

**STATE ENERGY CONSERVATION OFFICE  
LOAN AGREEMENT**

**1. Parties; Effective Date**

This Loan Agreement (hereinafter, "Agreement") is entered into by and between the Texas Comptroller of Public Accounts, through its State Energy Conservation Office ("Lender"), and \_\_\_\_\_ ("Borrower"). The Effective Date of this Agreement shall be the date this Agreement is signed by Lender, after having first been signed by the Borrower.

**2. Loan of Funds**

The Borrower hereby requests Lender and Lender hereby agrees, on the terms and conditions set forth in this Agreement, to establish a loan for the benefit of Borrower in an amount not to exceed \_\_\_\_\_ (\$ \_\_\_\_\_) (hereinafter, "Loan"). Borrower shall expend all funds received from Lender pursuant to this Agreement only for the purpose of completion of the project described in the Loan Approval Statement attached hereto as Attachment A-1 (hereinafter, "Project"), the Engineering Report (as defined in Attachment A-1), and Borrower's Loan Application. The Project shall be completed within 12 months of the Effective Date ("Project Completion Date"). The Project Completion Date may be extended only on Lender's prior written approval as provided for in Section 13 of this Agreement.

**3. Authority**

This Loan is authorized pursuant to: (1) the LoanSTAR Revolving Loan Program of the Texas State Energy Plan ("SEP") in accordance with the Energy Policy and Conservation Act (42 U.S.C. 6321, et seq.) as amended by the Energy Conservation and Production Act (42 U.S.C. 6326, et seq.); (2) the Oil Overcharge Restitutionary Act, Chapter 2305, Texas Government Code § 2305.032; and (3) Title 34, Part 1, Texas Administrative Code, Subchapter D, Loan Program for Energy Retrofits.

**4. Term and Termination**

The term of this Agreement shall begin on the Effective Date and shall terminate upon repayment, in full, of the Loan. The provisions of this Agreement regarding confidentiality, indemnification, payments, records, and dispute resolution shall survive the termination or expiration of this Agreement.

**5. Payments**

Borrower shall repay the Loan, in full, in accordance with the promissory note (see Attachment A-2) issued by Borrower (the "Note") and the terms specified in the Loan Payment Schedule at Lender's principal place of business in Austin, Texas, or at such other place as Lender may designate, the principal sum of \_\_\_\_\_ **DOLLARS** (\$ \_\_\_\_\_) or such lesser amount as shall equal the aggregate amount disbursed to Borrower by Lender under the terms of this Agreement **together with interest on the unpaid principal amount computed from the date of each disbursement to Borrower until repaid in full** at the rate of \_\_\_ percent (\_\_\_%) per annum.

**6. Disbursements**

Borrower must submit requests for disbursement to Lender on a regular basis so that they are received by Lender every thirty (30) to forty-five (45) calendar days. Requests for disbursement may only include requests for reimbursement of goods and services for which Borrower has authorized payment within sixty (60) days of the submission of the disbursement request. Lender shall have no obligation to make disbursements for the costs of goods and services if Borrower fails to comply with these requirements. Notwithstanding any other provision of this Agreement or any other document to the contrary, the total of all installments disbursed by Lender to Borrower shall not exceed the amount of the Loan set forth in Section 2 of this Agreement.

**7. Contingency of Funding**

Lender's performance of its obligations under this Agreement is contingent upon and subject to availability of and actual receipt by Lender of sufficient and adequate funds from the sources contemplated by this Agreement. This Agreement is subject to immediate termination or cancellation without penalty to Lender or the State of Texas, subject to such availability and receipt of these funds. In addition, Lender is a state agency whose authority and appropriations are subject to the actions of the Texas Legislature. If Lender becomes subject to a legislative change, revocation of statutory authority or lack of funds that would render Lender's performance under this Agreement impossible or unnecessary, Lender may terminate or cancel this Agreement without penalty to Lender or the State of Texas. In the

event of a termination or cancellation under this Section, Lender shall not be required to give notice and shall not be liable for any damages, losses or any other amounts caused or associated with such termination or cancellation. Lender acknowledges and agrees the terms of this Section 7 equally apply to Borrower if Borrower is an agency of the State of Texas.

#### **8. Accounts; Audits**

If requested by Lender, Borrower shall deposit disbursements of the Loan into an account with an institution the deposits of which are insured by the federal government. Borrower shall establish on its books of account an account specifically for the Loan and maintain the same until the Loan is fully repaid. Such account shall accurately and fully show all deposits attributable to disbursements of the Loan and all expenditures of the Loan. Upon Lender's request, Borrower shall promptly acquire and submit to an independent audit of such account and all funds received from Lender. All costs related to Borrower's compliance with this Section shall be borne solely by Borrower. In addition to and without limitation on the other audit provisions of this Agreement, pursuant to Section 2262.154, Texas Government Code, the state auditor may conduct an audit or investigation of the Borrower or any other entity or person receiving funds from the state directly under this Agreement or indirectly through a subcontract under this Agreement. The acceptance of funds by the Borrower or any other entity or person directly under this Agreement or indirectly through a subcontract under this Agreement acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. Under the direction of the legislative audit committee, the Borrower or other entity that is the subject of an audit or investigation by the state auditor must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit. This Agreement may be amended unilaterally by the Lender to comply with any rules and procedures of the state auditor in the implementation and enforcement of Section 2262.154. Borrower shall ensure that this paragraph concerning the authority to audit funds received indirectly by subcontractors through Borrower and the requirement to cooperate is included in any subcontract it awards. The state auditor shall at any time have access to and the right to examine, audit, excerpt, and transcribe any pertinent books, documents, working papers, and records of Borrower relating to this Agreement.

#### **9. Inspections; Monitoring**

Borrower shall provide Lender, its authorized employees, agents and representatives, and authorized State of Texas and federal employees, agents and representatives, with access to the Project site and all Project records. Borrower shall permit such persons to make physical inspections of any and all books, reports, documents, files, workpapers, work products, receipts, documentation, applications, data, accounts, or any other information or items pertaining to the Loan Application, the Project, the Loan, the Note or this Agreement, regardless of media ("Records") at reasonable times during the Project design process, before work on the Project commences, during the construction, installation, and implementation of the Project, and after work on the Project is completed and shall advise Borrower's project engineers and other employees, agents, and representatives of this requirement. Such authorized persons may monitor Project construction and review and audit financial documents and Project records. Borrower shall ensure that such documents are consistent with the project descriptions as detailed in Attachment A-1 to this Agreement. Borrower shall in each of its contracts with a supplier of goods and services for the Project provide the same rights of access and inspection with respect to the Project and Records in the possession of the supplier. In addition, Lender reserves the right, in its sole discretion, to make copies of, reproduce, distribute, monitor and inspect all Records to comply with requirements of the United States Department of Energy, the Texas Legislature, federal and state courts, and to publicly demonstrate the energy savings achieved by the Project.

Borrower shall permit such persons to make final physical inspections of the Project and Project records to verify the Project's completion in accordance with this Agreement and other State of Texas requirements. Lender may withhold from disbursement to Borrower ten percent (10%) of the amount of the Loan pending Lender's final inspection. Lender shall make reasonable efforts to coordinate site visits with Borrower; however, Lender and other authorized persons reserve the right to make unscheduled visits for any of the purposes described in this Agreement; however, Lender reserves the right, in its sole discretion, to extend the date for final inspection or to waive the final inspection. Without limiting Lender's right to make inspections at any time, Lender will physically inspect the project at the fifty percent (50%) and one hundred (100%) completion periods; provided, however, that Lender, may determine, in sole discretion, to limit this construction monitoring to one site visit to reduce costs on smaller projects.

**10. Design Review**

Lender's written approval will be required at the fifty percent (50%) and one hundred percent (100%) completion periods before Borrower proceeds to the next phase of the project. Construction shall not begin until Lender has approved all design and specification documents.

**11. Records Retention**

Borrower shall maintain all Records supporting its Loan Application until the Loan is fully repaid and for a period of seven (7) years thereafter and shall maintain copies of all Records under this Agreement for a period of seven (7) years after the date of submission; however, if at the conclusion of any audit of Borrower or audit of such Records, Lender determines that specific Records are no longer required to be maintained, Lender shall advise Borrower in writing and the obligation imposed on Borrower by this Section shall be terminated with respect to such specific Records only.

**12. Borrower Representations and Warranties**

To induce Lender to enter into this Agreement, extend the Loan and make the advances, Borrower represents and warrants to Lender that:

- a) Borrower has full power and authority to enter into this Agreement and this Agreement has been duly and validly authorized, executed and delivered by Borrower.
- b) This Agreement does not violate any limitation on the indebtedness of Borrower imposed by any statute, ordinance, charter, bylaw, or other agreement or instrument applicable to Borrower and this Agreement will not be rescinded at any time by any action of Borrower.
- c) Borrower is not in default in the performance or fulfillment of any of the obligations, covenants or conditions contained herein or in any other resolution, agreement, or instrument to which Borrower is a party which would have a material adverse effect on the ability of Borrower to perform its obligations hereunder or would adversely affect the enforceability hereof.
- d) Borrower has, or will have prior to commencing work on the Project, obtained all necessary federal, state and local licenses, permits and approvals required to construct, install, implement and operate the Project and shall comply with all federal, state and local laws, codes, rules and regulations applicable to the Project.
- e) Any written information, reports and other paper or data prepared by Borrower and furnished to Lender by Borrower pursuant to this Agreement were, at the time they were so furnished, complete and correct in all material respects to the extent necessary to give Lender a true and accurate knowledge of the subject matter thereof.
- f) Borrower shall maintain the Project in good working order and shall ensure that adequate personnel are fully instructed in the proper use and care of the Project.
- g) Borrower shall execute and deliver to Lender all such documents and instruments as may be necessary or reasonably required by Lender to enable Lender to exercise and enforce its rights under this Agreement, the Loan and any related transaction documents.
- h) Borrower shall to the extent permitted by law, and upon three (3) business days prior notice, permit Lender, from time to time during normal business hours, as often as may be reasonably requested, to inspect its books and records and make copies from such books and records which relate to its performance under this Agreement.

**13. Extensions**

To request an extension, Borrower shall submit to Lender a letter describing in detail the reasons for requesting the extension. With the letter, Borrower shall submit documentation to support the request. Lender reserves the right, in its sole discretion, to disapprove requests that do not include acceptable documentation or that are otherwise not submitted in compliance with this Section 13.

Lender may approve a properly requested and documented extension of the Project Completion Date for the Project if Borrower has complied with all requirements of this Agreement, other than completion of the Project by the original Project Completion Date, and any one of the following apply:

- 1) Borrower has recently discovered unforeseen circumstances during design or construction that prevent completion of the Project by the original Project Completion Date and that must be resolved to complete the Project as designed;
- 2) Borrower is required to rebid, delete, or propose an alternative to the Project; or

- 3) A force of nature created a delay in completing the Project.

In order to qualify for an extension, Borrower may not have been assessed more than two (2) late payment penalties under Section 21 during the term of this Agreement.

Lender shall not approve extensions under this Section 13 unless Borrower agrees to make and Borrower makes loan repayments on the previously completed portion of the Project as specified in the Loan Repayment Schedule provided by Lender. Any extension must be documented through an Amendment to this Agreement.

#### **14. Events of Default**

The occurrence of any of the following shall constitute a default by Borrower:

- a) The failure of Borrower to make a payment due and payable under this Agreement within the time specified in this Agreement;
- b) A breach or failure of performance by Borrower or any covenant, condition, or provision of this Agreement;
- c) The expenditure of Loan funds by Borrower for purposes other than the implementation of the Project as provided in this Agreement;
- d) Borrower's entry into any agreement whereby any person, corporation, business, or similar entity, other than Borrower, benefits directly or indirectly from utility savings resulting from the Loan or this Agreement, without the Lender's prior written approval, until such time as the Loan is repaid in full as determined by Lender;
- e) Without the prior written consent of Lender, the sale, transfer or other disposition by Borrower of any equipment or material constituting part of the Project, all or any part of the cost of which was paid with the Loan, or the sale, transfer or other disposition of, or the termination of the lease with respect to, the building or facility in which the Project is located, until such time as the Loan is repaid in full;
- f) The expenditure of Loan funds by Borrower to reimburse itself for funds expended by Borrower on the Project prior to the effective date of the Loan and this Agreement;
- g) The expenditure of Loan funds for the purpose of supplanting funds appropriated to the Borrower by the Texas Legislature; or
- h) Borrower's default under any other agreement between Borrower and Lender.

In the event of Borrower's default, Lender shall notify Borrower of the default and Borrower shall have a reasonable opportunity, not to exceed twenty (20) days, to cure Borrower's default. If Borrower fails to cure the default, Lender shall be released from all of its obligations under this Agreement and shall have the right to declare the Loan in default and all amounts loaned to Borrower under this Agreement and earned interest shall become immediately due. Borrower waives all demands for payment, presentations for payment, and notices of intention to accelerate maturity, notices of acceleration of maturity, protest, and notices of protest, to the extent permitted by law. Upon receipt of notice of default from Lender, Borrower shall cancel or otherwise terminate any contract, agreement or order relating to the Project and cease to incur any cost or expense relating to the Project.

If Borrower is a state agency, department or entity, or an institution of higher education or junior college funded in whole or in part by the State of Texas and Borrower has failed to repay the Loan within ninety (90) days of Lender's declaration of default under this Section, Lender may notify the Office of the Governor, Legislative Budget Board and the Texas Higher Education Coordinating Board of Borrower's breach of this Agreement and the amount owing by Borrower under this Agreement and recommend to the Legislative Budget Board that Borrower's appropriation of funds for the next succeeding biennium be reduced by an amount equal to the total amount due under this Agreement.

If Borrower is a school district organized under the laws of the State of Texas and has failed to repay the Loan within ninety (90) days of Lender's declaration of default under this Section, Lender may notify the Texas Education Agency of Borrower's breach of this Agreement and the amount owing by Borrower under this Agreement and recommend to the Texas Education Agency that funds to be allocated to Borrower by the Texas Education Agency for the next succeeding year be reduced by an amount equal to the total amount due under this Agreement.

#### **15. Amendments**

Any amendment, modification or alteration of the terms of this Agreement shall be in writing and executed by both parties; however, Lender may unilaterally amend this Agreement as provided in Section 26 below. Oral agreements or understandings not incorporated into this Agreement shall not be binding on the parties.

**16. Notices**

All notices and other communications required or permitted under this Agreement shall be in writing (including required copies) and delivered by registered or certified United States mail or by a recognized commercial courier or delivery service as follows:

If to Lender:                   Texas Comptroller of Public Accounts  
                                       State Energy Conservation Office  
                                       LBJ State Office Building  
                                       111 East 17<sup>th</sup> Street, Room 314  
                                       Austin, Texas 78774-0100

If to Borrower: \_\_\_\_\_

**17. Indemnification**

**TO THE EXTENT PERMITTED BY THE CONSTITUTION AND THE LAWS OF THE STATE OF TEXAS, BORROWER SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS THE STATE OF TEXAS AND LENDER, AND/OR THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEY FEES, AND EXPENSES ARISING OUT OF, OR RESULTING FROM ANY ACTS OR OMISSIONS OF BORROWER OR ITS AGENTS, EMPLOYEES, SUBCONTRACTORS, ORDER FULFILLERS, OR SUPPLIERS OF SUBCONTRACTORS IN THE EXECUTION OR PERFORMANCE OF THIS AGREEMENT AND ANY PURCHASE ORDERS ISSUED UNDER THIS AGREEMENT. THE DEFENSE SHALL BE COORDINATED BY BORROWER WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND BORROWER MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL. BORROWER AND LENDER AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.**

**18. Assignment**

This Agreement and the rights and obligations of Borrower hereunder are not assignable or transferable by Borrower, in whole or in part, without the prior written consent of Lender.

