CITY CLERK
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C-8037
05/08/2012

GRANT IN KIND
between
ARIZONA STATE LIBRARY, ARCHIVES AND PUBLIC RECORDS
and
City of Glendale

This Grant In Kind ("**AGREEMENT**") is entered into by and between the State of Arizona, the Arizona State Library, Archives and Public Records, a division of the Arizona Secretary of State ("**ASLAPR**" or "**GRANTOR**") located at 1700 West Washington, Suite 200, Phoenix, Arizona, 85007 and **City of Glendale** ("**RECIPIENT**"), located at **5850 West Glendale Avenue, Glendale, AZ 85301**.

This AGREEMENT is entered pursuant to A.R.S. §41-2701 et seq., authorizing the State of Arizona, Governor's Office of Economic Recovery, contracting with ASLAPR, to execute and administer a specific federal grant, American Recovery and Reinvestment Act (ARRA) - PCC, AZ Job Help Hubs @ Your Library, CFDA number 11.557, award number 04-41-B10521, awarded July 2, 2010, herein referred to as Broadband Technology Opportunities Program Round 2 ("**BTOP II**").
Whereas, A.R.S. § 41-151.05 and A.R.S. § 41-151.06 authorizes ASLAPR to execute and administer contracts. Whereas, A.R.S. § 9-420 authorizes RECIPIENT to enter into agreements with ASLAPR.

Therefore, it is agreed that ASLAPR shall provide equipment and funding to the RECIPIENT for implementation of Virtual Workforce Workstation ("VWW") as defined under BTOP II and as established herein:

1. Purpose of the Agreement

The purpose of this AGREEMENT is to transfer ownership of the equipment and all responsibilities thereof to the RECIPIENT, have the RECIPIENT install and implement the equipment at **Glendale Public Library** ("**PARTICIPATING LIBRARY**"), located at 5959 West Brown Street, Glendale, AZ 85302-1200, have the RECIPIENT meet the programmatic objectives of the BTOP II Program as established by ASLAPR, and have RECIPIENT report on the utilization of this equipment, as specified by the BTOP II grant, until the TERMINATION DATE or until all grant requirements are met as required by ASLAPR.

A. The BTOP II Grant

The goal of the BTOP II grant is to address the increased demand by job-seekers on local libraries as a local resource where patrons can utilize internet access to search for or apply to jobs and also obtain or improve job-related skills. The BTOP II implementation has two components: (1) Job Help Hubs ("**JHH**") and (2) Virtual Workforce Workstations ("**VWW**"). Together these are dubbed the Arizona Job Assistance Centers ("AzJAC") project.

The JHH is a portable computer lab dedicated to assisting job seekers with skill assessments, skill development and adult education. At least one JHH will be located in each county and within those counties located in communities determined to have the greatest need. Although the JHH is delivered and associated with a specific library, the BTOP II grant encourages and supports utilization at venues other than the target library, such as

community centers or faith-based sites, provided the use is in line with the job-seeker and adult education goals of the BTOP II grant.

The VWW is a single workstation dedicated to job seekers for job search and placement assistance, skill assessments, development of individual employment plans, and career planning. There are approximately 200 public libraries across Arizona receiving VWW as part of the BTOP II grant.

Pursuant to the goals of the BTOP II grant, **ASLAPR will purchase the computer equipment on the RECIPIENT's behalf and deliver this equipment to the RECIPIENT.** The RECIPIENT agrees to take ownership of the equipment and agrees to use the equipment as specified and report on that use as specified by ASLAPR in accordance with the BTOP II grant.

2. Effective Date/Term of Agreement

The term of the AGREEMENT shall commence on **February 1, 2012** ("**EFFECTIVE DATE**"), and shall remain in effect until June 28, 2013 ("**TERMINATION DATE**"), contingent upon federal funding availability, unless terminated or canceled as provided herein.

3. General Provisions

The parties mutually agree as follows:

A. Type of BTOP II RECIPIENT AGREEMENT

This AGREEMENT applies to a VWW implementation.

B. Equipment and Software List

Hardware List:

SIGNIFICANT ASSETS for VWW Recipients:			
Quantity	Description	Unit Cost	Approximate Subtotal Value
1	Desktop SFF; Dell Optiplex 780	$ 855	$ 855
1	Monitor: Dell E2211H, Widescreen, 21.5 in LCD		
1	All-in-one monochrome laser printer; Xerox Workcentre 3210N, C/P/S/F	$ 245	$ 245
	Total Approximate Value:		**$ 1,100**

Software List :

Quantity	Description	Approximate Unit Cost	Not-To-Exceed Value
1	Microsoft Office Standard (*see* ***Software Note 1*** *below*)	$ 350	$ 400 each
1	Adobe Acrobat Standard (*see* ***Software Note 1*** *below*)	$ 250	$ 300 each

Software Note 1: If the installed version of Microsoft Office is v2010 or later, then Adobe Acrobat Standard is not a requirement. For Office 2007 an add-in for creating Adobe documents must be installed. For versions of Office 2007 or older, Adobe Acrobat Standard would be a requirement and would have to be version 9 or 10.

