STATE ENERGY CONSERVATION OFFICE
LOAN AGREEMENT

1. Parties

This Loan Agreement (hereinafter, "Agreement") is made and entered into by the following parties:

Lender: Texas Comptroller of Public Accounts
State Energy Conservation Office
LBJ State Office Building
111 East 17th Street, Room 1118
Austin, Texas 78774-0100

Borrower:

2. Loan of Funds

Subject to the terms, covenants and conditions contained in this Agreement, Lender shall loan to Borrower a maximum of **Seven Million Five Hundred Thousand and no/100 Dollars ($7,500,000.00)** (hereinafter, "Loan"). Borrower shall expend all funds received from Lender pursuant to this Agreement only for the purpose of completion of the project (hereinafter, "Project") described in the Loan Approval Statement (Attachment A) and Engineering Report, and Borrower's Loan Application. Attachment A is attached to and incorporated as part of this Agreement for all purposes. The Project shall be completed on or before _____ ("Project Completion Date"). Lender reserves the right, in its sole discretion, to approve an extension requested by Borrower to extend the Project Completion Date for the Project; the Project Completion Date may be extended only on Lender's prior written approval as provided in Section 12 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 § 2305.0322; and (3) Title 1, Texas Administrative Code, Chapter 5.401, Loan Program for Energy Retrofits.

4. Payments

Borrower shall pay Lender at Lender's principal place of business in Austin, Texas, or at such other place as Lender may designate, the principal sum **Seven Million Five Hundred Thousand and no/100 Dollars ($7,500,000.00)** 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 computed from the date of each disbursement to Borrower until the date repaid at the rate of **two percent (2.00%)** interest per annum. Borrower shall repay the Loan in accordance with the terms specified in the Loan Payment Schedule.

5. Disbursements

The Loan shall be disbursed in installments, no more frequently than monthly, following Lender's receipt of Borrower;s requests for disbursement to pay the costs of goods purchased and services performed. Each request for disbursement shall be made on a form or voucher approved by Lender and the State of Texas, and supported by bills, statements or invoices for the goods or services to be paid and such other documentation that in Lender's sole discretion allows for full substantiation of the costs incurred by Borrower. Borrower's requests for disbursement

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must be received by Lender not later than sixty days (60) after Borrower pays for or authorizes payment for the goods and services, and Lender shall have no obligation to make disbursements for the costs of goods and services if Borrower fails to comply with this requirement. 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.

6. Contingency

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 6 equally apply to Borrower as an agency of the State of Texas.

7. 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 2262.003, 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 Consultant 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 Comptroller to comply with any rules and procedures of the state auditor in the implementation and enforcement of Section 2262.003. Under procedures provided by the state auditor on September 5, 2003, in addition to the above, (1) the Borrower understands that the acceptance of funds under this Agreement acts as acceptance of the authority of the state auditor to conduct an audit or investigation in connection with those funds; (2) the Borrower further agrees to cooperate fully with the state auditor in the conduct of the audit or investigation, including providing all records requested; (3) the Borrower shall ensure that this paragraph concerning the authority to audit funds received indirectly by subcontractors through the Borrower and the requirement to cooperate is included in any subcontract it awards; and (4) the state auditor shall at any time have access to and the rights to examine, audit, excerpt, and transcribe any pertinent books, documents, working papers, and records of the Borrower relating to this Agreement.

8. 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

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the Loan Application, the Project, the Loan 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 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.

9. Design Review

Lender's written approval will be required at the five percent (25%), 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*.

10. Retention

Borrower shall maintain all Records supporting its Loan Application until the Loan is fully repaid and for a period of four (4) years thereafter and shall maintain copies of all Records under this Agreement for a period of four (4) 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.

11. Borrower's Covenants

Borrower represents and warrants 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 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.

d) 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.

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e) If Borrower is a state agency, Borrower shall install metering and monitoring equipment and devices required to determine changes in energy consumption and the cost savings resulting from such changes. Borrower shall also prepare and submit quarterly reports to Lender documenting changes in energy consumption and the cost savings resulting from such changes.

f) Borrower shall annually budget an amount sufficient to make all payments due and payable under this Agreement.

12. Time Extension

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 4.

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;
3) A force of nature created a delay in completing the Project; or
4) Borrower has not been assessed more than two (2) late payment penalties under Section 23 of this Agreement.