**19. No Waiver**

This Agreement shall not constitute or be construed as a waiver of any of the privileges, rights, defenses, remedies, or immunities available to Lender, as an agency of the State of Texas, or otherwise available to Lender or Borrower. The failure to enforce or any delay in the enforcement of any privileges, rights, defenses, remedies, or immunities available to Lender or Borrower under this Agreement or under applicable law shall not constitute a waiver of such privileges, rights, defenses, remedies, or immunities or be considered as a basis for estoppel. Lender and Borrower do not waive any privileges, rights, defenses, remedies or immunities available to Lender and Borrower by entering into this Agreement or by their conduct prior to or subsequent to entering into this Agreement. **The modification of any privileges, rights, defenses, remedies, or immunities available to Lender and Borrower must be in writing, must reference this section, and must be signed by Lender or Borrower to be effective, and such modification of any privileges, rights, defenses, remedies, or immunities available to Lender and Borrower shall not constitute waiver of any subsequent privileges, rights, defenses, remedies, or immunities under this Agreement or under applicable law.**

**20. Discrimination**

During the term of this Agreement, Borrower shall not engage in any discriminatory practice with respect to any activity funded in whole or in part under this Agreement or by the Loan or with respect to any recipients of services, employees or applicants for employment based upon race, creed, color, handicap, national origin, gender, religion, political affiliation or age. Borrower shall in each contract with a person providing goods or services for the Project require the same agreement as to non-discrimination. By signing this agreement, Borrower certifies that it will comply with all HUB requirements, as applicable and amended.

**21. Default Rate**

All past-due principal of, and, to the extent permitted by applicable law, past-due interest on, any Notes issued under this Loan Agreement shall bear interest at ten percent (10%) (the "Default Rate") until the Loan is paid in full. In its sole discretion, Lender may waive the Default Rate upon Borrower's acceptable written justification for such waiver.

## **22. Maximum Interest**

Interest on the Loan evidenced by this Agreement shall not exceed the maximum amount of non-usurious interest that may be contracted for, taken, reserved, charged, or received under law; any interest in excess of that maximum amount shall be credited on the principal of the Loan or, if that has been paid, refunded. On any acceleration required or permitted prepayment, any such excess shall be canceled automatically as of the acceleration or prepayment or, if already paid, credited on the principal of the Loan or, if the principal of the Loan has been paid, refunded. This provision overrides other provisions in this and all other instruments concerning the Loan.

## **23. Governing Law; Venue**

This Agreement shall be governed by and construed in accordance with the laws of the State of Texas. The venue of any suit brought for any breach of this Agreement is fixed in any court of competent jurisdiction of Travis County, Texas.

## **24. Taxes**

Borrower is solely responsible for all state, federal and local taxes of any kind resulting from this Agreement. Lender shall have no liability for any such taxes. Borrower represents and warrants that it is not currently delinquent in the payment of any franchise taxes owed the State of Texas under the Texas Tax Code, Chapter 171. In addition, if Borrower is an individual not residing in Texas or a business entity not incorporated in or whose principal domicile is not in Texas, Borrower certifies that it holds a permit issued by the Comptroller of Public Accounts to collect or remit all state and local sales and use taxes that become due and owing as a result of the individual's or entity's business in Texas or certifies that it does not sell tangible personal property or services that are subject to the state and local sales and use tax.

Under the Texas Government Code, Section 2155.004, Borrower certifies that the individual or business entity named in this Agreement is not ineligible to receive the specified contract and acknowledges that this Agreement may be terminated and payment withheld if this certification is inaccurate.

## **25. Disputes**

As required by Chapter 2260, Lender has adopted rules under Chapter 2260, codified at 34 Texas Administrative Code §§1.360 – 1.387, regarding dispute resolution processes for certain breach of contract claims applicable to certain contracts for goods and services, and may adopt revisions to these rules throughout the term of this Agreement, including any extensions. Borrower shall comply with such rules.

The dispute resolution process provided for in Chapter 2260 of the Government Code shall be used, as further described herein, by Lender and Borrower to attempt to resolve any claim for breach of contract made by Borrower under this Agreement:

- a) Borrower's claim for breach of this Agreement that the parties cannot resolve in the ordinary course of business shall be submitted to the negotiation process provided in Chapter 2260. To initiate the process, Borrower shall submit written notice, as required by Chapter 2260, to the Deputy Comptroller or his or her designee. Said notice shall also be given to all other representatives of Lender and Borrower otherwise entitled to notice under this Agreement. Compliance by Borrower with Chapter 2260 is a condition precedent to the filing of a contested case proceeding under Chapter 2260.
- b) The contested case process provided in Chapter 2260 is Borrower's sole and exclusive process for seeking a remedy for an alleged breach of contract by Lender if the parties are unable to resolve their disputes under subparagraph (A) of this Section.
- c) Compliance with the contested case process provided in Chapter 2260 is a condition precedent to seeking consent to sue from the Legislature under Chapter 107, Civ. Prac. and Rem. Code. Neither the execution of this Agreement by Lender nor any other conduct of any representative of Lender relating to this Agreement shall be considered a waiver of sovereign immunity to suit.

For all other specific breach of contract claims or disputes under this Agreement, the following shall apply:

Should a dispute arise out of this Agreement, Lender and Borrower shall first attempt to resolve it through direct discussions in a spirit of mutual cooperation. If the parties' attempts to resolve their disagreements through negotiations fail, the dispute will be mediated by a mutually acceptable third party to be chosen by Lender and Borrower within fifteen (15) days after written notice by one of them demanding mediation under this Section. Borrower shall pay all costs of the mediation unless Lender, in its sole good faith discretion, approves its payment of all or part of such costs. By mutual agreement, Lender and Borrower may use a non-binding form of dispute resolution other than mediation. The purpose of this Section is to reasonably ensure that Lender and Borrower shall in good faith utilize mediation or another non-binding dispute resolution process before pursuing litigation. Lender's participation in or the results of any mediation or another non-binding dispute resolution process under this Section or the provisions of this Section shall not be construed as a waiver by Lender of: (1) any rights, privileges, defenses, remedies or immunities available to Lender as an agency of the State of Texas or otherwise available to Lender; (2) Lender's termination rights; or (3) other termination provisions or expiration dates of this Agreement.

Notwithstanding any other provision of this Agreement to the contrary, Borrower shall continue performance and shall not be excused from performance during the period any breach of Contract claim or dispute is pending under either of the above processes; however, Borrower may suspend performance during the pendency of such claim or dispute if Borrower has complied with all provisions of §2251.051, Texas Government Code, and such suspension of performance is expressly applicable and authorized under that law.

#### **26. Compliance**

Borrower shall comply with all laws, regulations, requirements and guidelines applicable to a Borrower from or a contractor with the State of Texas, as these laws, regulations, requirements and guidelines currently exist and as they are amended throughout the term of this Agreement. Lender reserves the right, in its sole discretion, to unilaterally amend this Agreement throughout its term to incorporate any modifications necessary for Lender's or Borrower's compliance with all applicable state and federal laws, regulations, requirements and guidelines. Other than this provision, this Agreement may only be amended upon the written agreement of both parties.

#### **27. Time**

Time is of the essence in the performance of this Agreement and accordingly all time limits shall be strictly and rigidly enforced.

#### **28. No Conflicts**

Borrower represents and warrants that Borrower has no actual or potential conflicts of interest in entering into this Agreement with Lender and that Borrower's receipt of disbursements under this Agreement would not reasonably create an appearance of impropriety. Borrower represents and warrants that neither Borrower nor any person or entity that will participate financially in this Agreement has received compensation from Lender for participation in preparation of specifications for this Agreement.

#### **29. Deceptive Trade Practices Act**

Borrower represents and warrants that Borrower has not been the subject of a Deceptive Trade Practices Act or any unfair business practice, administrative hearing, or court suit and that Borrower has not been found to be guilty of such practices in such proceedings. Borrower represents and warrants that it has no officers who have served as officers of other entities who have been the subject of a Deceptive Trade Practices Act or any unfair business practice, administrative hearing, or court suit and that such officers have not been found guilty of such practices in such proceedings.

#### **30. Antitrust**

Borrower represents and warrants that neither Borrower nor any firm, corporation, partnership, or institution represented by Borrower, nor anyone acting for such firm, corporation, partnership, or institution, has violated Texas antitrust laws or federal antitrust laws.

**31. Confidentiality; Open Records**

Borrower, its employees and contractors shall not disclose to anyone, directly or indirectly, any information designated by Lender as confidential or information accessed as a result of this Agreement without prior written consent of Lender. Notwithstanding any other provisions of this Agreement to the contrary, Borrower understands that Lender is bound by provisions of the Texas Public Information Act (formerly the Texas Open Records Act) and Attorney General Opinions issued under the statute. If Borrower is not also subject to the Texas Public Information Act, Borrower shall, within three (3) days of receipt, refer to Lender any third party requests, received directly by it, for information to which Borrower has access as a result of or in the course of performance under this Agreement.

**32. Other Rights**

Borrower shall have no exclusive rights or benefits other than those set forth in this Agreement.

**33. Certain Claims**

Borrower shall, to the extent authorized by the Constitution and laws of the State of Texas, defend and indemnify Lender and the State of Texas against claims of patent, trademark, copyright, trade secret or other proprietary rights, violations or infringements arising from or related to this Agreement, provided that Lender shall notify Borrower of any such claim within a reasonable time of Lender's receiving notice of any such claim. Borrower shall pay all reasonable costs of Lender's counsel. If Borrower is notified of any claim subject to this Section, Borrower shall notify Lender of such claim within five (5) working days of such notice. If Lender determines that a conflict exists between its interests and those of Borrower or if Lender is required by applicable law to select separate counsel, Lender shall be permitted to select separate counsel and the reasonable costs of such Lender's counsel shall be paid by Borrower. No settlement of any such claim shall be made by Borrower without Lender's prior written approval. Borrower represents that it has determined what licenses; patents and permits are required under this Agreement and has acquired or will acquire all such licenses, patents and permits prior to commencement of the Project.

**34. Statements**

By signature to this Agreement, Borrower makes all of the representations, warranties, covenants and certifications included in this Agreement. Notwithstanding any other provision of this Agreement to the contrary, if Borrower signs this Agreement with a false statement or it is subsequently determined that Borrower has violated any of the representations, warranties, covenants or certifications included in this Agreement, Borrower shall be in default under this Agreement and Lender may terminate or void this Agreement for cause and pursue other remedies available to Lender under this Agreement and applicable law.

**35. Debts or Delinquencies to State**

Borrower acknowledges and agrees that, to the extent Borrower owes any debt or delinquent taxes to the State of Texas, any payments or other amounts Borrower is otherwise owed under or related to this Agreement may be applied by the Comptroller of Public Accounts toward any debt or delinquent taxes Borrower owes the State of Texas until the debt or delinquent taxes are paid in full. These provisions are effective at any time Borrower owes any such debt or delinquency. Borrower shall comply with rules adopted by the Comptroller under Sections 403.055, 403.0551 and 2252.903 of the Texas Government Code, and other applicable laws and regulations regarding satisfaction of debts or delinquencies to the State of Texas.

Furthermore, Borrower acknowledges and agrees that any obligation to refund or return contract funds based on termination or breach of this Agreement entered into by Borrower and Lender creates "a debt to the state" for purposes of Section 403.055 of the Texas Government Code. Borrower further acknowledges and agrees that the terms of this Agreement are sufficient to create a debt by agreement between the Borrower and Lender. Lender agrees that it shall provide Borrower the opportunity to contest the amount due or the existence of a breach through an internal administrative review process which shall be determined by Lender. Borrower's failure to return any amount owed upon conclusion of Lender's administrative review process shall allow Lender to use the warrant-hold process under Section 403.055 of the Texas Government Code as a means of enforcing Borrower's compliance with the terms of the Grant Agreement or to recover grant funds required to be returned by Borrower under the terms of this Agreement.

If Borrower is a "local government entity" as defined under Section 271.151 of the Texas Local Government Code, Borrower acknowledges and agrees that this Agreement is a written contract stating the essential terms for providing services to Borrower, and therefore, this Agreement is subject to Chapter 271, Subchapter I, of the Local Government Code which waives sovereign immunity for certain breach of contract claims.



**36. Incorporation**

All of the following attachments are attached hereto and incorporated into this Agreement for all purposes:

<b>Attachment A-1:</b>	Loan Approval Statement
<b>Attachment A-2:</b>	Promissory Note
<b>Attachment B-1:</b>	DOE Assurance of Compliance Nondiscrimination in State Assisted Programs
<b>Attachment B-2:</b>	DOE Assurance of Compliance Nondiscrimination in State Assisted Programs
<b>Attachment C:</b>	Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion-Lower Tier Covered Transactions
<b>Attachment D:</b>	Certifications Regarding Lobbying; Debarment, Suspension and Other Responsibility Matters; and Drug-Free Workplace Requirements
<b>Attachment E:</b>	Disclosure of Lobbying Activities
<b>Attachment F:</b>	Assurances – Non Construction Programs
<b>Attachment G:</b>	Intellectual Property Provisions
<b>Attachment H:</b>	Subcontracting Provisions; Mandatory Flowdown Provision, as completed by the Borrower
<b>Attachment I:</b>	Consultation List for Energy Efficiency and Conservation Block Grants & the State Energy Plan Programs
<b>Attachment J:</b>	Execution of Application
<b>Attachment K:</b>	Lender's RFA
<b>Attachment L:</b>	Borrower's Application
<b>Attachment M:</b>	DOE Special Terms and Conditions Required in Grant to the Comptroller of Public Accounts and Flow down to ARRA Grants and Cooperative Agreements
<b>Attachment N:</b>	National Policy Assurances to be Incorporated as Award Terms (Version 2008)
<b>Attachment O-1:</b>	American Recovery & Reinvestment Act – Borrower/Subrecipient's Affidavit
<b>Attachment O-2:</b>	American Recovery & Reinvestment Act – Borrower/Subrecipient's Contractor Affidavit
<b>Attachment P:</b>	ARRA Reporting Requirements

In the event of a conflict, the following documents shall control in the following order of precedence:

1. This Agreement, excluding its attachments;
2. Attachments A-1 and A-2;
3. Attachment K;
4. Attachment J;
5. Attachments B-1 through I, Attachments M through P; and
6. Attachment L.

Borrower represents and warrants that it completed and provided the following Attachments to Lender prior to executing this Agreement: B-1, C, D, E, F, G, H, J, M, N, O-1 and P. In addition, Borrower represents and warrants that each of its contractors completed and provided an Attachments B-2 and O-2 to Borrower and Lender prior to Borrower executing this Agreement.