C. Method and Terms of Receipt of Equipment

1. Upon receipt of the equipment at the location specified by the RECIPIENT, or their designee, the RECIPIENT agrees to take ownership of the equipment specified in Section 3.B, ***Equipment and Software List***.
2. RECIPIENT, or their designee, agrees to notify ASLAPR within 5 business days of the receipt of any equipment for the BTOP II grant. Upon receiving notification of delivery, ASLAPR will, within 5 business days, provide by Email to the person designated by the RECIPIENT, an ***Inventory Receipt Form*** listing the items received.
3. The RECIPIENT, or their designee, shall complete and sign the ***Inventory Receipt Form*** and deliver to ASLAPR at the address provided at the bottom of this AGREEMENT.
4. Any incidental items supplied with the above equipment, such as USB printer cables, network cables, supplies (if any), or other non-essential items such as laptop cases, are not listed due to their relatively low value.
5. Any other equipment that may be supplied by ASLAPR as part of the BTOP II grant will be covered under separate agreement.

D. Software Requirements for BTOP II Computers

As part of the BTOP II grant, the items in the SOFTWARE LIST in Section 3.B, ***Equipment and Software List***, **are mandated to be installed on each computer listed in Section 3.B**. The RECIPIENT is eligible to be reimbursed for the actual cost to acquire these software licenses should they elect to utilize the grant to cover such costs up to the "Not-To-Exceed Value" amount listed in Section 3.B. Software maintenance for the items in Section 3.B will be covered up to the end of the grant period, June 30, 2013. **In order to be eligible for reimbursement by ASLAPR, the RECIPIENT or the PARTICIPATING LIBRARY must have acquired, installed, and requested reimbursement for the software listed in Section 3.B prior to June 29, 2012.** The RECIPIENT shall comply with all ASLAPR reimbursement requirements, including, but not limited to, all supporting documentation required by ASLAPR.

E. Maintenance of Equipment and Software

1. Hardware Maintenance:
For the SIGNIFICANT ASSETS listed in Section 3.B, ***Equipment and Software List***, ASLAPR will also purchase warranties that extend up to, or beyond, the end of the grant period, June 30, 2013. ASLAPR will have no obligation beyond June 30, 2013, to provide warranties and/or maintenance for any of the items referenced in this AGREEMENT.

2. Software Maintenance:
ASLAPR has no obligation to provide software maintenance beyond that provided as part of the initial software acquisition of the software specified in Section 3.B, ***Equipment and Software List***, and up to the end of the grant period, June 30, 2013.

ASLAPR makes no promises or warranties as to the actual cost the RECIPIENT or the PARTICIPATING LIBRARY will incur to acquire the software listed in Section 3.B or the accuracy of the estimated value provided in Section 3.B.

4. GRANTOR's and RECIPIENT's Responsibilities

A. RECIPIENT, or their designee, agrees to:

1. Install and implement the equipment referenced in Section 3.B, ***Equipment and Software***, within 45 days of either (a) receipt of all listed equipment, or (b) EFFECTIVE DATE, whichever is the most recent, and according to the utilization requirements of the BTOP II grant as established by ASLAPR.
2. Acquire and install the software on each computer provided as specified in Section 3.B, ***Equipment and Software List***, within 30 days of implementation as per Section 4.A.1 above.
3. Monitor and document use of the VWW equipment whether being utilized by the RECIPIENT, a designee of the RECIPIENT, or a designee of ASLAPR, or for any other use as permitted by the terms and conditions of the BTOP II grant.
4. Provide monthly utilization reports as required by ASLAPR. Upon generating a duly signed AGREEMENT, ASLAPR will consult with the PARTICIPATING LIBRARY on the best practices for gathering utilization metrics. However, there are minimum requirements for the BTOP II grant that the RECIPIENT must meet.
5. In consultation with ASLAPR, strive and aspire to maximize utilization of the VWW computer.

B. ASLAPR agrees to:

1. Administer the AzJAC Project.
2. Provide a project manager.
3. Work closely with the RECIPIENT and/or the PARTICIPATING LIBRARY to assist in resolving any issues of space, connectivity, accessibility, designated use, maximizing utilization, and gathering metrics on utilization.
4. Act as the fiscal agent for the project.
5. Submit federal and state project reports.
6. Communicate project status with libraries, when applicable.

5. Responsibility for Equipment

ASLAPR and the State of Arizona are not responsible for and will not cover any items referenced in this AGREEMENT for loss or damage. ASLAPR recommends that the RECIPIENT and the PARTICIPATING LIBRARY include the equipment in their loss prevention programs and/or policies.

In the event of loss of any items listed in Section 3.B, ***Equipment and Software List,*** the RECIPIENT agrees to report the loss to ASLAPR within five (5) business days of the loss. Because the RECIPIENT has a contractual responsibility to continue to provide the services required by the BTOP II grant and report on the use of the equipment, regardless of the circumstances of the loss, the RECIPIENT agrees to replace any items listed in Section 3.B, ***Equipment and Software List,*** that are designated as either SIGNIFICANT ASSETS or SOFTWARE within sixty (60) calendar days after the loss occurred.