Lender shall not approve extensions under this Section 4 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.

If Lender approves the request for an extension, Lender shall notify Borrower in writing and shall include the Loan Repayment Schedule and an amendment to this Agreement to incorporate the revised Project Completion Date. Promptly upon receipt of such amendment, Borrower shall execute it to incorporate such revised Project Completion Date into the Agreement.

13. 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) The failure of Borrower to comply with any 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.

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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.

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.

14. 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.

15. Severability

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

16. Notices

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

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If to Lender, to
Texas Comptroller of Public Accounts
State Energy Conservation Office

LBJ State Office Building
111 East 17th Street, Room 1118
Austin, Texas 78774-0100

If to Borrower, to
(Borrower's name and address)

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, ITS OFFICERS, EMPLOYEES, AND COMPTROLLER, ITS OFFICERS, EMPLOYEES AND CONTRACTORS, FROM AND AGAINST ALL CLAIMS, ACTIONS, SUITS, DEMANDS, PROCEEDINGS, COSTS, DAMAGES, AND LIABILITIES, INCLUDING WITHOUT LIMITATION ATTORNEYS' FEES AND COURT COSTS, ARISING OUT OF, CONNECTED WITH, OR RESULTING FROM ANY ACTS OR OMISSIONS OF BORROWER OR ANY AGENT, EMPLOYEE, SUBCONTRACTOR, OR SUPPLIER OF BORROWER IN THE EXECUTION OR PERFORMANCE OF THIS CONTRACT. BORROWER SHALL COORDINATE ITS DEFENSE WITH THE TEXAS ATTORNEY GENERAL AS REQUESTED BY COMPTROLLER.

THIS SECTION IS NOT INTENDED TO AND SHALL NOT BE CONSTRUED TO REQUIRE BORROWER TO INDEMNIFY OR HOLD HARMLESS THE STATE OR COMPTROLLER FROM ANY CLAIMS OR LIABILITIES RESULTING FROM THE NEGLIGENT ACTS OR OMISSIONS OF COMPTROLLER OR ITS EMPLOYEES.

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.**

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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.

21. Late Payments

If any installment due under this Agreement is not paid within thirty (30) days of its due date, Lender, at its option, may require Borrower to pay a penalty equal to ten percent (10%) of the amount of the installment then due.

22. 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

This Agreement and the rights and duties of the parties hereunder shall be governed by the laws of the State of 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:

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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, Contractor 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, Contractor may suspend performance during the pendency of such claim or dispute if Contractor 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 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.

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28. 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. DTPA

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

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. Borrower must execute the Nondisclosure Agreement, Attachment J, which is attached to and incorporated as part of this Agreement. 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.

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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 §§403.055, 403.0551, 2252.903, 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 Comptroller 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 Comptroller. Comptroller 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 Comptroller. Borrower's failure to return any amount owed upon conclusion of Comptroller's administrative review process shall allow Comptroller 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:

Attachment A:	Loan Approval Statement
Attachment B-1:	DOE Assurance of Compliance Nondiscrimination in State Assisted Programs, as completed by Borrower
Attachment B-2:	DOE Assurance of Compliance Nondiscrimination in State Assisted Programs, as completed by each Borrower subcontractor
Attachment C:	Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion-Lower Tier Covered Transactions, as completed by Borrower
Attachment D:	Certifications Regarding Lobbying; Debarment, Suspension and Other Responsibility Matters; and Drug-Free Workplace Requirements, as completed by Borrower
Attachment E:	Disclosure of Lobbying Activities, as completed by Borrower
Attachment F:	Assurances – Non Construction Programs, as completed by Borrower
Attachment G:	Intellectual Property Provisions, as completed by Borrower
Attachment H:	Subcontracting Provisions; Mandatory Flowdown Provision, as completed by the Borrower
Attachment I:	Nondisclosure Agreement, as completed by Borrower

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Attachment J: Consultation List for Energy Efficiency and Conservation Block Grants & the State Energy Plan Programs
Attachment K: Execution of Application
Attachment L: Lender's NOLFA/RFA and Official Responses to Questions
Attachment M: Borrower's Application

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;
3. Attachments B-1 through K;
4. Attachment L; and
5. Attachment M.