All applicable rules, regulations and all other requirements imposed by law, including, but not limited to, those pertinent rules and regulations of the State of Texas and those of federal agencies providing funds to the State of Texas are incorporated into this Agreement by reference as if specifically written herein.

**37. Successors and Assigns**

This Agreement is binding upon Borrower and its successors and assigns and upon Lender and its successors and assigns.

**38. Severability**

In the event that any provision of this Agreement is later determined to be invalid, void, or unenforceable, then the remaining terms, provisions, conditions of this Agreement shall remain in full force and effect, and shall in no way be affected, impaired, or invalidated.

**39. Merger**

This Agreement contains the entire agreement between Lender and Borrower relating to the rights granted and the obligations assumed in it. Any oral representations or modifications concerning this Agreement shall be of no force or effect unless contained in a subsequent writing, signed by both parties.

**40. Signatories**

The undersigned signatories represent and warrant that they have full authority to enter into this Agreement on behalf of the respective parties.

**LENDER:**

Texas Comptroller of Public Accounts

By: \_\_\_\_\_

Lisa Craven

Deputy Comptroller

Date: \_\_\_\_\_

**BORROWER:**

By: \_\_\_\_\_

(Printed Name)

\_\_\_\_\_  
(Title)

Date: \_\_\_\_\_

ATTACHMENT A-1, Loan No. \_\_\_\_\_

**LOAN APPROVAL STATEMENT  
For Energy Conservation Measures**

Borrower: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 City: \_\_\_\_\_  
 Loan Coordinator: \_\_\_\_\_  
 Title: \_\_\_\_\_  
 Phone: \_\_\_\_\_

A	B	C	D	E	F	G
Building	UCRM	Description of Utility Cost Reduction Measure UCRM)	Estimated UCRM Cost (\$)	Annual Energy Cost Savings (\$ per yr)	Pay-back (yrs)	UCRM Loan Amount (\$)

Construction Bonding Cost	
---------------------------	--

<b>TOTAL LOAN AMOUNT</b>	
--------------------------	--

Anticipated Substantial Completion Time	
Project Simple Payback (with allowance)(yrs.)	

Comments: \_\_\_\_\_

***NOTE: The final Loan Repayment Schedule will be sent to Borrower after construction has been completed and the Borrower's Final Report is accepted by Lender and SECO. The outstanding loan balance on the Loan Repayment Schedule shall be the principal plus accrued interest due as of the first payment due on the Loan. The loan repayment term is equal to the Project Simple Payback shown above on this Attachment A-1.***

Loan Statement Definitions

- a) **Building** - A description of the building/facility and individual (E/U)CRM is contained in the Review of the Utility Assessment Report (and all attachments) by \_\_\_\_\_, dated \_\_\_\_\_ ("Engineering Report"), that is incorporated herein by reference and included as a part of this Attachment A-1.
- b) **(E/U)CRM** - No (E/U)CRMs may be canceled after loan is granted without prior written Lender approval.
- c) **Estimated (E/U)CRM Cost (\$)** - includes cost of detail engineering design, labor, and materials to implement retrofit. The cost of an individual ECM may not exceed 120% of approved ECM amount without a contract amendment and update to the Utility Assessment Report. Increases in individual ECM costs must be offset with equivalent decreases in different ECM(s) costs. Variances must be documented in the LoanSTAR Change in Scope Review and receive written approval from the LoanSTAR Program Administrator.
- d) **Annual Energy Cost Savings (\$/yr)** - Energy Retrofit Savings and/or Avoided Costs of Electrical Energy and Demand, Oil or Natural Gas. Does not include Operations and Maintenance Savings.
- e) **(E/U)CRM Loan Amount (\$)** - Cost of individual ECM projects may not exceed 120% of approved loan amount. Any individual variance exceeding this amount must be submitted in a change of scope and receive written approval from Lender.
- f) **Project Simple Payback (yrs)** - The **TOTAL LOAN** divided by the **Annual Energy Cost Savings (\$/yr)**.

**[END OF ATTACHMENT A-1]**

ATTACHMENT A-2

PROMISSORY NOTE

\$ \_\_\_\_\_

1. FOR VALUE RECEIVED, \_\_\_\_\_ (“Borrower”), hereby unconditionally promises to pay to the order of the Texas Comptroller of Public Accounts, through its State Energy Conservation Office (together with its successors and assigns and any subsequent holders of this Promissory Note (“Note”), the “Lender”), as hereinafter provided, the principal sum of \_\_\_\_\_ AND 100 DOLLARS (\$ \_\_\_\_\_), or, if less, the unpaid principal amount of the Loan, **together with accrued interest (as hereinafter defined) thereon**, in lawful money of the United States of America. Capitalized terms not defined herein shall have the meanings assigned to such terms in the Loan Agreement (as defined below).
2. The unpaid principal amount of this Note shall be payable in accordance with the terms of the Loan Payment Schedule (to be provided and finalized once Project is complete) and *Sections 5, 21 and 22* of the Loan Agreement.
3. The unpaid principal amount of this Note shall accrue interest from the date of borrowing until the Loan is repaid in full, whether at maturity or by acceleration, in accordance with *Sections 5, 21 and 22* of the Loan Agreement.
4. All borrowings hereunder, and all payments made with respect thereto, may be recorded by Lender from time to time on the Loan Payment Schedule(s), or Lender may record such information by such other method as Lender may generally employ; *provided, however*, that failure to make any such entry shall in no way reduce or diminish Borrower’s obligations hereunder. The aggregate unpaid amount of all borrowings set forth on the Loan Payment Schedule shall be rebuttably presumptive evidence of the unpaid principal amount of this Note.
5. This Note has been executed and delivered pursuant to that certain Loan Agreement (as amended, modified, supplemented, or restated from time to time, the “**Loan Agreement**”), by and among Borrower, as the borrower thereunder, and Lender as lender. This Note evidences borrowings made under the Loan Agreement, and the holder of this Note shall be entitled to the benefits provided in the Loan Agreement. Reference is hereby made to the Loan Agreement for a statement of: (a) the obligation of Lender to make advances hereunder; (b) the prepayment rights and obligations of Borrower; (c) the collateral for the repayment of this Note; and (d) the events upon which the maturity of this Note may be accelerated.
6. Provided Borrower is not in default under the terms of this Note, the Loan Agreement or any other document evidencing, governing or securing the loan evidenced by this Note (collectively, the “Loan Documents”), Borrower may prepay the principal of this Note in whole or in part, at any time, or from time to time, without penalty or premium, and interest shall immediately cease to accrue on any amount so prepaid.
7. If this Note, or any installment or payment due hereunder, is not paid when due, whether at maturity or by acceleration, Borrower agrees to pay all out-of-pocket costs of collection, including, but not limited to, attorneys’ fees incurred by the holder hereof. All past-due principal of, and, to the extent permitted by applicable law, past-due interest on, this Note shall bear interest until paid at the Default Rate as provided in *Section 21* of the Loan Agreement.
8. This Note is executed and delivered as an incident to a lending transaction negotiated and consummated in Travis County, Texas, and shall be governed and construed in accordance with the laws of the State of Texas and the applicable federal laws of the United States of America, which shall govern the validity, construction, enforcement and interpretation of this Note. Borrower, for itself and its successors and assigns, hereby irrevocably submits to any court of competent jurisdiction of Travis County, Texas.

**BORROWER NAME:** \_\_\_\_\_

Name of Authorized Representative: \_\_\_\_\_

Title of Authorized Representative: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

**ATTACHMENT B-1**

DOE F 1600.5  
(06-94)  
All Other Editions Are Obsolete

OMB Control No.  
1910-0400

**U.S. DEPARTMENT OF ENERGY**  
**Assurance of Compliance**  
**Nondiscrimination in State Assisted Programs**  
**OMB Burden Disclosure Statement**

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Office of Information Resources Management Policy, Plans, and Oversight, Records Management Division, HR-422-GTN, Paperwork Reduction Project (1910-0400), U.S. Department of Energy, 1000 Independence Avenue, S.W., Washington, DC 20585; and to the Office of Management and Budget (OMB), Paperwork Reduction Project (1910-0400), Washington, DC 20503.

\_\_\_\_\_ (hereinafter called the "Applicant") HEREBY AGREES to comply with Title VI of the Civil Rights Act of 1964 (Pub. L. 88-352), Section 16 of the Federal Energy Administration Act of 1974 (Pub. L. 93-275), Section 401 of the Energy Reorganization Act of 1974 (Pub. L. 93-438), Title IX of the Education Amendments of 1972, as amended (Pub. L. 92-318, Pub. L. 93-568, and Pub. L. 94-482), Section 504 of the Rehabilitation Act of 1973 (Pub. L. 93-112), the Age Discrimination Act of 1975 (Pub. L. 94-135), Title VIII of the Civil Rights Act of 1968 (Pub. L. 90-284), the Department of Energy Organization Act of 1977 (Pub. L. 95-91), the Energy Conservation and Production Act of 1976, as amended, (Pub. L. 94-385) and Title 10, Code of Federal Regulations, Part 1040. In accordance with the above laws and regulations issued pursuant thereto, the Applicant agrees to assure that no person in the United States shall, on the ground of race, color, national origin, sex, age, or disability, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity in which the Applicant receives Federal assistance from the Department of Energy.

**Applicability and Period of Obligation**

In the case of any service, financial aid, covered employment, equipment, property, or structure provided, leased, or improved with Federal assistance extended to the Applicant by the Department of Energy, this assurance obligates the Applicant for the period during which Federal assistance is extended. In the case of any transfer of such service, financial aid, equipment, property, or structure, this assurance obligates the transferee for the period during which Federal assistance is extended. If any personal property is so provided, this assurance obligates the Applicant for the period during which it retains ownership or possession of the property. In all other cases, this assurance obligates the Applicant for the period during which the Federal assistance is extended to the Applicant by the Department of Energy.

**Employment Practices**

Where a primary objective of the Federal assistance is to provide employment or where the Applicant's employment practices affect the delivery of services in programs or activities resulting from Federal assistance extended by the Department of Energy, the Applicant agrees not to discriminate on the ground of race, color, national origin, sex, age or disability, in its employment practices. Such employment practices may include, but are not limited to, recruitment, advertising, hiring, layoff or termination, promotion, demotion, transfer, rates of pay, training and participation in upward mobility programs; or other forms of compensation and use of facilities.

**Subrecipient Assurance**

The Applicant shall require any individual, organization, or other entity with which it subcontracts, subgrants, or subleases for the purpose of providing any service, financial aid, equipment, property, or structure to comply with laws and regulations cited above. To this end, the subrecipient shall be required to sign a written assurance form; however, the obligation of both recipient and subrecipient to ensure compliance is not relieved by the collection or submission of written assurance forms.

**Data Collection and Access to Records**

The Applicant agrees to compile and maintain information pertaining to programs or activities developed as a result of the Applicant's receipt of Federal assistance from the Department of Energy. Such information shall include, but is not limited to the following: (1) the manner in which services are or will be provided and related data necessary for determining whether any persons are or will be denied such services on the basis of prohibited discrimination; (2) the population eligible to be served by race, color, national origin, sex, age and disability; (3) data regarding covered employment, including use or planned use of bilingual public contact employees serving beneficiaries of the program where necessary to permit effective participation by beneficiaries unable to speak or understand English; (4) the location of existing or proposed facilities connected with the program and related

information adequate for determining whether the location has or will have the effect of unnecessarily denying access to any person on the basis of prohibited discrimination; (5) the present or proposed membership by race, color, national origin, sex, age and disability, in any planning or advisory body which is an integral part of the program; and (6) any additional written data determined by the Department of Energy to be relevant to the obligation to assure compliance by recipients with laws cited in the first paragraph of this assurance.

The Applicant agrees to submit requested data to the Department of Energy regarding programs and activities developed by the Applicant from the use of Federal assistance funds extended by the Department of Energy. Facilities of the Applicant (including the physical plants, buildings, or other structures) and all records, books, accounts, and other sources of information pertinent to the Applicant's compliance with the civil rights laws shall be made available for inspection during normal business hours on request of an officer or employee of the Department of Energy specifically authorized to make such inspections. Instructions in this regard will be provided by the Director, Office of Civil Rights, U. S. Department of Energy.

This assurance is given in consideration of and for the purpose of obtaining any and all Federal grants, loans, contracts (excluding procurement contracts), property, discounts or other Federal assistance extended after the date hereto, to the Applicants by the Department of Energy, including installment payments on account after such date of application for Federal assistance which are approved before such date. The Applicant recognizes and agrees that such Federal assistance will be extended in reliance upon the representations and agreements made in this assurance and that the United State shall have the right to seek judicial enforcement of this assurance. This assurance is binding on the Applicant, the successors, transferees, and assignees, as well as the person(s) whose signatures appear below and who are authorized to sign this assurance on behalf of the Applicant.

**Applicant Certification**

The Applicant certifies that it has complied, or that, within 90 days of the date of the grant, it will comply with all applicable requirements of 10 C.F.R. § 1040.5 (a copy will be furnished to the Applicant upon written request to DOE).

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**Designated Responsible Employee**

\_\_\_\_\_  
**Name and Title (Printed or Typed)**

\_\_\_\_\_  
**Telephone Number**

\_\_\_\_\_  
**Signature**

\_\_\_\_\_  
**Date**

\_\_\_\_\_  
**Address**

\_\_\_\_\_  
**Telephone Number**

**Authorized Official:**

\_\_\_\_\_  
**Name and Title (Printed or Typed)**

\_\_\_\_\_  
**Telephone Number**

\_\_\_\_\_  
**Signature**

\_\_\_\_\_  
**Date**

## ATTACHMENT B-2

DOE F 1600.5  
(06-94)  
All Other Editions Are Obsolete

OMB Control No.  
1910-0400

### U.S. DEPARTMENT OF ENERGY Assurance of Compliance Nondiscrimination in State Assisted Programs

#### OMB Burden Disclosure Statement

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Office of Information Resources Management Policy, Plans, and Oversight, Records Management Division, HR-422-GTN, Paperwork Reduction Project (1910-0400), U.S. Department of Energy, 1000 Independence Avenue, S.W., Washington, DC 20585; and to the Office of Management and Budget (OMB), Paperwork Reduction Project (1910-0400), Washington, DC 20503.

(Enter name of Borrower's Subcontractor) \_\_\_\_\_ (hereinafter called the "Applicant") HEREBY AGREES to comply with Title VI of the Civil Rights Act of 1964 (Pub. L. 88-352), Section 16 of the Federal Energy Administration Act of 1974 (Pub. L. 93-275), Section 401 of the Energy Reorganization Act of 1974 (Pub. L. 93-438), Title IX of the Education Amendments of 1972, as amended (Pub. L. 92-318, Pub. L. 93-568, and Pub. L. 94-482), Section 504 of the Rehabilitation Act of 1973 (Pub. L. 93-112), the Age Discrimination Act of 1975 (Pub. L. 94-135), Title VIII of the Civil Rights Act of 1968 (Pub. L. 90-284), the Department of Energy Organization Act of 1977 (Pub. L. 95-91), the Energy Conservation and Production Act of 1976, as amended, (Pub. L. 94-385) and Title 10, Code of Federal Regulations, Part 1040. In accordance with the above laws and regulations issued pursuant thereto, the Applicant agrees to assure that no person in the United States shall, on the ground of race, color, national origin, sex, age, or disability, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity in which the Applicant receives Federal assistance from the Department of Energy.