The RECIPIENT must submit the specifications of the proposed replacement equipment and/or software to ASLAPR prior to purchasing or implementation, in case the RECIPIENT proposes using existing equipment or software. ASLAPR reserves the right to reject the proposed replacement equipment or software if ASLAPR determines that it will not sufficiently meet the capabilities or specifications of the original equipment or software. If the replacement equipment is not approved by ASLAPR prior to purchasing or implementation, the RECIPIENT is still liable for loss coverage should the equipment not meet the approval of ASLAPR.

Should the RECIPIENT elect not to replace equipment due to a loss, ASLAPR will consider the RECIPIENT in breach of this AGREEMENT and ASLAPR may terminate this AGREEMENT subject to Section 21, ***AGREEMENT Termination*** and may exercise any other remedy available by law.

6. Method and Terms of Reimbursement

Funds will be transferred to RECIPIENT on a cost reimbursement basis upon receipt and approval of a Reimbursement Request Form showing cumulative expenditures by line item. Items to be reported are; dollar amount requested, name of project worked on and project status compared to timeline submitted, if applicable. The RECIPIENT will be responsible for paying vendors associated with this project, when applicable. ASLAPR will reimburse expenses to RECIPIENT using a warrant, transfer, or by direct deposit of BTOP II funds. Method of payment will be at the discretion of ASLAPR and the RECIPIENT will allow thirty (30) calendar days for completion of payment of funds after ASLAPR's receipt of a Reimbursement Request Form. Any unspent funds associated with this AGREEMENT will be refunded to ASLAPR at completion of stated AGREEMENT term. Final payment for this AGREEMENT will be released upon receipt of any final reporting requirements which are yet to be determined, if applicable.

7. Reporting and Compliance Requirements

Payments by ASLAPR to the RECIPIENT shall be in strict compliance with OMB Circular A-87, Cost Principles for State, Local and Indian Tribal Governments (2 CFR 225 A-87) and shall adhere to the Federal Cash Management Improvement Act (CMIA) and comply with guidelines of the BTOP II grant.

In addition the Recovery Act specifically provides that funds may not be used by any state or local government, or any private entity, for any casino or other gambling establishment, aquarium, zoo, golf course, or swimming pool.

The RECIPIENT must be prepared to track and report on the specific outcomes and benefits attributable to use of Recovery Act funds. Funds associated with this AGREEMENT shall only be used to reimburse the RECIPIENT for the purposes set forth on Section 3 of this AGREEMENT. The RECIPIENT must comply with all applicable Federal and State policies and procedures, and requirements related to Recovery Act and BTOP II monies.

8. Printed Material

It is agreed that any report or printed matter completed as a part of this AGREEMENT is a work for hire and shall not be copyrighted by the RECIPIENT. Any publicly printed material under this AGREEMENT shall state "This project was supported by ARRA funding in the form of a grant from the U.S. Department of Commerce and the Governor's Office of Economic Recovery ."

9. Documents Incorporated by Reference

Incorporation by Reference into AGREEMENT as if fully set forth herein:

Title XIV of the American Recovery and Reinvestment Act (ARRA) of 2009, known as the State Fiscal Stabilization Fund (Public Law 111-5 (H.R. 1), February 17, 2009; 123 Stat. 115, as amended by Public Law 111-8 (H.R. 1105), the Omnibus Appropriations Act, 2009; Division A, Section 523; March 11, 2009; 123 Stat. 524), as administered by the U.S. Department of Education.

(Included as **Attachment 1** and accessible at: http://www2.ed.gov/policy/gen/leg/recovery/statutory/stabilization-fund.doc).

It is the RECIPIENT's responsibility to obtain the most current revisions of this document.

10. Fiscal Responsibility

Should the project not be completed, be partially completed, or be completed at a lower cost than the original budget called for, the amount reimbursed to RECIPIENT shall be for only the amount of dollars actually spent by the RECIPIENT. For any funds received under this AGREEMENT for which expenditure is disallowed in an audit exception by the ASLAPR, the State of Arizona, or Federal government, the RECIPIENT shall reimburse said funds directly to the ASLAPR immediately within fifteen (15) business days, exclusive of state holidays.

11. Records and Audit Trails

Under A.R.S. § 35-214 and A.R.S. § 35-215, the RECIPIENT shall retain all data and other "records" relating to the performance of the AGREEMENT for a period of five (5) years after the closing of the federal grant. The RECIPIENT is subject to all audit oversight policies and procedures established by ASLAPR and/or the State of Arizona. The RECIPIENT shall flow down this requirement to all subcontractors utilized during the term of this AGREEMENT.

12. Amendments

This AGREEMENT may be modified, altered or amended only in writing signed by, or on behalf of, both parties.

13. Arbitration

This AGREEMENT is subject to arbitration to the extent required by A.R.S. § 12-1518, and any such proceeding shall be held in Phoenix, Maricopa County, Arizona.

14. Cancellation for Conflict of Interest

This AGREEMENT is subject to cancellation pursuant to A.R.S. § 38-511, the provisions of which are herein incorporated by reference.

15. Non-Discrimination

The RECIPIENT shall comply with State Executive Order No. 2009-09 and all other applicable Federal and State laws, rules and regulations, including the American with Disabilities Act. The RECIPIENT shall flow down this requirement to all subcontractors utilized during the term of this AGREEMENT.

