --

(i) Unlimited rights in all data delivered under this Task Ordering Agreement, and in all data first produced in the performance of this Task Ordering Agreement, except as provided in paragraph C of this clause for copyright.

(ii) The right to limit exercise of claim to copyright in data first produced in the performance of this Task Ordering Agreement, and to obtain assignment of copyright in such data, in accordance with subparagraph C (1) of this clause.

(iii) The right to limit the release and use of certain data in accordance with paragraph D of this clause.

2. The Subcontractor shall have, to the extent permission is granted in accordance with subparagraph C (1) of this clause, the right to establish claim to copyright subsisting in data first produced in the performance of this Task Ordering Agreement.

C. *Copyright* –

1. *Data first produced in the performance of this Task Ordering Agreement.*

(i) The Subcontractor agrees not to assert, establish, or authorize others to assert or establish, any claim to copyright subsisting in any data first produced in the performance of this Task Ordering Agreement without prior written permission of the DOE Contracting Officer. When claim to copyright is made, the Subcontractor shall affix the appropriate copyright notice of 17 U.S.C. 401 or 402 and acknowledgment of NREL/Government sponsorship (including Task Ordering Agreement number) to such data when delivered to NREL/Government, as well as when the data are published or deposited for registration as a published work in the U.S. Copyright Office. The Subcontractor grants to NREL/Government, and others acting on its behalf, a paid-up nonexclusive, irrevocable, worldwide license for all such data to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, by or on behalf of the Government.

(ii) If the Government desires to obtain copyright in data first produced in the performance of this Task Ordering Agreement and permission has not been granted as set forth in subdivision C (1)(i) of this clause, the DOE Contracting Officer may direct the Subcontractor to establish, or authorize the establishment of, claim to copyright in such data and to assign, or obtain the assignment of, such copyright to the Government or its designated assignee.

2. *Data not first produced in the performance of this Task Ordering Agreement.* The Subcontractor shall not, without prior written permission of the DOE Contracting Officer, incorporate in data delivered under this Task Ordering Agreement any data not first produced in the performance of this Task Ordering Agreement and which contain the copyright notice of 17 U.S.C. 401 or 402, unless the Subcontractor identifies such data and grants to the Government, or acquires on its behalf, a license of the same scope as set forth in subparagraph C (1) of this clause.

D. *Release and use restrictions*. Except as otherwise specifically provided for in this Task Ordering Agreement, Subcontractor shall not release, reproduce, distribute, or publish any data first produced in the performance of this Task Ordering Agreement, nor authorize others to do so, without written permission of the DOE Contracting Officer.

E. *Indemnity.* The Subcontractor shall indemnify NREL and the Government and its officers, agents, and employees acting for NREL or the Government against any liability, including costs and expenses, incurred as the result of the violation of trade secrets, copyrights, or right of privacy or publicity, arising out of the creation, delivery, publication, or use of any data furnished under this Task Ordering Agreement; or any libelous or other unlawful matter contained in such data. The provisions of this paragraph do not apply unless NREL/Government provides notice to the Subcontractor as soon as practicable of any claim or suit, affords the Subcontractor an opportunity under applicable laws, rules, or regulations to participate in the defense thereof, and obtains the Subcontractor's consent to the settlement of any suit or claim other than as required by final decree of a court of competent jurisdiction; nor do these provisions apply to material furnished to the Subcontractor by the NREL/Government and incorporated in data to which this clause applies.

ARTICLE 22 - INTEGRATION

This Task Ordering Agreement contains the entire understanding between the parties, and there are no understandings or representations except those set forth or incorporated by reference herein. No subsequent modifications of this Task Ordering Agreement shall be of any force or effect unless in writing signed by a duly authorized official of NREL.

IN WITNESS WHEREOF, the parties hereto have executed this Task Ordering Agreement as of the date fully signed below.

ACCEPTED:		AUTHRORIZED: ALLIANCE FOR SUSTAINABLE ENERGY, LLC	
BY:	_____	BY:	_____
NAME:	_____	NAME:	_____
TITLE:	_____	TITLE:	_____
DATE:	_____	DATE:	_____