#### Applicability and Period of Obligation

In the case of any service, financial aid, covered employment, equipment, property, or structure provided, leased, or improved with Federal assistance extended to the Applicant by the Department of Energy, this assurance obligates the Applicant for the period during which Federal assistance is extended. In the case of any transfer of such service, financial aid, equipment, property, or structure, this assurance obligates the transferee for the period during which Federal assistance is extended. If any personal property is so provided, this assurance obligates the Applicant for the period during which it retains ownership or possession of the property. In all other cases, this assurance obligates the Applicant for the period during which the Federal assistance is extended to the Applicant by the Department of Energy.

#### Employment Practices

Where a primary objective of the Federal assistance is to provide employment or where the Applicant's employment practices affect the delivery of services in programs or activities resulting from Federal assistance extended by the Department of Energy, the Applicant agrees not to discriminate on the ground of race, color, national origin, sex, age, or disability, in its employment practices. Such employment practices may include, but are not limited to, recruitment, advertising, hiring, layoff or termination, promotion, demotion, transfer, rates of pay, training and participation in upward mobility programs; or other forms of compensation and use of facilities.

#### Subrecipient Assurance

The Applicant shall require any individual, organization, or other entity with which it subcontracts, subgrants, or subleases for the purpose of providing any service, financial aid, equipment, property, or structure to comply with laws and regulations cited above. To this end, the subrecipient shall be required to sign a written assurance form; however, the obligation of both recipient and subrecipient to ensure compliance is not relieved by the collection or submission of written assurance forms.

#### Data Collection and Access to Records

The Applicant agrees to compile and maintain information pertaining to programs or activities developed as a result of the Applicant's receipt of Federal assistance from the Department of Energy. Such information shall include, but is not limited to the following: (1) the manner in which services are or will be provided and related data necessary for determining whether any persons are or will be denied such services on the basis of prohibited discrimination; (2) the population eligible to be served by race, color, national origin, sex, age and disability; (3) data regarding covered employment, including use or planned use of bilingual public contact employees serving beneficiaries of the program where necessary to permit effective participation by beneficiaries unable to speak or understand English; (4) the location of existing or proposed facilities connected with the program and related information adequate for determining whether the location has or will have the effect of unnecessarily denying access to any person on the basis of prohibited discrimination; (5) the present or proposed membership by race, color, national origin, sex, age and disability, in any planning or advisory body which is an integral part of the program; and (6) any additional written data determined by the Department of Energy to be relevant to the obligation to assure compliance by recipients with laws cited in the first paragraph of this assurance.

The Applicant agrees to submit requested data to the Department of Energy regarding programs and activities developed by the Applicant from the use of Federal funds extended by the Department of Energy. Facilities of the Applicant (including the physical plants, buildings, or other structures) and all records, books, accounts, and other sources of information pertinent to the Applicant's compliance with the civil rights laws shall be made available for inspection during normal business hours on request of an officer or employee of the Department of Energy specifically authorized to make such inspections. Instructions in this regard will be provided by the Director, Office of Civil Rights, U. S. Department of Energy.

This assurance is given in consideration of and for the purpose of obtaining any and all Federal grants, loans, contracts (excluding procurement contracts), property, discounts or other Federal assistance extended after the date hereto, to the Applicants by the Department of Energy, including installment payments on account after such date of application for Federal assistance which are approved before such date. The Applicant recognizes and agrees that such Federal assistance will be extended in reliance upon the representations and agreements made in this assurance and that the United State shall have the right to seek judicial enforcement of this assurance. This assurance is binding on the Applicant, the successors, transferees, and assignees, as well as the person(s) whose signatures appears below and who are authorized to sign this assurance on behalf of the Applicant.

**Applicant Certification**

The Applicant certifies that it has complied, or that, within 90 days of the date of the grant, it will comply with all applicable requirements of 10 C.F.R. §1040.5 (a copy will be furnished to the Applicant upon written request to DOE).

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**Designated Responsible Employee of Subcontractor**

Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Telephone \_\_\_\_\_  
Signature \_\_\_\_\_  
Date: \_\_\_\_\_

**Subcontractor Name:**

Subcontractor Name: \_\_\_\_\_  
Telephone: \_\_\_\_\_  
Address: \_\_\_\_\_

**Authorized Official of Subcontractor**

Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Telephone \_\_\_\_\_  
Signature \_\_\_\_\_  
Date: \_\_\_\_\_



**ATTACHMENT C**  
**Certification Regarding Debarment, Suspension, Ineligibility,  
and Voluntary Exclusion-Lower Tier Covered Transactions**

Instructions for Certification

1. The prospective lower tier participant is required to sign the attached certification.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the person to whom this application is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principle," "application," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the person to which this application is submitted for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this application that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
6. The prospective lower tier participant further agrees by submitting this application that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Non-procurement List.
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
  - (1) The prospective lower tier participant certifies, by submission of this application, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
  - (2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this application.

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Organization Name: \_\_\_\_\_

Name of Authorized Representative: \_\_\_\_\_

Title of Authorized Representative: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

## ATTACHMENT D

### CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 10 CFR Part 601, "New Restrictions on Lobbying," and 10 CFR Part 606, "Government-wide Debarment and Suspension (Non-procurement)" and 10 CFR Part 607 "Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Energy determines to award the covered transaction, grant, or cooperative agreement.

#### 1. LOBBYING

The undersigned certifies, to the best of his or her knowledge and belief, that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- (3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31,

U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

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#### 2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

- (1) The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:
    - (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
    - (b) Have not within a three-year period receding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
    - (c) Are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and
    - (d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.
  - (2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.
-

### 3. DRUG-FREE WORKPLACE

This certification is required by the Drug-Free Workplace Act of 1988 (Pub. L. 100-690, Title V, Subtitle D) and is implemented through additions to the Debarment and Suspension regulations, published in the Federal Register on January 31, 1989, and May 25, 1990.

#### ***ALTERNATE 1 (SUB-RECIPIENTS OTHER THAN INDIVIDUALS)***

- (1) The Sub-recipient certifies that it will or will continue to provide a drug-free workplace by:
  - (a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the Sub-recipient's workplace and specifying the actions that will be taken against employees for violation of such prohibition;
  - (b) Establishing an ongoing drug-free awareness program to inform employees about:
    - (1) The dangers of drug abuse in the workplace;
    - (2) The Sub-recipient's policy of maintaining a drug-free workplace;
    - (3) Any available drug counseling, rehabilitation, and employee assistance programs; and
    - (4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;
  - (c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);
  - (d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:
    - (1) Abide by the terms of the statement; and
    - (2) Notify the employer in writing, of his or her conviction for a violation of criminal drug statute occurring in the work-place not later than five calendar days after such conviction;
  - (e) Notifying the agency, in writing, within ten calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such

conviction. Employers of convicted employees must provide notice, including position title, to energy grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

- (f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:
    - (1) Taking appropriate actions against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act 9f 1973, as amended; or
    - (2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State or local health, law enforcement, or other appropriate agency;
  - (g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).
- (2) The Sub-recipient may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance:

(Street address, city, county, state, zip code)

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- Check if there are workplaces on file that are not identified here.

**ALTERNATE II (SUB-RECIPIENTS WHO ARE INDIVIDUALS)**

- (1) The Sub-recipient certifies that, as a condition of the grant, he or she will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substances in conducting any activity with the grant.
- (2) If convicted of a criminal drug offense resulting from a violation occurring during the conduct of

**4. LOBBYING DISCLOSURE ACT OF 1995, SIMPSON-CRAIG AMENDMENT**

Applicant organization which are described in section 501 (c)(4) of the Internal Revenue Code of 1986 and engage in lobbying activities after December 31, 1995, shall not be eligible for the receipt of Federal funds constituting an award, grant, or loan. Section 501(c)(4) of the Internal Revenue Code of 1986 covers:

*Civic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare, or local associations of employees, the membership of which is limited to the employees of a designated persons or person in a particular municipality, and the net earnings of which are devoted exclusively to charitable, educational, or recreational purposes.*

any grant activity, he or she will report the conviction, in writing, within 10 calendar days of the conviction, to every grant officer or other designee, unless the Federal agency designates a central point for the receipt of such notices. When notice is made to such a central point, it shall include the identification number(s) of each affected grant.

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As set forth in the Lobbying Disclosure Act of 1995 (Public Law 104-65, December 19, 1995), as amended [“Simpson-Craig Amendment,” see Section 129 of The Balanced Budget Down payment Act, I (Public Law 104-99, January 26, 1996)], lobbying activities is defined broadly. (See section 3 of the Act.)

The undersigned certifies, to the best of his or her knowledge and belief, that: it IS NOT an organization described in section 501 (c)(4) of the Internal Revenue Code of 1986: OR that it IS an organization described in section 501 (c)(4) of the Internal Revenue Code of 1986, which, after December 31, 1995, HAS NOT engaged in any lobbying activities as defined in the Lobbying Disclosure Act of 1995, as amended.

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*As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.*

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Name of Applicant

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Pre/Award Number and/or Project Name

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Printed Name and Title of Authorized Representative

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Signature

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Date



**ATTACHMENT F, Loan No. \_\_\_\_\_**  
**ASSURANCES -- NON-CONSTRUCTION PROGRAMS**  
**OMB Approval No. 0348-0040**

*Note:* Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant, I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.
2. Will give the awarding agency, the Comptroller, the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.
7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.
9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction sub-agreements.
10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93- 234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is \$10,000 or more.
11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in flood plains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management

Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.
13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469 a-1 et seq.)
14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.
15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.
16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.
17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996 and OMB Circular No. A-133, "Audits of States, Local Governments, and Non-Profit Organizations."
18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.
19. Will comply with the requirements of Section 160(g) of the Trafficking Victims Protection Act (TVPA) of 2000, as amended (22 U.S.C. 7104) which prohibits grant award recipients or a sub-recipient from (1) Engaging in severe forms of trafficking in persons during the period of time that the award is in effect (2) Procuring a commercial sex act during the period of time that the award is in effect or (3) Using forced labor in the performance of the award or subawards under this award.

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Signature of Authorized Certifying Official

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Title

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Applicant Organization

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Date Submitted

## **ATTACHMENT G Intellectual Property Provisions**

### **AUTHORIZATION AND CONSENT (41 CFR 9-9.102-1)**

The Government hereby gives its authorization and consent (without prejudice to any rights of indemnification) for all use and manufacture, in the performance of this grant or any part hereof or any amendment hereto or any subcontract hereunder (including all lower-tier subcontracts hereunder), of any invention described in and covered by a patent of the United States.

- (a) embodied in the structure or composition of any article, the delivery of which is accepted by the Government under this grant, or
- (b) utilized in the machinery, tools, or methods, the use of which necessarily results from compliance by the Subrecipient or the using subcontractor with
  - (i) specifications or written provisions now or hereafter forming a part of this grant, or
  - (ii) specific written instructions given by the Contracting Officer directing the manner of performance.

The entire liability to the Government for infringement of a patent of the United States shall be determined solely by the provisions of the indemnity clauses, if any, included in this grant or any subcontract hereunder (including all lower-tier subcontracts hereunder), and the Government assumes liability for all other infringement to the extent of the authorization and consent herein above granted.

### **PATENT INDEMNITY (41 CFR 9-9.103-1)**

If the amount of this contract is in excess of \$10,000 the contractor shall indemnify the Government and its officers, agents, and employees against liability, including costs, for infringement of any United States letters patent (except U.S. letters patent issued upon an application which is now or may hereafter be kept secret or otherwise withheld from issue by order of the Government) arising out of the manufacture or delivery of supplies or out of construction, alteration, modification, or repair of real property (hereinafter referred to as "construction work") under this contract, or out of the use or disposal by or for the account of the Government of such supplies or construction work. The foregoing indemnity shall not apply unless the contractor shall have been informed as soon as practicable by the Government of the suit or action alleging such infringement, and shall have been given such opportunity as is afforded by applicable laws, rules, or regulations to participate in the defense thereof; and further, such indemnity shall not apply to: (a) an infringement resulting from compliance with specific written instructions of the Contracting Officer directing a change in the supplies to be delivered or in the materials or equipment to be used, or directing a manner of performance of the contract not normally used by the contractor; (b) an infringement resulting from addition to or change in, such supplies or components furnished or construction work performed which addition or change was made subsequent to delivery or performance by the contractor; or (c) a claimed infringement which is settled without the consent of the contractor, unless required by final decree of a court of competent jurisdiction.

### **NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT (41 CFR 9-9.104(b))**

The provisions of this clause shall be applicable only if the amount of this loan exceeds \$10,000.

- (a) The Borrower shall report to the Contracting Officer, promptly and in reasonable written detail, each notice of claim of patent or copyright infringement based on the performance of this grant of which the Subrecipient has knowledge.
- (b) In the event of any claim or suit against the Government on account of any alleged patent or copyright infringement arising out of the performance of this grant or out of the use of any supplies furnished or work or services performed hereunder, the Borrower shall furnish to the Government, when requested by the Contracting Officer, all evidence and information in possession of the Borrower pertaining to such suit or claim. Such evidence and information shall be furnished at the expense of the Government except where the Borrower has agreed to indemnify the Government.
- (c) This clause shall be included in all contracts and subgrants under this grant.

### **REPORTING OF ROYALTIES (41 CFR 9-9.110)**

If this grant is in an amount which exceeds \$10,000 and if any royalty payments are directly involved in the grant or are reflected in the grant price to the Government, the Borrower agrees to report in writing to the Patent Counsel (with notification by Patent



Counsel to the Contracting Officer) during the performance of this grant and prior to its completion of final settlement the amount of any royalties or other payments paid or to be paid by it directly to others in connection with the performance of this grant together with the names and addresses of licensors to whom such payments are made and either the patent numbers involved or such other information as will permit the identification of the patents or other basis on which the royalties are to be paid. The approval of DOE of any individual payments or royalties shall not stop the Government at any time from contesting the enforceability, validity or scope of, or title to, any patent under which a royalty or payments are made.

#### **RIGHTS IN TECHNICAL DATA (SHORT FORM)**

(a) Definitions. The definitions of terms set forth in DEAR 927.401 apply to the extent these terms are used herein.

(b) Allocation of Rights.

(1) The Government shall have:

- (i) Unlimited rights in technical data first produced or specifically used in the performance of this grant;
- (ii) The right of the Contracting Officer or his representatives to inspect, at all reasonable times up to three years after final payment under this grant, all technical data first produced or specifically used in the grant (for which inspection the Borrower or its contractor shall afford proper facilities to DOE); and
- (iii) The right to have any technical data first produced or specifically used in the performance of this grant delivered to the Government as the Contracting Officer may from time-to-time direct during the progress of the work, or in any event as the Contracting Officer shall direct upon completion or termination of this grant.