16. Federal Immigration and Nationality Act

The RECIPIENT shall comply with all federal, state and local immigration laws and regulations relating to the immigration status of their employees during the term of the AGREEMENT. Further, the RECIPIENT shall flow down this requirement to all subcontractors utilized during the term of the AGREEMENT. The State shall retain the right to perform random audits of the RECIPIENT's and subcontractors' records or to inspect papers of any employee thereof to ensure compliance. Should the State determine that the RECIPIENT and/or any subcontractor be found noncompliant, the State may pursue all remedies allowed by law, including, but not limited to; suspension of work, termination of the AGREEMENT for default and suspension and/or debarment of the RECIPIENT.

17. E-Verify Requirements

In accordance with A.R.S. § 41-4404, the RECIPIENT warrants compliance with all Federal immigration laws and regulations relating to employees and warrants its compliance with A.R.S. § 23-214, Subsection A. The RECIPIENT shall flow down this requirement to all subcontractors utilized during the term of this AGREEMENT.

18. Scrutinized Business

In accordance with A.R.S. § 35-931 and A.R.S. § 35-393, the RECIPIENT certifies that the RECIPIENT does not have scrutinized business operations in Sudan or Iran. The RECIPIENT shall flow down this requirement to all subcontractors utilized during the term of this AGREEMENT.

19. Renewal

This AGREEMENT will and shall not be renewed. Additionally, this AGREEMENT shall not bind nor purport to bind ASLAPR and/or the State of Arizona for any contractual commitment in excess of the original AGREEMENT period or amount. The AGREEMENT will terminate on the TERMINATION DATE and ASLAPR reserves the right to cancel prior to the TERMINATION DATE based on the cancellation criteria set forth in this AGREEMENT.

20. Indemnification

Each party (as "**Indemnitor**") agrees to indemnify, defend, and hold harmless the other party (as "**Indemnitee**") from and against any and all claims, losses, liability, costs, or expenses (including reasonable attorney's fees) (hereinafter collectively referred to as "**Claims**") arising out of bodily injury of any person (including death) or property damage, but only to the extent that such Claims which result in vicarious/derivative liability to the Indemnitee are caused by the act, omission, negligence, misconduct, or other fault of the Indemnitor, its officers, officials, agents, employees, or volunteers.

21. AGREEMENT Termination

A. Termination for Cause

ASLAPR reserves the right to cancel the whole or any part of the AGREEMENT due to failure of the RECIPIENT to carry out any term or condition of the AGREEMENT or failure to make satisfactory progress in performing this AGREEMENT.

If ASLAPR determines there is cause for cancellation, ASLAPR shall issue a written ten (10) day notice of default to the RECIPIENT and ASLAPR may cancel the AGREEMENT. If ASLAPR cancels AGREEMENT pursuant to this clause, the State reserves all rights or claims to damage for breach of contract.

B. Termination for Non-Availability of Funds

Obligations by ASLAPR for acquisition of equipment and software is conditioned upon the availability of funds appropriated or allocated for such obligations. If funds are not allocated and available for the continuance of this AGREEMENT, either party may terminate this AGREEMENT at the end of the period for which funds remain available. No liability shall accrue to ASLAPR or the State of Arizona in the event this provision is exercised, and neither ASLAPR nor the State of Arizona will be obligated or liable for any future commitment, obligations, or for any damages as a result of termination under this paragraph.

C. Termination by Notice

ASLAPR reserves the right to terminate the AGREEMENT at any time, for the convenience of ASLAPR, without penalty or recourse, by giving written notice to the RECIPIENT at least thirty (30) days prior to the effective date of such termination. In the event of termination pursuant to this paragraph, all documents, data, and reports prepared by the RECIPIENT under the AGREEMENT shall, at the option of ASLAPR, become property of the State of Arizona. The RECIPIENT shall be entitled to receive just and equitable compensation for that work completed prior to the effective date of termination.

22. Entire Agreement

This AGREEMENT contains the entire agreement and understanding of the parties hereto. There are no representations or provisions other than those contained herein, and this AGREEMENT supersedes all prior agreements between the parties, whether written or oral, pertaining to the same subject matter of this AGREEMENT.

23. No Waiver

Either party's failure to insist on strict performance of any term or condition of the AGREEMENT shall not be construed as a waiver of that term or condition even if the party accepting or acquiescing in the nonconforming performance knows of the nature of the performance and fails to object to it.

24. Partial Invalidity

The parties agree that, should any part of this AGREEMENT be held to be invalid or void, the remainder of the AGREEMENT shall remain in full force and effect and shall be binding upon the parties.

25. Governing Law

This AGREEMENT is made under, and shall be governed and interpreted by the laws of the State of Arizona. In the event of litigation arising out of, or relating to, this AGREEMENT, the RECIPIENT, ASLAPR, and the State of Arizona hereby stipulate to the exclusive jurisdiction and venue of the Maricopa County Superior Court in Phoenix, Arizona.

26. Counterparts

This AGREEMENT may be executed in any number of duplicate originals, photocopies or facsimiles, all of which (once each party has executed at least one such duplicate original, photocopy, or facsimile) will constitute one and the same document.