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, I, J and K. In addition, Borrower represents and warrants that each of its contractors completed and provided an Attachment B-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

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

38. Term

Therefore, the parties hereby agree that the effective date of this Agreement is the date signed by Lender, after first having been signed by Borrower. Except for the provisions of Sections 7, 8, 10, 11, 13, 17, 19, 25, 26, 31, 33, 34 and 35; and Attachments B-1, B-2, I and J, which shall survive the termination or expiration of this Agreement, this Agreement shall terminate upon repayment, in full, of the Loan.

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.

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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:	**BORROWER:**
Texas Comptroller of Public Accounts	(Borrower's name)
By: _____	By: _____
Martin A. Hubert Deputy Comptroller	(Authorized Representative) (Title)
Date: _____	Date: _____

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ATTACHMENT A, Loan No. _____

LOAN APPROVAL STATEMENT
For Energy Conservation Measures

Agency: _____
Address: _____
City: _____
Loan Coordinator: _____
Title: _____
Phone: _____

Building	(E/U) C R M	Description of Energy/Utility Cost Reduction Measure ((E/U)CRM)	Estimated (E/U)CRM Cost ($)	Annual Energy Cost Savings (per yr)	Payback (yrs)	(E/U)CRM Loan Amount ($)

Engineering Audit Expense	
Measurement and Verification	

Contingency Allowance	
TOTAL LOAN	

@2% Interest

Anticipated Substantial Completion Time **_ months**
Payback (with allowance) **_ years**

Loan Approval Statement Definitions

a) **Building** - A description of the building/facility and individual ECM is contained in the engineering report that is incorporated herein by reference and included as a part of this Attachment A.
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 ($)** - includes cost of detail engineering design, labor, and materials to implement retrofit. The cost of an individual ECM may not exceed 120% of approved ECM amount without a contract amendment and update to the Energy Assessment Report (Utility Assessment Report). Increases in individual ECM costs must be offset with equivalent decreases in different ECM(s) costs. Variances will be documented in the LoanSTAR Change in Scope Review and receive written approval from the LoanSTAR Program Administrator.
d) **Annual Energy Cost Savings ($/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).**

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 is the principal loan amount. The loan repayment term is equal to the simple payback shown on this Attachment A, above.

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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 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 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 funding extended to the Applicant by the Department of Energy, this assurance obligates the Applicant 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 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, 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

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 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

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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 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 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 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, 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 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.)

Designated Responsible Employee

_____ _____

Name and Title (Printed or Typed) **Telephone Number**

_____ _____

Signature **Date**

_____ _____

Telephone Number

_____

Address

Authorized Official:

_____ _____

Name and Title (Printed or Typed) **Telephone Number**

_____ _____

Signature **Date**

DRAFT

LOAN # _____

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 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 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 funding extended to the Applicant by the Department of Energy, this assurance obligates the Applicant 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 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, 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

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 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 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 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 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 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, 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 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.)

Designated Responsible Employee of Subcontractor

_____ (_____

Name and Title (Printed or Typed) **Telephone Number**

_____ _____

Signature **Date**

Subcontractor

_____ _____

Telephone Number

_____

Address

Authorized Official of Subcontractor:

_____ _____

Name and Title (Printed or Typed) **Telephone Number**

_____ _____

Signature **Date**

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LOAN # _____

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.

_____
Organization Name

_____
Name and Title of Authorized Representative

_____ _____
Signature Date

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LOAN # _____

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 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Non-procurement) and 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.

---

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

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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 I (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)

_____
_____
_____

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

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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 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.

---

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.*

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.

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

Name of Applicant	Pre/Award Number and/or Project Name
Printed Name and Title of Authorized Representative	
Signature	Date