(2) The Borrower shall have:

The right to use for its private purposes, subject to patent, security or other provisions of this grant, technical data it first produces in the performance of this loan provided the date requirements of this loan have been met as of the date of the private use of such data. The Borrower agrees that to the extent it receives or is given access to proprietary data or other technical, business or financial data in the form of recorded information from DOE or a DOE contractor or subcontractor, the Borrower shall treat such data in accordance with any restrictive legend contained thereon, unless use is specially authorized by prior written approval of the Contracting Officer.

(c) Copyrighted Material.

(1) The Borrower agrees to, and does hereby grant to the Government, and to others acting on its behalf:

- (i) A royalty-free, nonexclusive, irrevocable, worldwide license for Governmental purposes to reproduce, distribute, display, and perform all copyrighted material first produced or composed in the performance of this loan by the Borrower, its employees or any individual or concern specifically employed or assigned to originate and prepare such material and to prepare derivative works based thereon; and
- (ii) A license as aforesaid under any and all copyrighted or copyrighted work not first produced or composed by the Borrower in the performance of this loan but which is incorporated in the material furnished under the loan, provided that such license shall be only to the extent the Borrower now has, or prior to completion or close-out of the loan, may acquire the right to grant such license without becoming liable to pay compensation to others solely because of such grant.

(1) The Borrower agrees that it will not knowingly include any material copyrighted by others in any written or copyrighted material furnished or delivered under this loan without a license as provided for in subparagraph (c) (1) (ii) of this section, or without the consent of the copyright owner, unless it obtains specific written approval of the Contracting Officer for the inclusion of such copyrighted material.

**RIGHTS TO PROPOSAL DATA (TECHNICAL) (48 CFR 52.227-23)**

It is agreed that as a condition of award of this loan or modification and notwithstanding the conditions of any notice appearing on the proposal(s), the Government shall have the right to use, duplicate, and disclose and have others to do so for any purpose whatsoever, the technical data contained in the proposal(s) upon which the loan or modification is based.

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Organization Name

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Name and Title of Authorized Representative

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Signature

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Date

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**ATTACHMENT H**

**SUBCONTRACTING PROVISIONS; MANDATORY FLOWDOWN PROVISION**

Borrower, if subcontracting any of its performance hereunder, shall legally bind subcontractors to perform and make such Subcontractors subject to all the duties, requirements, and obligations of Borrower under this Agreement. Borrower shall be jointly and severally liable for all performances under this Agreement, including, but not limited to, the performance of its Subcontractors to the extent permitted under the Constitution and laws of the State of Texas.

Borrower represents and warrants that it has obtained all necessary permits, licenses, easements, waivers and permissions of whatsoever kind required for its performance and the performance of its Subcontractors under this Agreement. In no event shall any provision of this Attachment H, including, but not limited to, the requirement that Borrower obtain the prior approval of Lender on Borrower's proposed subcontracts, be construed as relieving Borrower of the responsibility for ensuring that all services rendered under any subcontracts comply with all the terms and provisions of this Agreement as if they were rendered by Borrower. Borrower shall, upon request, furnish Lender with copies of all proposed subcontracts and all proposed amendments, assignments, cancellations or terminations of said subcontracts no later than thirty (30) days prior to the proposed effective date of such contracts, amendments, assignments, cancellations or terminations; provided, however, that this thirty (30) day period may be shortened by written agreement of the parties. Upon request from the Lender, Borrower shall provide any and all documentation deemed necessary by the Lender to evidence Subcontractors compliance with all terms, conditions and performance pertaining to the Agreement and all applicable law.

As the duly authorized representative of the Borrower, I hereby certify that Borrower and subcontractor will comply with the above requirements.

**BORROWER:** \_\_\_\_\_

**By:** \_\_\_\_\_

**Printed Name:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**ATTACHMENT I**  
**CONSULTATION LIST**  
**FOR THE STATE ENERGY PROGRAM**

The work items and undertakings listed herein qualify for assistance from the State Energy Program (“SEP”) implemented by the Texas State Energy Conservation Office (“SECO”) of the Comptroller of Public Accounts (“CPA”). By memorandum dated August 28, 2009 (“Attachment B”), the DOE has delegated limited authority for compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (Section 106), to CPA and SECO or its subrecipients. This document, known as the Consultation List, shall assist the parties in carrying out the reviews and consultation between CPA or its subrecipients and the Texas Historical Commission (“THC”), acting as the Texas State Historic Preservation Officer (“SHPO”), for Section 106 compliance.

**TERMS OF USE**

Any work item in the SEP program that is not addressed in this list shall be subject to THC consultation under Category B. This Consultation List applies only to projects funded through the SEP program as part of the DOE’s Energy Efficiency and Renewable Energy Program (“EERE”). This Consultation List is for the exclusive use of CPA and the SEP program and shall not apply to any other federally-funded program. CPA is advised to document all points of its decision-making in order to demonstrate proper compliance with Section 106.

The following categories apply to any structure or building that is forty-five (45) years of age or older, that is listed in or eligible for listing in the National Register of Historic Places, that is located in a National Register listed or eligible historic district, or that is in a locally designated historic district. Please note that consultation with THC will be required for all State Archeological Landmarks designated under the Antiquities Code of Texas and all current and former county courthouses protected by Chapter 442.008 of the Texas Government Code. Ground-disturbing activity, regardless of the age of structures on the property, will also require consultation with THC in most cases.

**Category A No SHPO Consultation Required:**

THC as SHPO has concluded that the following work items do not meet the definition of undertaking since they do not have the potential to cause effects on historic properties per 36 CFR § 800.3(a) and thus *no historic properties will be affected* per 36 CFR § 800.4(d), **or** they have limited potential to affect historic properties per 36 CFR § 800.5 and will have *no adverse effect* upon historic properties if carried out as described. CPA and subrecipients are not required to consult further with THC for work in this category. CPA and its delegated entities are responsible for ensuring that work is carried out as described and for documenting their compliance.

**Building energy audits and retrofits:**

- Energy audits and feasibility studies.

**Heating, ventilation, and air conditioning (HVAC):**

- Routine maintenance or retrofits to existing mechanical equipment, provided there is no physical impact on the building;
- Replacement of existing mechanical equipment or installation of supplemental equipment, provided that exterior equipment is installed within the same footprint on the same pad, and interior equipment is installed within an existing mechanical closet;
- Upgrading existing facility and infrastructure-related pumps and motors, including those for HVAC systems, to variable-speed or premium efficiency standards;
- Sealing, restoring, or insulating HVAC ducts, provided that the ducts are not visible in occupied spaces of the building and access to the ducts does not require demolition of walls or ceilings in occupied spaces of the building; and

- Adding or replacing existing building controls systems including HVAC control systems and the replacement of building-wide pneumatic controls with digital controls, thermostats, dampers, and other individual sensors like smoke detectors or carbon monoxide detectors (wired or non-wired).

Roofing:

- Installation of new roofing, including white roofs or cool roofs, on a flat-roofed building with a parapet, such that the roofing material is not visible from any public right-of-way.

Windows and doors:

- Weatherstripping around windows and doors; and
- Caulking around windows and doors, provided that the color of the sealant matches adjacent materials.

Lighting and appliances:

- Installation of compact fluorescent or LED bulbs in existing fixtures;
- Replacement of fluorescent bulbs, ballasts, and/or wiring in existing fixtures;
- Replacement of existing fluorescent fixtures with new fixtures, provided that the fixtures are not original to the building;
- Installation of motion/occupancy sensors for lighting control;
- Replacement of existing lighting in street lighting fixtures with high efficiency lighting; and
- Replacement of existing appliances with “EnergyStar”™ appliances.

Insulation:

- Attic insulation with proper ventilation, provided that insulation is fiberglass batt or loose fill only;
- Under-floor insulation in basements or crawl spaces, provided that insulation is fiberglass batt or loose fill only, and ventilation of crawl spaces;
- Exterior blown-in wall insulation where holes are not drilled through exterior wall material or decorative plasterwork on the interior, and result in no permanent visible alteration to the structure;
- Water heater tank and pipe insulation; and
- Radiant barriers in unoccupied attic spaces.

Water conservation:

- Water conservation measures, such as installation of low-flow faucets, toilets, showerheads, urinals, or distribution device controls, provided that plumbing fixtures to be replaced are not original to the building;
- Upgrading existing facility and infrastructure-related pumps and motors, including those water/wastewater facilities, to variable-speed or premium efficiency standards;
- Hot water tank replacement that does not require a visible new supply or venting; and
- Repairing plumbing systems in a manner that does not affect the interior or exterior of the building.

Electrical:

- Repairing or upgrading electrical systems in a manner that does not affect the interior or exterior of the building.

Ground-disturbing activity and site work:

- Repairing or replacing in-kind existing driveways, parking areas, and walkways with materials of similar appearance; and
- Excavating to gain access to existing underground utilities to repair or replace them, in a manner that does not disturb historic exterior building or landscape materials or features, and where all construction occurs within existing trenches.

**Category B SHPO Consultation Required:**

The following undertakings may affect historic properties per 36 CFR § 800.5 and will always require Section 106 review if they involve a structure that is forty-five (45) years of age or older, under the terms of Stipulation III (B) of this Agreement. Any work item or undertaking in the SEP program that is not described in Category A or Category B of this Consultation List will also require THC review. **In addition, consultation with THC will be required for all State Archeological Landmarks designated under the Antiquities Code of Texas, all current and former county courthouses protected by Chapter 442.008 of the Texas Government Code, and most ground-disturbing activity, regardless of the age of structures on the property.**

Building energy audits and retrofits:

- Implementation of any energy audit recommendations that do not fall within the types of work described in Category A.

Heating, ventilation, and air conditioning (HVAC):

- Construction of new district heating and cooling systems;
- Construction of new combined heat and power systems, if construction requires ground disturbance;
- Installation of geothermal heating systems; and
- Installation of biomass thermal systems.

Roofing:

- Replacement of visible roofing materials; and
- Installation of green or sod roofs.

Windows and doors:

- Installation of window treatments such as awnings, solar deflection screens, double pane insulation, or solar film or glazing;
- Installation of storm windows or doors; and
- Replacement of windows or doors.

Lighting and appliances:

- Replacement of non-fluorescent light fixtures, or replacement of fluorescent light fixtures that are original to the building.

Insulation:

- Use of spray foam insulation products;
- Wall insulation that does not comply with the conditions described in Category A; and
- Roof insulation during roof replacement, especially exterior rigid insulation.

Water conservation:

- Replacement of original plumbing fixtures.

Renewable energy technologies:

- Solar photovoltaic systems;
- Solar hot water systems; and
- Wind turbines.

Ground disturbing activity:

- New construction or additions; and
- Trenching for utilities where work does not occur in an existing trench.

**ATTACHMENT J  
EXECUTION OF APPLICATION**

1. By signature hereon, Applicant represents and warrants that the provisions in this Execution of Application apply to Applicant and all of Applicant's principals, officers, directors, shareholders, partners, owners, agents, employees, subcontractors, independent contractors, and any other representatives who may provide services under, who have a financial interest in, or otherwise are interested in this RFA or any contract resulting from it.
2. By signature hereon, Applicant represents and warrants that it has read and understood and shall comply with Lender's Anti-Fraud Policy, located on Lender's website at <https://www.comptroller.texas.gov/about/policies/ethics.php> as such Policy currently reads and as it is amended throughout the term of any resulting contract.
3. By signature hereon, Applicant represents and warrants that each employee, including "replacement employees", will possess the qualifications, education, training, experience and certifications necessary to perform the services in the manner required by this RFA.
4. By signature hereon, Applicant represents and warrants that it has no actual or potential conflicts of interest in providing the requested items to Lender under the RFA and any resulting contract, if any, and that Applicant's provision of the requested items under the RFA and any resulting contract, if any, would not reasonably create an appearance of impropriety.
5. By signature hereon, pursuant to Section 2155.003 of the Texas Government Code, Applicant represents and warrants that it has not given, nor intends to give at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor or service to a public servant in connection with the submitted Application.
6. By signature hereon, Applicant represents and warrants that it is not currently delinquent in the payment of any franchise taxes owed the State of Texas under Chapter 171 of the Texas Tax Code.
7. By signature hereon, Applicant hereby represents and warrants that, pursuant to 15 U.S.C. Sec. 1, *et seq.* and Tex. Bus. & Comm. Code Sec. 15.01, *et seq.*, neither Applicant nor the firm, corporation, partnership, or institution represented by Applicant, nor anyone acting for such a firm, corporation or institution has violated the antitrust laws of this state, federal antitrust laws or communicated directly or indirectly the Application made to any competitor or any other person engaged in such line of business.
8. By signature hereon, Applicant represents and warrants that all statements and information prepared and submitted in response to this RFA are current, complete, and accurate.
9. By signature hereon, Applicant represents and warrants that the individual signing this document and the documents made part of this RFA and Application is authorized to sign such documents on behalf of the company and to bind the company under any contract that may result from the submission of this Application.
10. By signature hereon, Applicant represents and warrants that if a Texas address is shown as the address of Applicant, Applicant qualifies as a Texas Bidder as defined by 34 Texas Administrative Code §20.32(68).
11. Check below if preference claimed under 34 Texas Administrative Code §20.38:
  - Goods produced or offered by a Texas bidder that is owned by a Texas resident service-disabled veteran
  - Goods produced in Texas or offered by a Texas bidder that is not owned by a Texas resident service-disabled veteran
  - Agricultural products grown in Texas
  - Agricultural products offered by a Texas bidder
  - Services offered by a Texas bidder that is owned by a Texas resident service-disabled veteran
  - Services offered by a Texas bidder that is not owned by a Texas resident service disabled veteran
  - Texas Vegetation Native to the Region
  - USA produced supplies, materials or equipment
  - Products of persons with mental or physical disabilities

- Products made of recycled, remanufactured, or environmentally sensitive materials including recycled steel
- Energy Efficient Products
- Rubberized asphalt paving material
- Recycled motor oil and lubricants
- Products produced at facilities located on formerly contaminated property
- Products and services from economically depressed or blighted areas
- Vendors that meet or exceed air quality standards
- Recycled or Reused Computer Equipment of Other Manufacturers
- Foods of Higher Nutritional Value
- Commercial production company or advertising agency located in Texas

12. By signature hereon, under Section 231.006, Texas Family Code, regarding child support, Applicant certifies that the individual or business named in the Application is not ineligible to receive the specified payment and acknowledges that the contract may be terminated and payment may be withheld if this certification is inaccurate. Furthermore, any Applicant subject to Section 231.006 of the Texas Family Code must include names and Social Security numbers of each person with at least 25% ownership of the business entity submitting the Application. This information must be provided prior to award. Enter the Name and Social Security Number for each person below:

Name: \_\_\_\_\_ SSN: \_\_\_\_\_  
 Name: \_\_\_\_\_ SSN: \_\_\_\_\_  
 Name: \_\_\_\_\_ SSN: \_\_\_\_\_

**FEDERAL PRIVACY ACT NOTICE:** This notice is given pursuant to the Federal Privacy Act. Disclosure of your Social Security Number (SSN) is required under Section 231.006(c) and Section 231.302(c)(2), Texas Family Code. The SSN will be used to identify persons that may owe child support. The SSN will be kept confidential to the fullest extent allowed under Section 231.302(e), Texas Family Code.