27. Interpretation

This AGREEMENT is not to be construed or interpreted for or against either of the parties on the grounds of sole or primary authorship or draftsmanship.

28. Paragraph Headings

The paragraph headings in this AGREEMENT are for convenience or reference only and do not define, limit, enlarge, or otherwise affect the scope, construction, or interpretation of this AGREEMENT or any of its provisions.

29. Notices

Any and all notices, requests or demands given or made upon the parties hereto, pursuant to or in connection with this AGREEMENT, unless otherwise noted, shall be delivered in person, fax, email, or sent by United States Mail, postage prepaid, to the parties at their respective addresses as set forth immediately below:

Correspondence to RECIPIENT:	Correspondence to Grantor:
Cheryl Kennedy	**Laura Stone**
Acting Library Director	BTOP II Program Director
Glendale Public Library	**Arizona State Library and Archives**
5959 West Brown St.	1700 West Washington
Glendale, AZ 85302	Suite 200
	Phoenix, AZ 85007
Telephone: 623[redacted]	Telephone: (602)[redacted]
Email: ckennedy@glendaleaz.com	Email: lstone@lib.az.us
Fax: (623) 842-2161	Fax: (602) 256 - 7983

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31. Authority to Execute this AGREEMENT

Each individual executing this AGREEMENT on behalf of the RECIPIENT and ASLAPR represents and warrants that he or she is duly authorized to execute this AGREEMENT.

IN WITNESS WHEREOF, the parties hereto agree to execute this AGREEMENT:

RECIPIENT:

City of Glendale,
an Arizona municipal corporation
5850 West Glendale Avenue
Glendale, AZ 85301

Horatio Skeete for
Ed Beasley
City Manager
Date: 5 / 10 / 2012

ATTEST:

Pamela Hanna
City Clerk
(seal)
Date: 05 / 10 / 2012

APPROVED AS TO FORM:

Craig Tindall
City Attorney
Date: 5 / 9 / 2012

ASLAPR:

Arizona State Library,
Archive and Public Records
1700 W. Washington, Suite 300
Phoenix, AZ 85007

Jim Drake
Jim Drake
Assistant Secretary of State
Date: 2 / 28 / 2012

Any ***Inventory Receipt Form*** completed by RECIPIENT shall be delivered in person or sent by the United States Postal Service to the address below.

Arizona State Library
1700 W. Washington
Suite 200
Phoenix, AZ 85007
Attn.: Chris Guerra

Email: cguerra@lib.az.us
Telephone: (602) [redacted]

American Recovery and Reinvestment Act of 2009
Public Law 111-5 (H.R. 1), February 17, 2009; 123 Stat. 115

As amended by Public Law 111-8 (H.R. 1105), the Omnibus Appropriations Act, 2009; Division A, Section 523; March 11, 2009; 123 Stat. 524

Below are excerpts from Public Law 111-5, as amended by Public Law 111-8, that relate to the State Fiscal Stabilization Fund administered by the U.S. Department of Education. The U.S. Department of Education has posted this information as a courtesy to readers. The official (and controlling) texts of this material will be printed in those two Public Laws.

DIVISION A, TITLE XIV – STATE FISCAL STABILIZATION FUND
DEPARTMENT OF EDUCATION
STATE FISCAL STABILIZATION FUND

GENERAL PROVISIONS – THIS TITLE

SEC. 14001. ALLOCATIONS.

(a) Outlying Areas. From the amount appropriated to carry out this title, the Secretary of Education shall first allocate up to one-half of 1 percent to the outlying areas on the basis of their respective needs, as determined by the Secretary, in consultation with the Secretary of the Interior, for activities consistent with this title under such terms and conditions as the Secretary may determine.

(b) Administration and Oversight. The Secretary may, in addition, reserve up to $14,000,000 for administration and oversight of this title, including for program evaluation.

(c) Reservation for Additional Programs. After reserving funds under subsections (a) and (b), the Secretary shall reserve $5,000,000,000 for grants under sections 14006 and 14007.

(d) State Allocations. After carrying out subsections (a), (b), and (c), the Secretary shall allocate the remaining funds made available to carry out this title to the States as follows:

(1) 61 percent on the basis of their relative population of individuals aged 5 through 24.

(2) 39 percent on the basis of their relative total population.

(e) State Grants. From funds allocated under subsection (d), the Secretary shall make grants to the Governor of each State.

(f) Reallocation. The Governor shall return to the Secretary any funds received under subsection (e) that the Governor does not award as subgrants or otherwise commit within two years of receiving such funds, and the Secretary shall reallocate such funds to the remaining States in accordance with subsection (d).

SEC. 14002. STATE USES OF FUNDS.

(a) Education Fund.

(1) In general. For each fiscal year, the Governor shall use 81.8 percent of the State's allocation under section 14001(d) for the support of elementary, secondary, and postsecondary education and, as applicable, early childhood education programs and services.

(2) Restoring state support for education.

(A) In general. The Governor shall first use the funds described in paragraph (1)—

(i) to provide the amount of funds, through the State's primary elementary and secondary education funding formulae, that is needed—

(I) to restore, in each of fiscal years 2009, 2010, and 2011, the level of State support provided through such formulae to the greater of the fiscal year 2008 or fiscal year 2009 level; and

(II) where applicable, to allow existing State formulae increases to support elementary and secondary education for fiscal years 2010 and 2011 to be implemented and allow funding for phasing in State equity and adequacy adjustments, if such increases were enacted pursuant to State law prior to October 1, 2008.

(ii) to provide, in each of fiscal years 2009, 2010, and 2011, the amount of funds to public institutions of higher education in the State that is needed to restore State support for such institutions (excluding tuition and fees paid by students) to the greater of the fiscal year 2008 or fiscal year 2009 level.

(B) Shortfall. If the Governor determines that the amount of funds available under paragraph (1) is insufficient to support, in each of fiscal years 2009, 2010, and 2011, public elementary, secondary, and higher education at the levels described in clauses (i) and (ii) of subparagraph (A), the Governor shall allocate those funds between those clauses in proportion to the relative shortfall in State support for the education sectors described in those clauses.

(C) Fiscal year. For purposes of this paragraph, the term "fiscal year" shall have the meaning given such term under State law.

(3) Subgrants to improve basic programs operated by local educational agencies.--After carrying out paragraph (2), the Governor shall use any funds remaining under paragraph (1) to provide local educational agencies in the State with subgrants based on their relative shares of funding under part A of title I of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6311 et seq.) for the most recent year for which data are available.

(b) Other Government Services.

(1) In general. The Governor shall use 18.2 percent of the State's allocation under section 14001(d) for public safety and other government services, which may include assistance for elementary and secondary education and public institutions of higher education, and for modernization, renovation, or repair of public school facilities and institutions of higher education facilities, including modernization, renovation, and repairs that are consistent with a recognized green building rating system.

(2) Availability to all institutions of higher education. A Governor shall not consider the type or mission of an institution of higher education, and shall consider any institution for funding for modernization, renovation, and repairs within the State that—

(A) qualifies as an institution of higher education, as defined in subsection 14013(3); and

(B) continues to be eligible to participate in the programs under title IV of the Higher Education Act of 1965.

(c) Rule of Construction. Nothing in this section shall allow a local educational agency to engage in school modernization, renovation, or repair that is inconsistent with State law.

SEC. 14003. USES OF FUNDS BY LOCAL EDUCATIONAL AGENCIES.

(a) In General. local educational agency that receives funds under this title may use he funds for any activity authorized by the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6301 et seq.) ("SEA"), the Individuals with Disabilities Education Act (20 U.S.C. 1400 et seq.) ("IDEA"), the Adult Education and Family Literacy Act (20 U.S.C. 9201 et seq.), or the Carl D. Perkins Career and Technical Education Act of 2006 (20 U.S.C. 2301 et seq.) ("the Perkins Act") or for modernization, renovation, or repair of public school facilities, including modernization, renovation, and repairs that are consistent with a recognized green building rating system.

(b) Prohibition. A local educational agency may not use funds received under this title for—

(1) payment of maintenance costs;

(2) stadiums or other facilities primarily used for athletic contests or exhibitions or other events for which admission is charged to the general public;

(3) purchase or upgrade of vehicles; or

(4) improvement of stand-alone facilities whose purpose is not the education of children, including central office administration or operations or logistical support facilities.

(c) Rule of Construction. Nothing in this section shall allow a local educational agency to engage in school modernization, renovation, or repair that is inconsistent with State law.

SEC. 14004. USES OF FUNDS BY INSTITUTIONS OF HIGHER EDUCATION.

(a) In General. A public institution of higher education that receives funds under this title shall use the funds for education and general expenditures, and in such a way as to mitigate the need to raise tuition and fees for in-State students, or for modernization, renovation, or repair of institution of higher education facilities that are primarily used for instruction, research, or student housing, including modernization, renovation, and repairs that are consistent with a recognized green building rating system.

(b) Prohibition. An institution of higher education may not use funds received under this title to increase its endowment.

(c) Additional Prohibition. No funds awarded under this title may be used for—

(1) the maintenance of systems, equipment, or facilities;

(2) modernization, renovation, or repair of stadiums or other facilities primarily used for athletic contests or exhibitions or other events for which admission is charged to the general public; or

(3) modernization, renovation, or repair of facilities—

(A) used for sectarian instruction or religious worship; or

(B) in which a substantial portion of the functions of the facilities are subsumed in a religious mission.

SEC. 14005. STATE APPLICATIONS.

(a) In General. The Governor of a State desiring to receive an allocation under section 14001(d) shall submit an application at such time, in such manner, and containing such information as the Secretary may reasonably require.

(b) Application. In such application, the Governor shall—

(1) include the assurances described in subsection (d);

(2) provide baseline data that demonstrates the State's current status in each of the areas described in such assurances; and

(3) describe how the State intends to use its allocation, including whether the State will use such allocation to meet maintenance of effort requirements under the ESEA and IDEA and, in such cases, what amount will be used to meet such requirements.