13. By signature hereon, Applicant represents and warrants that no relationship, whether by relative, business associate, capital funding contract or by any other such kinship exists between Applicant and an employee of any Lender component, and Applicant has not been an employee of any Lender component within the immediate twelve (12) months prior to Applicant’s Application. By signature hereon, Applicant certifies that it is in compliance with Section 669.003 of the Texas Government Code, relating to contracting with executive head of a state agency. Enter the name of any current or former executive head of a Texas State Agency that is currently employed by Applicant below:

Name of Former Executive: \_\_\_\_\_  
 Name of State Agency: \_\_\_\_\_  
 Date of Separation from State Agency: \_\_\_\_\_  
 Position with Applicant: \_\_\_\_\_  
 Date of Employment with Applicant: \_\_\_\_\_

All such disclosures will be subject to administrative review and approval prior to Lender entering into any contract with Applicant. Applicant acknowledges that any contract resulting from this RFA may be terminated at any time, and payments withheld, if this information is false.

14. By signature hereon, pursuant to Section 2155.004(a) of the Texas Government Code, Applicant represents and warrants that neither it nor any person or entity which will participate financially in any contract resulting from this RFA has received compensation for participation in the preparation of specifications for this RFA. Further, under Section 2155.005(b) of the Texas Government Code, Applicant certifies that the individual or business entity named in this Application or any contract resulting from this RFA is not ineligible to receive the specified contract and acknowledges that the contract may be terminated and payment withheld if this certification is inaccurate.

15. By signature hereon, Applicant represents and warrants that all articles and services quoted in response to this RFA meet or exceed the safety standards established and promulgated under the *Federal Occupational Safety and Health Law* and its regulations in effect or proposed as of the date of this solicitation.



16. By signature hereon, Applicant represents and warrants its compliance with all federal laws and regulations pertaining to Equal Employment Opportunities and Affirmative Action.
17. By signature hereon, Applicant represents and warrants its compliance with the requirements of the Americans With Disabilities Act (ADA). Applicant further represents and warrants that it will comply with all applicable Texas Accessibility requirements.
18. By signature hereon, in accordance with Section 2155.4441 of the Texas Government Code, Applicant agrees that during the performance of a contract for services it shall purchase products and materials produced in Texas when they are available at a price and time comparable to products and materials produced outside this state.
19. By signature hereon, Applicant represents and warrants that Lender's payments to Applicant and Applicant's receipt of appropriated or other funds under any contract resulting from this RFA are not prohibited by Sections 556.005, 556.0055, or 556.008 of the Texas Government Code.
20. By signature hereon, Applicant represents and warrants that the offering entity and its principals are eligible to participate in this transaction and have not been subjected to suspension, debarment, or similar ineligibility determined by any federal, state, or local governmental entity and that Applicant is in compliance with the State of Texas statutes and rules relating to procurement and that Applicant is not listed on the federal government's terrorism watch list as described in Executive Order 13224. Entities ineligible for federal procurement are listed at <http://www.sam.gov>.
21. Sections 2155.006 and 2261.053 of the Texas Government Code, prohibit state agencies from awarding a contract to any person who, in the past five years, has been convicted of violating a federal law or assessed a penalty in connection with a contract involving relief for Hurricane Rita, Hurricane Katrina, or any other disaster, as defined by Section 418.004 of the Texas Government Code, occurring after September 24, 2005. By signature hereon, the Applicant represents and warrants, in accordance with Section 2155.006 of the Texas Government Code, that the individual or business entity named in its Application is not ineligible to receive the Agreement and acknowledges that the Agreement may be terminated and payment withheld if this certifications inaccurate.
22. By signature hereon, Applicant represents and warrants that it is not aware of and has received no notice of any court or governmental agency actions, proceedings or investigations, etc., pending or threatened against Applicant or any of the individuals or entities included in Part 1 of this document within the five (5) calendar years immediately preceding the submission of Applicant's Application in response to the RFA that would or could impair Applicant's performance under any agreement resulting from this RFA, relate to the solicited or similar goods or services, or otherwise be relevant to Lender's consideration of Applicant's Application. If Applicant is unable to make the preceding representation and warranty, then Applicant instead represents and warrants that it has included as a detailed attachment in its Application a complete disclosure of any such court or governmental agency actions, proceedings, or investigations, etc. that would or could impair Applicant's performance under any agreement resulting from this RFA, relate to the solicited or similar goods or services, or otherwise be relevant to Lender's consideration of Applicant's Application. In addition, Applicant represents and warrants that it shall notify Lender in writing within five (5) business days of any changes to the representations or warranties in this clause and understands that failure to so timely update Lender shall constitute breach of contract and may result in immediate termination of any agreement resulting from this RFA.
23. By signature hereon, Applicant represents and warrants that it has read and agrees to all terms and conditions of this RFA.

**Authorized signatory on behalf of Applicant must complete and sign the following:**

Authorized Signature \_\_\_\_\_

Printed Name of Authorized Signatory \_\_\_\_\_

Title of Authorized Signatory \_\_\_\_\_

Email Address \_\_\_\_\_

Company Name \_\_\_\_\_

Federal Employer Identification Number \_\_\_\_\_

Phone Number \_\_\_\_\_

Physical Address \_\_\_\_\_

Mailing Address \_\_\_\_\_

**ATTACHMENT K  
LENDER'S RFA**

Lender's Request for Applications (RFA) BE-G19-2017, issued on October 6, 2017 is incorporated by reference for all purposes into this Agreement as Attachment K.

**ATTACHMENT L  
BORROWER'S APPLICATION**

The Application signed and dated by Borrower on \_\_\_\_\_, is incorporated by this reference into the Agreement as Attachment L.

## ATTACHMENT M

### DOE SPECIAL TERMS AND CONDITIONS REQUIRED IN GRANT TO THE COMPTROLLER OF PUBLIC ACCOUNTS AND FLOW DOWN TO ARRA GRANTS AND COOPERATIVE AGREEMENTS

**A. Site Visits.** DOE's authorized representatives have the right to make site visits at reasonable times to review project accomplishments and management control systems and to provide technical assistance, if required. Subrecipients must provide, and must require Subcontractors to provide, reasonable access to facilities, office space, resources, and assistance for the safety and convenience of the government representatives in the performance of their duties. All site visits and evaluations must be performed in a manner that does not unduly interfere with or delay the work.

**B. Decontamination and/or Decommissioning (D&D) Costs.** Notwithstanding any other provisions of this Agreement to the contrary, the DOE or the Prime Recipient shall not be responsible for or have any obligation to the Subrecipient for (i) D&D of any of the Subrecipient's facilities, or (ii) any costs which may be incurred by the Subrecipient in connection with the D&D of any of its facilities due to the performance of the work under this Agreement, whether said work was performed prior to or subsequent to the effective date of the Agreement.

#### SPECIAL PROVISIONS RELATING TO WORK FUNDED UNDER ARRA (May 2009)

**A. Flow Down Requirement.** Subrecipient understands that Lender/Prime Recipient is subject to the following provisions. Subrecipient shall cooperate with Lender/Prime Recipient relevant to such compliance. Subrecipient must include these special terms and conditions in any subcontracts.

**B. Segregation of Costs.** Prime Recipients must segregate the obligations and expenditures related to funding under the Recovery Act. Financial and accounting systems should be revised as necessary to segregate, track and maintain these funds apart and separate from other revenue streams. No part of the funds from the Recovery Act shall be commingled with any other funds or used for a purpose other than that of making payments for costs allowable for Recovery Act projects.

**C. Prohibition on Use of Funds.** None of the funds provided under this agreement derived from ARRA may 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.

**D. Access to Records.** With respect to each financial assistance agreement awarded utilizing at least some of the funds appropriated or otherwise made available by the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, any representative of an appropriate inspector general appointed under section 3 or 8G of the Inspector General Act of 1988 (5 U.S.C. App.) or of the Comptroller General is authorized --

- (1) to examine any records of the Subrecipient or Subrecipient Subcontractor or any State or local agency administering such contract that pertain to, and involve transactions that relate to, the grant or subcontract; and
- (2) to interview any officer or employee of the Subrecipient or Subrecipient Subcontractor regarding such transactions.

**E. Publication.** An application may contain technical data and other data, including trade secrets and/or privileged or confidential information, which the Subrecipient or Subrecipient Subcontractor does not want disclosed to the public or used by the Government for any purpose other than the application. To protect such data, the Subrecipient or Subrecipient Subcontractor should specifically identify each page including each line or paragraph thereof containing the data to be protected and mark the cover sheet of the application with the following Notice as well as referring to the Notice on each page to which the Notice applies:

#### Notice of Restriction on Disclosure and Use of Data

The data contained in pages - of this application have been submitted in confidence and contain trade secrets or proprietary information, and such data shall be used or disclosed only for evaluation purposes, provided that if this Subrecipient or Subrecipient Subcontractor receives an award as a result of or in connection with the submission of this application, DOE shall have the right to use or disclose the data here to the extent provided in the award. This restriction does not limit the Government's right to use or disclose data obtained without restriction from any source, including the Subrecipient or Subrecipient Subcontractor.

Information about this agreement will be published on the Internet and linked to the website [www.recovery.gov](http://www.recovery.gov), maintained by the Accountability and Transparency Board. The Board may exclude posting contractual or other information on the website on a case-by-case basis when necessary to protect national security or to protect information that is not subject to disclosure under Sections 552 and 552a of Title 5, United States Code.

**F. Protecting State and Local Government and Contractor Whistleblowers.** The requirements of Section 1553 of the Act are summarized below. They include, but are not limited to:

Prohibition on Reprisals: An employee of any non-federal employer receiving covered funds under the ARRA, may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing, including a disclosure made in the ordinary course of an employee's duties, to the Accountability and Transparency Board, an inspector general, the Comptroller General, a member of Congress, a State or Federal regulatory or law enforcement agency, a person with supervisory authority over the employee (or other person working for the employer who has the authority to investigate, discover or terminate misconduct), a court or grand jury, the head of a Federal agency, or their representatives information that the employee believes is evidence of:

- gross management of an agency contract or grant relating to covered funds;
- a gross waste of covered funds;
- a substantial and specific danger to public health or safety related to the implementation or use of covered funds;
- an abuse of authority related to the implementation or use of covered funds; or
- as violation of law, rule, or regulation related to an agency contract (including the competition for or negotiation of a contract) or grant, awarded or issued relating to covered funds.

Agency Action: Not later than 30 days after receiving an inspector general report of an alleged reprisal, the head of the agency shall determine whether there is sufficient basis to conclude that the non-federal employer has subjected the employee to a prohibited reprisal. The agency shall either issue an order denying relief in whole or in part or shall take one or more of the following actions:

- Order the employer to take affirmative action to abate the reprisal.
- Order the employer to reinstate the person to the position that the person held before the reprisal, together with compensation including back pay, compensatory damages, employment benefits, and other terms and conditions of employment that would apply to the person in that position if the reprisal had not been taken.
- Order the employer to pay the employee an amount equal to the aggregate amount of all costs and expenses (including attorneys' fees and expert witnesses' fees) that were reasonably incurred by the employee for or in connection with, bringing the complaint regarding the reprisal, as determined by the head of a court of competent jurisdiction.

Non-enforceability of Certain Provisions Waiving Rights and Remedies or Requiring Arbitration: Except as provided in a collective bargaining agreement, the rights and remedies provided to aggrieved employees by this section may not be waived by any agreement, policy, form, or condition of employment, including any pre-dispute arbitration agreement. No pre-dispute arbitration agreement shall be valid or enforceable if it requires arbitration of a dispute arising out of this section.

Requirement to Post Notice of Rights and Remedies: Any employer receiving covered funds under ARRA, shall post notice of the rights and remedies as required therein. (Refer to section 1553 of ARRA, [www.Recovery.gov](http://www.Recovery.gov), for specific requirements of this section and prescribed language for the notices.).

**G. Reserved**

**H. False Claims Act.** Recipient and Subrecipients shall promptly refer to the DOE or other appropriate Inspector General any credible evidence that a principal, employee, agent, contractor, Subrecipient Subcontractor, subcontractor or other person has submitted a false claim under the False Claims Act or has committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity or similar misconduct involving those funds.

**I. Information in Support of ARRA Reporting.** Subrecipient may be required to submit backup documentation for expenditures of funds under the ARRA including such items as timecards and invoices. Subrecipient shall provide copies of backup documentation at the request of the Contracting Officer or designee.

**J. Availability of Funds.** Funds obligated to this award are available for reimbursement of costs as provided in Exhibit G.

**L. Certifications.** With respect to funds made available to State or local governments for infrastructure investments under ARRA, the Governor, mayor, or other chief executive, as appropriate, certified by acceptance of this award that the infrastructure investment has received the full review and vetting required by law and that the chief executive accepts responsibility that the infrastructure investment is an appropriate use of taxpayer dollars. Recipient shall provide an additional certification that includes a description of the investment, the estimated total cost, and the amount of covered

funds to be used for posting on the Internet. A State or local agency may not receive infrastructure investment funding from funds made available by the Act unless this certification is made and posted.

## **REPORTING AND REGISTRATION REQUIREMENTS UNDER SECTION 1512 OF ARRA**

Recipients and their first-tier Subrecipients must maintain current registrations in the Central Contractor Registration (<http://www.ccr.gov>) at all times during which they have active federal awards funded with ARRA funds. A Dun and Bradstreet Data Universal Numbering System (DUNS) Number (<http://www.dnb.com>) is one of the requirements for registration in the Central Contractor Registration.

## **DOE ASSURANCE OF COMPLIANCE, NON DISCRIMINATION IN STATE ASSISTED PROGRAMS**

Subrecipient agrees to comply with Title VI of the Civil Rights Act of 1964 (Pub. L. 88-352), Section 16 of the Federal Energy Administration Act of 1974 (Pub. L. 93-275), Section 401 of the Energy Reorganization Act of 1974 (Pub. L. 93-438), Title IX of the Education Amendments of 1972, as amended (Pub. L. 92-318, Pub. L. 93-568, and Pub. L. 94-482), Section 504 of the Rehabilitation Act of 1973 (Pub. L. 93-112), the Age Discrimination Act of 1977 (Pub. L. 94-135), Title VIII of the Civil Rights Act of 1968 (Pub. L. 90-284), the Department of Energy Organization Act of 1977 (Pub. L. 95-91), the Energy Conservation and Production Act of 1976, as amended, (Pub. L. 94-385) and Title 10 Code of Federal Regulations, Part 1040. In accordance with the above laws and regulations issued pursuant thereto, the Subrecipient agrees to assure that no person in the United States shall, on the ground of race, color, national origin, sex, age, or disability, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity in which the Subrecipient receives Federal assistance from the Department of Energy.

**Applicability and Period of Obligation.** In the case of any service, financial aid, covered employment, equipment, property, or structure provided, leased, or improved with Federal assistance funding extended to Subrecipient by the Department of Energy, this assurance obligates Subrecipient for the period during which the Federal assistance is extended. In the case of any transfer of such service, financial aid, equipment, property, or structure, this assurance obligates the transferee for the period during which Federal assistance is extended. If any personal property is so provided, this assurance obligates Subrecipient for the period during which it retains ownership or possession of the property. In all other cases, this assurance obligates Subrecipient for the period during which the Federal assistance is extended to Subrecipient by the Department of Energy.