(c) Incentive Grant Application. The Governor of a State seeking a grant under section 14006 shall—

(1) submit an application for consideration;

(2) describe the status of the State's progress in each of the areas described in subsection (d), and the strategies the State is employing to help ensure that students in the subgroups described in section 1111(b)(2)(C)(v)(II) of the ESEA (20 U.S.C. 6311(b)(2)(C)(v)(II)) who have not met the State's proficiency targets continue making progress toward meeting the State's student academic achievement standards;

(3) describe the achievement and graduation rates (as described in section 1111(b)(2)(C)(vi) of the ESEA (20 U.S.C. 6311(b)(2)(C)(vi)) and as clarified in section 200.19(b)(1) of title 34, Code of Federal Regulations) of public elementary and secondary school students in the State, and the strategies the State is employing to help ensure that all subgroups of students identified in section 1111(b)(2) of the ESEA (20 U.S.C. 6311(b)(2)) in the State continue making progress toward meeting the State's student academic achievement standards;

(4) describe how the State would use its grant funding to improve student academic achievement in the State, including how it will allocate the funds to give priority to high-need local educational agencies; and

(5) include a plan for evaluating the State's progress in closing achievement gaps.

(d) Assurances. An application under subsection (b) shall include the following assurances:

(1) Maintenance of effort.

(A) Elementary and secondary education. The State will, in each of fiscal years 2009, 2010, and 2011, maintain State support for elementary and secondary education at least at the level of such support in fiscal year 2006.

(B) Higher education. The State will, in each of fiscal years 2009, 2010, and 2011, maintain State support for public institutions of higher education (not including support for capital projects or for research and development or tuition and fees paid by students) at least at the level of such support in fiscal year 2006.

(2) Achieving equity in teacher distribution. The State will take actions to improve teacher effectiveness and comply with section 1111(b)(8)(C) of the ESEA (20 U.S.C. 6311(b)(8)(C)) in order to address inequities in the distribution of highly qualified teachers between high- and low-poverty schools, and to ensure that low-income and minority children are not taught at higher rates than other children by inexperienced, unqualified, or out-of-field teachers.

(3) Improving collection and use of data. The State will establish a longitudinal data system that includes the elements described in section 6401(e)(2)(D) of the America COMPETES Act (20 U.S.C. 9871).

(4) Standards and assessments. The State—

(A) will enhance the quality of the academic assessments it administers pursuant to section 1111(b)(3) of the ESEA (20 U.S.C. 6311(b)(3)) through activities such as those described in section 6112(a) of such Act (20 U.S.C. 7301a(a));

(B) will comply with the requirements of paragraphs (3)(C)(ix) and (6) of section 1111(b) of the ESEA (20 U.S.C. 6311(b)) and section 612(a)(16) of the IDEA (20 U.S.C. 1412(a)(16)) related to the inclusion of children with disabilities and limited English proficient students in State assessments, the development of valid and reliable assessments for those students, and the provision of accommodations that enable their participation in State assessments; and

(C) will take steps to improve State academic content standards and student academic achievement standards consistent with section 6401(e)(1)(A)(ii) of the America COMPETES Act.

(5) Supporting struggling schools. The State will ensure compliance with the requirements of section 1116(b)(7)(C)(iv) and section 1116(b)(8)(B) of the ESEA with respect to schools identified under such sections.

SEC. 14006. STATE INCENTIVE GRANTS.

(a) In General.

(1) Reservation. From the total amount reserved under section 14001(c) that is not used for section 14007, the Secretary may reserve up to 1 percent for technical assistance to States to assist them in meeting the objectives of paragraphs (2), (3), (4), and (5) of section 14005(d).

(2) Remainder. Of the remaining funds, the Secretary shall, in fiscal year 2010, make grants to States that have made significant progress in meeting the objectives of paragraphs (2), (3), (4), and (5) of section 14005(d).

(b) Basis for Grants. The Secretary shall determine which States receive grants under this section, and the amount of those grants, on the basis of information provided in State applications under section 14005 and such other criteria as the Secretary determines appropriate, which may include a State's need for assistance to help meet the objective of paragraphs (2), (3), (4), and (5) of section 14005(d).

(c) Subgrants to Local Educational Agencies. Each State receiving a grant under this section shall use at least 50 percent of the grant to provide local educational agencies in the State with subgrants based on their relative shares of funding under part A of title I of the ESEA (20 U.S.C. 6311 et seq.) for the most recent year.

SEC. 14007. INNOVATION FUND.

(a) In General.

(1) Eligible entities. For the purposes of this section, the term "eligible entity" means—

(A) a local educational agency; or

(B) a partnership between a nonprofit organization and—

(i) one or more local educational agencies; or

(ii) a consortium of schools.

(2) Program established. From the total amount reserved under section 14001(c), the Secretary may reserve up to $650,000,000 to establish an Innovation Fund, which shall consist of academic achievement awards that recognize eligible entities that meet the requirements described in subsection (b).

(3) Basis for awards. The Secretary shall make awards to eligible entities that have made significant gains in closing the achievement gap as described in subsection (b)(1)—

(A) to allow such eligible entities to expand their work and serve as models for best practices;

(B) to allow such eligible entities to work in partnership with the private sector and the philanthropic community; and

(C) to identify and document best practices that can be shared, and taken to scale based on demonstrated success.

(b) Eligibility. To be eligible for such an award, an eligible entity shall—

(1) have significantly closed the achievement gaps between groups of students described in section 1111(b)(2) of the ESEA (20 U.S.C. 6311(b)(2));

(2) have exceeded the State's annual measurable objectives consistent with such section 1111(b)(2) for 2 or more consecutive years or have demonstrated success in significantly increasing student academic achievement for all groups of students described in such section through another measure, such as measures described in section 1111(c)(2) of the ESEA;

(3) have made significant improvement in other areas, such as graduation rates or increased recruitment and placement of high-quality teachers and school leaders, as demonstrated with meaningful data; and

(4) demonstrate that they have established partnerships with the private sector, which may include philanthropic organizations, and that the private sector will provide matching funds in order to help bring results to scale.

(c) Special Rule. In the case of an eligible entity that includes a nonprofit organization, the eligible entity shall be considered to have met the eligibility requirements of paragraphs (1), (2), (3) of subsection (b) if such nonprofit organization has a record of meeting such requirements.

SEC. 14008. STATE REPORTS.

For each year of the program under this title, a State receiving funds under this title shall submit a report to the Secretary, at such time and in such manner as the Secretary may require, that describes—

(1) the uses of funds provided under this title within the State;

(2) how the State distributed the funds it received under this title;

(3) the number of jobs that the Governor estimates were saved or created with funds the State received under this title;

(4) tax increases that the Governor estimates were averted because of the availability of funds from this title;

(5) the State's progress in reducing inequities in the distribution of highly qualified teachers, in implementing a State longitudinal data system, and in developing and implementing valid and reliable assessments for limited English proficient students and children with disabilities;

(6) the tuition and fee increases for in-State students imposed by public institutions of higher education in the State during the period of availability of funds under this title, and a description of any actions taken by the State to limit those increases;

(7) the extent to which public institutions of higher education maintained, increased, or decreased enrollment of in-State students, including students eligible for Pell Grants or other need-based financial assistance; and

(8) a description of each modernization, renovation and repair project funded, which shall include the amounts awarded and project costs.

SEC. 14009. EVALUATION.

The Comptroller General of the United States shall conduct evaluations of the programs under sections 14006 and 14007 which shall include, but not be limited to, the criteria used for the awards made, the States selected for awards, award amounts, how each State used the award received, and the impact of this funding on the progress made toward closing achievement gaps.

SEC. 14010. SECRETARY'S REPORT TO CONGRESS.

The Secretary shall submit a report to the Committee on Education and Labor of the House of Representatives, the Committee on Health, Education, Labor, and Pensions of the Senate, and the Committees on Appropriations of the House of Representatives and of the Senate, not less than 6 months following the submission of State reports, that evaluates the information provided in the State reports under section 14008 and the information required by section 14005(b)(3) including State-by-State information.

SEC. 14011. PROHIBITION ON PROVISION OF CERTAIN ASSISTANCE.

No recipient of funds under this title shall use such funds to provide financial assistance to students to attend private elementary or secondary schools, unless such funds are used to provide special education and related services to children with disabilities, as authorized by the Individuals with Disabilities Education Act (20 U.S.C. 1400 et seq.).

SEC. 14012. FISCAL RELIEF.

(a) In General. For the purpose of relieving fiscal burdens on States and local educational agencies that have experienced a precipitous decline in financial resources, the Secretary of Education may waive or modify any requirement of this title relating to maintaining fiscal effort.

(b) Duration. A waiver or modification under this section shall be for any of fiscal year 2009, fiscal year 2010, or fiscal year 2011, as determined by the Secretary.

(c) Criteria. The Secretary shall not grant a waiver or modification under this section unless the Secretary determines that the State receiving such waiver or modification will not provide for elementary, secondary, and public higher education, for the fiscal year under consideration, a smaller percentage of the total revenues available to the State than the percentage provided for such purpose in the preceding fiscal year.

(d) Maintenance of Effort. Upon prior approval from the Secretary, a State or local educational agency that receives funds under this title may treat any portion of such funds that is used for elementary, secondary, or postsecondary education as non-Federal funds for the purpose of any requirement to maintain fiscal effort under any other program, including part C of the Individuals with Disabilities Education Act (20 U.S.C. 1431 et seq.), administered by the Secretary.

(e) Subsequent Level of Effort. Notwithstanding (d), the level of effort required by a State or local educational agency for the following fiscal year shall not be reduced.

SEC. 14013. DEFINITIONS.

Except as otherwise provided in this title, as used in this title—

(1) the terms "elementary education" and "secondary education" have the meaning given such terms under State law;

(2) the term "high-need local educational agency" means a local educational agency—

(A) that serves not fewer than 10,000 children from families with incomes below the poverty line; or

(B) for which not less than 20 percent of the children served by the agency are from families with incomes below the poverty line;

(3) the term "institution of higher education" has the meaning given such term in section 101 of the Higher Education Act of 1965 (20 U.S.C. 1001);

(4) the term "Secretary" means the Secretary of Education;

(5) the term "State" means each of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico; and

(6) any other term used that is defined in section 9101 of the ESEA (20 U.S.C. 7801) shall have the meaning given the term in such section.

[END]