**Employment Practices.** Where a primary objective of the Federal assistance is to provide employment or where Subrecipient's employment practices affect the delivery of services in programs or activities resulting from Federal assistance extended by the Department of Energy, Subrecipient agrees not to discriminate on the ground of race, color, national origin, sex, and disability, in its employment practices. Such employment practices may include, but are not limited to, recruitment, advertising, hiring, layoff or termination, promotion, demotion, transfer, rates of pay, training and participation in upward mobility programs, or other forms of compensation and use of facilities.

**Subrecipient Assurance.** Subrecipient shall require any individual, organization, or other entity with which it subcontracts, subgrants, or subleases for the purpose of providing any service, financial aid, equipment, property, or structure to comply with laws cited above. To this end, Subrecipient shall be required to sign a written assurance form; however, the obligation of both recipient and Subrecipient to ensure compliance is not relieved by the collection or submission of written assurance forms.

**Data Collection and Access to Records.** Subrecipient agrees to compile and maintain information pertaining to programs or activities developed as a result of Subrecipient's receipt of Federal assistance from the Department of Energy. Such information shall include, but is not limited to the following: (1) the manner in which services are or will be provided and related data necessary for determining whether any persons are or will be denied such services on the basis of prohibited discrimination; (2) the population eligible to be serviced by race, color, national origin, sex, and disability; (3) data regarding covered employment, including use or planned use of bilingual public contact employees serving beneficiaries of the program where necessary to permit effective participation by beneficiaries unable to speak or understand English; (4) the location of existing or proposed facilities connected with the program and related information adequate for determining whether the location has or will have the effect of unnecessarily denying access to any person on the basis of prohibited discrimination; (5) the present or proposed membership by race, color, national origin, sex, and disability, in any planning or advisory body which is an integral part of the program; and (6) any additional written data determined by the Department of Energy to be relevant to the obligation to assure compliance by Subrecipients with laws cited in the first paragraph of this assurance.

Subrecipient agrees to submit requested data to the Department of Energy regarding programs and activities developed

by the Subrecipient from the use of Federal funds extended by the Department of Energy. Facilities of Subrecipient (including the physical plants, buildings, or other structures) and all records, books, accounts, and other sources of information pertinent to Subrecipient's compliance with the civil rights laws shall be made available for inspection during normal business hours of request of an officer or employee of the Department of Energy specifically authorized to make such inspections. Instructions in this regard will be provided by the Director, Office of Civil Rights, U. S. Department of Energy.

This assurance is given in consideration of and for the purpose of obtaining any and all Federal grants, loans, contracts (excluding procurement contracts), property, discounts or other Federal assistance extended after the date hereto, to Subrecipients by the Department of Energy, including installment payments on account after such date of application for Federal assistance which are approved before such date. Subrecipient recognizes and agrees that such Federal assistance will be extended in reliance upon the representations and agreements made in this assurance and that the United State shall have the right to seek judicial enforcement of this assurance. This assurance is binding on Subrecipient, its successors, transferees, and assignees, as well as the person(s) whose signature appears below and who is authorized to sign this assurance on behalf of Subrecipient.

**Subrecipient Certification.** Subrecipient certifies that it has complied, or that, within 90 days of the date of the grant, it will comply with all applicable requirements of 10 C.F.R. § 1040.5 (a copy will be furnished to Subrecipient upon written request to DOE.)

**RECOVERY ACT TRANSACTIONS LISTED IN SCHEDULE OF EXPENDITURES OF FEDERAL AWARDS AND RECIPIENT RESPONSIBILITIES FOR INFORMING CONTRACTORS**

(a) To maximize the transparency and accountability of funds authorized under the American Recovery and Reinvestment Act of 2009 (Pub. L. 111--5) (Recovery Act) as required by Congress and in accordance with 2 CFR 215.21 "Uniform Administrative Requirements for Grants and Agreements" and OMB Circular A--102 Common Rules provisions, recipients agree to maintain records that identify adequately the source and response of Recovery Act funds. OMB Circular A--102 is available at <http://www.whitehouse.gov/omb/circulars/a102/a102.html>.

(b) For recipients covered by the Single Audit Act Amendments of 1996 and OMB Circular A--133, "Audits of States, Local Governments, and Non-Profit Organizations," recipients agree to separately identify the expenditures for Federal awards under the Recovery Act on the Schedule of Expenditures of Federal Awards (SEFA) and the Data Collection Form (SF--SAC) required by OMB Circular A--133. OMB Circular A--133 is available at <http://www.whitehouse.gov/omb/circulars/a133/a133.html>. This shall be accomplished by identifying expenditures for Federal awards made under the Recovery Act separately on the SEFA, and as separate rows under Item 9 of Part III on the SF--SAC by CFDA number, and inclusion of the prefix "ARRA-" in identifying the name of the Federal program on the SEFA and as the first characters in Item 9d of Part III on the SF--SAC.

(c) Recipients agree to separately identify to each Contractor, and document at the time of subaward and at the time of disbursement of funds, the Federal award number, CFDA number, and amount of Recovery Act funds. When a recipient awards Recovery Act funds for an existing program, the information furnished to Contractors shall distinguish the subawards of incremental Recovery Act funds from regular subawards under the existing program.

(d) Recipients agree to require their Contractors to include on their SEFA information to specifically identify Recovery Act funding similar to the requirements for the recipient SEFA described above. This information is needed to allow the recipient to properly monitor Contractor expenditure of ARRA funds as well as oversight by the Federal awarding agencies, Offices of Inspector General and the Government Accountability Office.

As the duly authorized representative of the Contractor, I hereby certify that Contractor will comply with the above requirements.

**BORROWER/SUBRECIPIENT NAME:** \_\_\_\_\_

Authorized by:

Name \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_



**ATTACHMENT N**  
**National Policy Assurances to be Incorporated as Award Terms**  
**(Version August 2008)**

- To the extent that a term does not apply to a particular type of activity or award, it is self-deleting.
- The term “You” refers to Subrecipients and subcontractors of Subrecipients.
- The term “We” or “Us” refers to the Department of Energy and the Comptroller of Public Accounts.

To the extent that a term does not apply to a particular type of activity or award, it is self-deleting.

**I. Nondiscrimination Policies**

You must comply with applicable provisions of the following national policies prohibiting discrimination:

1. On the basis of race, color, or national origin, in Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.), as implemented by DOE regulations at 10 CFR part 1040;
2. On the basis of sex or blindness, in Title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.), as implemented by DOE regulations at 10 CFR parts 1041 and 1042;
3. On the basis of age, in the Age Discrimination Act of 1975 (42 U.S.C.6101 et seq.), as implemented by Department of Health and Human Services regulations at 45 CFR part 90 and DOE regulations at 10 CFR part 1040;
4. On the basis of disability, in Section 504 of the Rehabilitation Act of 1973 (29 U.S.C.794), as implemented by Department of Justice regulations at 28 CFR part 41 and DOE regulations at 10 CFR part 1041;
5. On the basis of race, color, national origin, religion, disability, familial status, and sex under Title VIII of the Civil Rights Act (42 U.S.C. 3601 et seq.) as implemented by the Department of Housing and Urban Development at 24 CFR part 100; and
6. On the basis of disability in the Architectural Barriers Act of 1968(42 U.S.C. 4151 et seq.) for the design, construction, and alteration of buildings and facilities financed with Federal funds.

**II. Environmental Policies**

You must:

1. Comply with applicable provisions of the Clean Air Act (42 U.S.C.740 I, et. seq.) and Clean Water Act (33 U.S.C. 1251, et. seq.), as implemented by Executive Order 11738 [3 CFR,1971-1975 Comp., p. 799] and Environmental Protection Agency rules at 40 CFR part 32, Subpart J.
2. Immediately identify to us, as the awarding agency, any potential impact that you find this award may have on:
  - a. The quality of the human environment, including wetlands, and provide any help we may need to comply with the National Environmental Policy Act (NEPA, at 42 U.S.C. 4321 et. seq.) and assist us to prepare Environmental Impact Statements or other environmental documentation. In such cases, you may take no action that will have an adverse environmental impact (e.g., physical disturbance of a site such as breaking of ground) or limit the choice of reasonable alternatives until we provide written notification of Federal compliance with NIEPA, as implemented by DOE at 10 CFR part 1021.
  - b. Flood-prone areas, and provide any help we may need to comply with the National Flood Insurance Act of 1968 and Flood Disaster Protection Act of 1973 (42 U.S.C. 4001 et. seq.), which require flood insurance, when available, for Federally assisted construction or acquisition in flood-prone areas, as implemented by DOE at 10 CFR part 1022.
  - c. Use of land and water resources of coastal zones, and provide any help we may need to comply with the Coastal Zone Management Act of 1972(16 U.S.C. 1451, et. seq.).
  - d. Coastal barriers along the Atlantic and Gulf coasts and Great Lakes’ shores, and provide help we may need to comply with the Coastal Bathers Resource Act (16 U.S.C. 3501 et. seq.), concerning preservation of barrier resources.
  - e. Any existing or proposed component of the National Wild and Scenic Rivers system, and provide any help we may need to comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. 1271 et seq.).
  - f. Underground sources of drinking water in areas that have an aquifer that is the sole or principal drinking water source, and provide any help we may need to comply with the Safe Drinking Water Act(42 U.S.C. 300h-3).
3. Comply with applicable provisions of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821-4846), as implemented by the Department of Housing and Urban Development at 24 CFR part 35. The requirements concern lead-

based paint in housing owned by the Federal Government or receiving Federal assistance.

4. Comply with section 6002 of the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6962), and implementing regulations of the Environmental Protection Agency, 40 CFR Part 247, which require the purchase of recycled products by States or political subdivision of States.

### III. Live Organisms

1. **Human research subjects.** You must protect the rights and welfare of individuals that participate as human subjects in research under this award in accordance with the Common Federal Policy for the Protection of Human Subjects (45 CFR part 46), as implemented by DOE at 10 CFR part 745.

#### 2. Animals and plants.

a. You must comply with applicable provisions of Department of Agriculture rules at 9 CFR parts 1-4 that implement the Laboratory Animal Welfare Act of 1966(7 U.S.C. 2131-2156) and provide for humane transportation, handling, care, and treatment of animals used in research, experimentation, or testing under this award.

b. You must follow the guidelines in the National Academy of Sciences(NAS) Publication “Guide for the Care and Use of Laboratory Animals”(1996, which may be found currently at <http://www.nap.edu/readingroom/books/labrats/>) and comply with the Public Health Service Policy and Government principles Regarding the Care and use of animals (included as Appendix D to the NAS Guide).

c. You must immediately identify to us, as the awarding agency, any potential impact that you find this award may have on endangered species, as defined by the Endangered Species Act of 1973, as amended (“the Act,” 16 U.S.C. 1531-1543), and implementing regulations of the Departments of the Interior (50 CFR parts 10-24) and Commerce (50 CFR parts 217-227). You also must provide any help we may need to comply with 16 U.S.C. 1536(a)(2). This is not in lieu of responsibilities you have to comply with provisions of the Act that apply directly to you as a U.S. entity, independent of receiving this award.

### IV. Other National Policies

1. **Debarment and suspension.** You must comply with requirements regarding debarment and suspension in Subpart C of 2 CFR parts 180 and 901.

2. **Drug-free workplace.** You must comply with drug-free workplace requirements in Subpart B of 10 CFR part 607, which implements sec. 5151-5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100-690, Title V, Subtitle D; 41 U.S.C. 701, et seq.).

#### 3. Lobbying

a. You must comply with the restrictions on lobbying in 31 U.S.C. 1352, as implemented by DOE at 10 CFR part 601, and submit all disclosures required by that statute and regulation.

b. If you are a nonprofit organization described in section 501(c)(4)of title 26, United States Code (the Internal Revenue Code of 1968),you may not engage in lobbying activities as defined in the Lobbying Disclosure Act of 1995 (2 U.S.C., Chapter 26). If we determine that you have engaged in lobbying activities, we will cease all payments to you under this and other awards and terminates the awards unilaterally for material failure to comply with the award terms and conditions. By submitting an application and accepting fluids under this agreement, you assure that you are not an organization described in section 501(c)(4) that has engaged in any lobbying activities described in the Lobbying Disclosure Act of 1995 (2 U.S.C. 1611).

c. You must comply with the prohibition in 18 U.S.C. 1913 on the use of Federal funds, absent express Congressional authorization, to pay directly or indirectly for any service, advertisement or other written matter, telephone communication, or other device intended to influence at any time a Member of Congress or official of any government concerning any legislation, law, policy, appropriation, or ratification.

4. **Officials not to benefit.** You must comply with the requirement that no member of Congress shall be admitted to any share or part of this agreement, or to any benefit arising from it, in accordance with 41U.S.C. 22.

5. **Hatch Act.** If applicable, you must comply with the provisions of the Hatch Act (5U.S.C. 1501-1508 and 7324-7326), as implemented by the Office of Personnel Management at 5 CFR part 151, which limits political activity of employees or officers of State or local governments whose employment is connected to an activity financed in whole or part with Federal funds.

6. **Native American graves protection and repatriation.** If you control or possess Native American remains and

associated funerary objects, you must comply with the requirements of 43 CFR part 10, the Department of the Interior implementation of the Native American Graves Protection and Repatriation Act of 1990 (25 U.S.C., chapter 32).

**7. Fly America Act.** You must comply with the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118), commonly referred to as the “Fly America Act,” and implementing regulations at 41 CFR 301-10.131 through 301-10.143. The law and regulations require air transport of people or property to, from, between or within a country other than the United States, the cost of which is supported under this award, to be performed by or under a cost-sharing arrangement with a U.S. flag carrier, if service is available.

**8. Use of United States-flag vessels.**

a. Pursuant to Pub. L. 664 (43 U.S.C. 1241(b)), at least 50 percent of any equipment, materials or commodities procured, contracted for or otherwise obtained with funds under this award, and which may be transported by ocean vessel, must be transported on privately owned United States-flag commercial vessels, if available.

b. Within 20 days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, “on-board” commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph 9.a of this section shall be furnished to both our award administrator (through you in the case of your contractor’s bill-of-lading) and to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590.

**9. Research misconduct.** You must comply with the government-wide policy on research misconduct issued by the Office of Science and Technology Policy (available in the Federal Register at 65 FR 76260, December 6,2000, or on the Internet at [www.ostp.gov](http://www.ostp.gov)), as implemented by DOE at 10 CFR part 733 and 10 CFR 600.31.

**10. Requirements for an Institution of Higher Education Concerning Military recruiters and Reserve Officers Training Corps (ROTC).**

a. As a condition for receiving funds under an award by the National Nuclear Security Administration of the Department of Energy, you agree that you are not an institution of higher education that has a policy or practice placing any of the restrictions specified in 10 U.S.C. 983. as implemented by 32 CFR part 216, on:

- i. Maintenance, establishment, or operation of Senior ROTC units, or student participation in those units; or
- ii. Military recruiters’ access to campuses, students on campuses, or information about students.

b. If you are determined, using the procedures in 32 CFR part 216, to be such an institution of higher education during the period of performance of this award, we:

- i. Will cease all payments to you of funds under this award and all other awards subject to the requirements in 32 CFR part 216; and
- ii. May suspend or terminate those awards unilaterally for material failure to comply with the award terms and conditions.

**11. Historic preservation.** You must identify to us any:

a. Any property listed or eligible for listing on the National Register of Historic Places that will be affected by this award, and provide any help we may need, with respect to this award, to comply with Section 106 of the National Historic Preservation Act of 1966 (16 U.S.C. 470, as implemented by the Advisory Council on Historic Preservation regulations at 36 CFR part 800 and Executive Order 11593, “Identification and Protection of Historic Properties,” [3 CFR, 1971-1975 Comp., p. 559].

b. Potential under this award for irreparable loss or destruction of significant scientific, prehistorical, historical, or archeological data, and provide any help we may need, with respect to this award, to comply with the Archaeological and Historic Preservation Act of 1974 (16 U.S.C.469a-1, et seq.).

**12. Relocation and real property acquisition.** You must comply with applicable provisions of 49 CFR part 24, which implements the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970(42 U.S.C. 4601, et seq.) and provides for fair and equitable treatment of persons displaced by federally assisted programs or persons whose property is acquired as a result of such programs.

**13. Confidentiality of patient records.** You must keep confidential any records that you maintain of the identity, diagnosis, prognosis, or treatment of any patient in connection with any program or activity relating to substance abuse education, prevention, training, treatment, or rehabilitation that is assisted directly or indirectly under this award, in accordance with 42 U.S.C. 290dd-2.

14. **Constitution Day.** You must comply with Public Law 108-447, Div. J, Title I, Sec. 111(36 U.S.C. 106 note), which requires each educational institution receiving Federal funds in a Federal fiscal year to hold an educational program on the United States Constitution on September 17<sup>th</sup> during that year for the students served by the educational institution.

**15. Trafficking in Persons**

a. Provisions applicable to a recipient that is a private entity.

1. You as the recipient, your employees, subrecipients under this award, and subrecipients' employees may not—
  - i. Engage in severe forms of trafficking in persons during the period of time that the award is in effect;
  - ii. Procure a commercial sex act during the period of time that the award is in effect; or
  - iii. Use forced labor in the performance of the award or subawards under the award.
2. We as the Federal awarding agency may unilaterally terminate this award, without penalty, if you or a subrecipient that is a private entity —
  - i. Is determined to have violated a prohibition in paragraph a. 1 of this award term; or
  - ii. Has an employee who is determined by the agency official authorized to terminate the award to have violated a prohibition in paragraph a.1. of this award term through conduct that is either—
    - A. Associated with performance under this award; or
    - B. Imputed to you or the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR part 180, “OMB Guidelines to Agencies on Government wide Debarment and Suspension (Non-procurement),” as implemented by our agency at 2 CFR part 901.

b. Provision applicable to a recipient other than a private entity. We as the Federal awarding agency may unilaterally terminate this award, without penalty, if a subrecipient that is a private entity—

1. Is determined to have violated an applicable prohibition in paragraph a. 1 of this award term; or
2. Has an employee who is determined by the agency official authorized to terminate the award to have violated an applicable prohibition in paragraph a. 1 of this award term through conduct that is either—
  - i. Associated with performance under this award; or
  - ii. Imputed to the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR part 180, “OMB Guidelines to Agencies on Government wide Debarment and Suspension (Non-procurement),” as implemented by our agency at 2 CFR part 901.

c. Provisions applicable to any recipient.

1. You must inform us immediately of any information you receive from any source alleging a violation of a prohibition in paragraph a.1. of this award term.
2. Our right to terminate unilaterally that is described in paragraph a.2 orb. of this section:
  - i. Implements section 106(g) of the Trafficking Victims Protection Act of 2000 (TWA), as amended (22 U.S.C. 7104(g)), and
  - ii. Is in addition to all other remedies for noncompliance that are available to us under this award.
3. You must include the requirements of paragraph a. 1 of this award term in any subaward you make to a private entity.

d. Definitions. For purposes of this award term:

1. “Employee” means either:
  - i. An individual employed by you or a subrecipient who is engaged in the performance of the project or program under this award; or
  - ii. Another person engaged in the performance of the project or program under this award and not compensated by you including, but not limited to, a volunteer or individual whose services are contributed by a third party as an in-kind contribution toward cost sharing **or** matching requirements.
2. “Forced labor” means labor obtained by any of the following methods: the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.
3. “Private entity”:
  - i. Means any entity other than a State, local government, Indian tribe, or foreign public entity, as those terms are defined in 2 CFR 175.25.
  - ii. Includes:

- A. A nonprofit organization, including any nonprofit institution of higher education, hospital, or tribal organization other than one included in the definition of Indian tribe at 2 CFR 175.25(b).
- B. A for-profit organization.

4. “Severe forms of trafficking in persons,” “commercial sex act,” and “coercion” have the meanings given at section 103 of the TWA, as amended (22 U.S.C. 7102).

**V. National Policy Requirements for Subawards.**

Recipient responsibility. You must include in any subaward you make under this award the requirements of the national policy requirements in Sections I through IV of this document that apply, based on the type of subawardee organization and situation.

As the duly authorized representative of the Subrecipient, I hereby certify that Subrecipient will comply with the above requirements.

**SUBRECIPIENT NAME:** \_\_\_\_\_

Authorized by:

Name \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

**ATTACHMENT O-1**  
**AMERICAN RECOVERY & REINVESTMENT ACT—BORROWER/SUBRECIPIENT**  
**AFFIDAVIT**

***This Affidavit must be signed and sworn (notarized)***

I, **(Name), (Title)**, an authorized representative of: **(Borrower)**, an institution of higher education that is receiving American Recovery and Reinvestment Act of 2009 (ARRA or the Act) funding, hereby swear and affirm that, to the best of my knowledge, internal controls, processes and procedures have been designed and implemented to help ensure that the recipient and its use of these funds complies with the following: applicable state law; federal law, including federal reporting requirements under Section 1512 of the Act, if applicable; rules; regulations; and other relevant guidance. I further swear and affirm that all of the statements made and information provided herein, including statements made and information provided in any attachments are true, complete, and correct, to the best of my knowledge.

I understand that I am receiving ARRA funding from the Texas Comptroller of Public Accounts, a state agency.

I understand that non-compliance with reporting requirements could be treated as a violation of the award agreement resulting in the withholding of funds, debarment, or award termination or suspension, as appropriate.

I understand that it is a federal crime under 18 U.S.C. Section 1001 to, in any matter within the jurisdiction of the executive branch of the U.S. Government, knowingly and willfully make any materially false, fictitious, or fraudulent statement or representation, or to make or use any false writing or document knowing that it contains the same.

I understand that presenting a false or fraudulent claim, in whole or in part, or causing same, may subject me to civil penalties as provided for in 31 U.S.C. Section 3729.

I understand that it is a felony offense under Section 37.10, Texas Penal Code, to knowingly make a false entry in, or false alteration of, a governmental record, or to make, present, or use a governmental record with knowledge of its falsity, when the actor has the intent to harm or defraud another.

I understand that the offense of perjury, under Section 37.02, Texas Penal Code, is committed when a person, with intent to deceive and with knowledge of the statement's meaning, makes a false statement under oath or swears to the truth of a false statement previously made and the statement is required or authorized by law to be made under oath.

I understand my obligation to track all ARRA funds and that ARRA funds cannot be comingled with Non-ARRA funds. I also understand my obligation to immediately report any known or suspected waste, fraud, and abuse of funds received under the Act to the United States Government Accountability Office at (800) 424-5454 and the Texas State Auditor's Office at (800) 892-8348. I further understand that I will require all Subrecipients with whom I contract using funds made available under the Act to sign a similar affidavit swearing to all of the above. I hereby swear and affirm that I have read the entire affidavit, and I understand its contents.

**Borrower / Subrecipient Name:** \_\_\_\_\_

Authorized by:

Name \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

Sworn and subscribed before me by the said \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**Notary Public, State of Texas**

**Notary's printed name:** \_\_\_\_\_ **My commission expires:** \_\_\_\_\_ (Seal)

**ATTACHMENT O-2**

**American Recovery & Reinvestment Act – Borrower/Subrecipient’s Contractor Affidavit**

**This Affidavit must be signed and sworn (notarized)**

I, \_\_\_\_\_, an authorized representative of: \_\_\_\_\_, a [person, sole proprietorship, partnership, corporation, limited liability company, nonprofit organization, governmental entity, political subdivision, or other entity] (circle one) that is receiving ARRA funding, hereby swear and affirm that, to the best of my knowledge, internal controls, processes and procedures have been designed and implemented to help ensure that the Subrecipient Subcontractor and its use of these funds complies with the following: applicable state law; federal law, including federal reporting requirements under Section 1512 of the Act, if applicable; rules; regulations; and other relevant guidance. I further swear and affirm that all of the statements made and information provided herein, including statements made and information provided in any exhibits are true, complete, and correct, to the best of my knowledge.

I understand that I am receiving ARRA funding from a governmental entity through the Texas Comptroller of Public Accounts, a Texas state agency. I understand that non-compliance with reporting requirements could be treated as a violation of the award agreement resulting in the withholding of funds, debarment, or award termination or suspension, as appropriate.

I understand that it is a federal crime under 18 U.S.C. Section 1001 to, in any matter within the jurisdiction of the executive branch of the U.S. Government, knowingly and willfully make any materially false, fictitious, or fraudulent statement or representation, or to make or use any false writing or document knowing that it contains the same.

I understand that presenting a false or fraudulent claim, in whole or in part, or causing same, may subject me to civil penalties as provided for in 31 U.S.C. Section 3729.

I understand that it is a felony offense under Section 37.10, Texas Penal Code, to knowingly make a false entry in, or false alteration of, a governmental record, or to make, present, or use a governmental record with knowledge of its falsity, when the actor has the intent to harm or defraud another. I understand that the offense of perjury, under Section 37.02, Texas Penal Code, is committed when a person, with intent to deceive and with knowledge of the statement’s meaning, makes a false statement under oath or swears to the truth of a false statement previously made and the statement is required or authorized by law to be made under oath.

I understand my obligation to track all ARRA funds and that ARRA funds cannot be comingled with Non-ARRA funds. I also understand my obligation to immediately report any known or suspected waste, fraud, and abuse of funds received under the Act to the United States Government Accountability Office at (800) 424-5454 and the Texas State Auditor’s Office at (800) 892-8348. I further understand that I will require all subcontractors with whom I contract using funds made available under the Act to sign a similar affidavit swearing to all of the above. I hereby swear and affirm that I have read the entire affidavit, and I understand its contents.

**Borrower/Subrecipient Name:** \_\_\_\_\_

**Affiant Signature:** \_\_\_\_\_

**Printed Name:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**Sworn and subscribed before me by the said**

\_\_\_\_\_  
(Printed Name of Recipient’s Authorized Representative)

this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

**Notary Public, State of Texas**

**Notary’s printed name:** \_\_\_\_\_ **My commission expires:** \_\_\_\_\_ (Seal)

**ATTACHMENT P**  
**ARRA REPORTING REQUIREMENTS**

Subrecipient shall submit to the Lender the following reports:

**I. INITIAL INFORMATION REPORT.** The Subrecipient shall submit the following information upon the execution of the Loan Agreement and return this report when the executed Loan Agreement is submitted to the Lender:

**A. Subrecipient Identification:**

1. **Subrecipient name:** Provide the following information for the Subrecipient;
  - a. the official name of the Subrecipient as it appears on the Loan Agreement and DUNS #;
  - b. the street address, city, and county of the official place of business;
  - c. City, County, and U.S. Postal Zip Code + four digits;
  - d. the URL designation or address of any official web site for the Subrecipient;
  - e. U.S. Congressional District;
  - f. the state senatorial district;
  - g. the state house district;
  - h. a copy of the minutes or resolution by which the Subrecipient approved the Loan Agreement and designated an authorized representative for the Subrecipient;
  - i. the loan/award number assigned to the Subrecipient by the Lender;
  - j. the date the Loan Agreement was signed (mm/dd/yyyy); and
  - k. the performance period established in the Loan Agreement during which sponsorship begins and ends.
2. **Authorized Representative:** Provide the following information for the person designated by the Subrecipient to represent the Subrecipient in the performance of the Loan Agreement:
  - a. the name of the authorized representative and official title, if any;
  - b. the street address, city, and county of the primary business location;
  - c. City, County, and U.S. Postal Zip Code + four digits;
  - d. area code and telephone number; and
  - e. email address.
3. **Key Personnel:** Provide the following information for each employee or agent designated by the Subrecipient or the Authorized Representative that may assist or serve as a representative for the Subrecipient in the performance of the Loan Agreement:
  - a. the name of the key personnel and official title, if any;
  - b. primary role served for the Subrecipient with respect to the Loan;
  - c. the street address, city, and county of the primary business location;
  - d. City, County, and U.S. Postal Zip Code + four digits;
  - e. area code and telephone number; and
  - f. email address.
4. **Five most highly compensated individuals:** The information required in this subsection is ONLY required when the reporting entity (A) received 80 percent or more of its annual gross revenues in Federal awards the recipient in its preceding fiscal year, and (B) received \$ 25,000,000 or more in annual gross revenues from Federal awards; and (C) the public does not have access to information about the compensation of the senior executives of the entity through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (*15 U.S.C. 78m(a), 78o(d)*) or section 6104 of the Internal Revenue Code of 1986 [*26 USC §6104*]. If this subsection is applicable, the report shall include:
  - a. the names and total compensation for the five most highly compensated officers of the entity;
  - b. "Total compensation" means the cash and noncash dollar value earned by the executive during the subrecipient's past fiscal year of the following: Salary and bonus; Awards of stock, stock options, and stock appreciation rights. Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with FAS 123R; Earnings for services under non-equity incentive plans. Does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees; Change in pension value. This is the change in present value of defined benefit and actuarial pension plans; Above-market earnings on deferred compensation which are not tax-qualified. Other compensation, for example, severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property if the value for the executive exceeds \$10,000.



**5. Project Identification:**

- a. Project Name: Provide the brief descriptive title of the project or activity as identified in the Loan Agreement.
- b. Primary Performance Location: Provide physical location of primary place of performance by:
  - i. street address,
  - ii. City, County, and U.S. Postal Zip Code + four digits
  - iii. U.S. Congressional District;
  - iv. the state senatorial district; and
  - v. the state house district;
- c. Project Objective: A description of the overall purpose and expected outputs and outcomes or results of the Loan Agreement, including significant deliverables and, if appropriate, units of measure.

**II. MONTHLY REPORT.** On the last day of each calendar month, the Subrecipient shall submit an electronic performance report. Report format will be coordinated with SECO.

**III. FINAL REPORT.**

- 1. No later than 30 days prior to the grant ending date, the Subrecipient shall submit an electronic Final Report.
- 2. Subrecipient is required to collect and report required project information from any of its vendors or subcontractors that are remitted any funds provided under this agreement.
- 3. Failure to comply with the requirements of this attachment may result in termination of the grant award and the Subrecipient being ineligible for future grants.
- 4. The form and substance of these reporting requirements may be amended by the Comptroller at any time.

As the duly authorized representative of the Subrecipient, I hereby certify that Subrecipient will comply with the above requirements.

**Borrower:** \_\_\_\_\_

Authorized by:

Name \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_