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LOAN # _____

ATTACHMENT E
DISCLOSURE OF LOBBYING ACTIVITIES

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352

1. Type of Federal Action: ____ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	2. Status of Federal Action: ___ a. bid/offer/application b. initial award c. post award	3. Report Type: ___ a. initial filing b. material change For Material Change Only: year _____ quarter ____ date of last report ____
. Name and Address of Reporting Entity: Name Address ___ Prime ___ Subawardee Tier, if known:	5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:	
6. Federal Department/Agency:	7. Federal Program Name/Description CFDA Number, if applicable:	
8. Federal Action Number, If known:	9. Award Amount, if known:	
10.a. Name and Address of Lobbying Entity: (if individual, last name, first name, MI): (attach Continuation Sheet(s) SF-LLL-A, if necessary)	10.b. Individual Performing Services (including address if different from No. 10A) (last name, first name, MI):	
11. Amount of Payment (check all that apply): $_____ ___ actual ___ planned	12. Form of Payment (check all that apply): a. cash b. in-kind; specify: nature ____ value ____	
13. Type of Payment (check all that apply): ___ a. retainer ___ c. commission ___ e. deferred ___ b.one-time fee ___ d.contingent fee ___ f. other; specify _____		
14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment indicated in Item 11:		
15. Continuation Sheet(s) SF-LLL-A attached: ___ Yes ___ No		
16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annual and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure	Authorized Representative:_____ Title:_____ Signature:_____ Telephone: _____ Date: _____	

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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.

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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 of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

_____	_____
Signature of Authorized Certifying Official	Title
_____	_____
Applicant Organization	Date Submitted

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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.

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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 licensers 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.

(2) 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)

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(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.

_____
Organization Name

_____
Name and Title of Authorized Representative

_____ _____
Signature Date

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LOAN # _____

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, as well as full compliance with all reporting requirements set forth in Attachment K of this Agreement.

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 Paragraph, including, but not limited to, the requirement that Borrower obtain the prior approval of Agency 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 Agency 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 Comptroller, Borrower shall provide any and all documentation deemed necessary by the Comptroller 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 and the subcontractor, I hereby certify that Borrower and subcontractor will comply with the above requirements.

BORROWER: _____

_____
SUBCONTRACTOR

By:_____

Date: _____

Notary's printed name: _____My commission expires: _____(Seal)

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LOAN # _____

ATTACHMENT I
NONDISCLOSURE AGREEMENT

In consideration of the Comptroller retaining the services of , (Borrower) and because of the sensitivity of certain information which may come under the care and control of Borrower, both parties agree that all information regarding Comptroller, or gathered, produced, or derived from or accessed as a result of the Agreement (Confidential Information) must remain confidential subject to release only by written permission of Comptroller, and more specifically agree as follows:

1. The Confidential Information may be used by Contractor only to assist Contractor in connection with its engagement with Comptroller.

2. Contractor shall not, at any time, use the Confidential Information in any fashion, form, or manner except in its capacity as independent contractor to Comptroller.

3. Contractor shall maintain the confidentiality of any and all deliverables resulting from the Agreement in the same manner that it protects the confidentiality of its own proprietary products of like kind.

4. The Confidential Information may not be copied or reproduced without Comptroller's written consent.

5. All Confidential materials made available to Contractor, including copies thereof, must be returned to Comptroller upon the first to occur of; (a) completion of the project, or (b) request by Comptroller.

6. The foregoing must not prohibit or limit Contractor use of the information (including, but not limited to, ideas, concepts, know-how, techniques and methodologies) (a) previously known to it, (b) independently developed by it, (c) acquired by it from a third party, or (d) which is or becomes part of the public domain through no breach to Contractor of this agreement.

7. This agreement shall become effective as of the date Confidential Information is first made available to Contractor and must survive the Agreement and be a continuing requirement.

8. The breach of this Nondisclosure Agreement by Contractor shall entitle Comptroller to immediately terminate the Agreement upon written notice to Contractor for such breach. The parties acknowledge that the measure of damages in the event of a breach of this Nondisclosure Agreement may be difficult or impossible to calculate, depending on the nature of the breach. Regardless of whether Comptroller elects to terminate the Agreement upon the breach hereof, Comptroller may require Contractor to pay to Comptroller the sum of $1,000 for each breach as liquidated damages. This amount is not intended to be in the nature of a penalty, but is intended to be a reasonable estimate of the amount of damages to Comptroller in the event of a breach hereof by Contractor. Comptroller does not waive any right to seek additional relief, either equitable or otherwise, concerning any breach of this Agreement. Contractor shall not be considered in breach of this Nondisclosure Agreement if fulfilling requirements under the Public Information Act, TX Gov’t Code, Chp 552.

By:_____
Signature

Title:_____

Date:_____

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ATTACHMENT J
CONSULTATION LIST
FOR ENERGY EFFICIENCY AND CONSERVATION BLOCK GRANTS & THE STATE ENERGY PLAN PROGRAMS

The work items and undertakings listed herein qualify for assistance from the U.S. Department of Energy's (DOE) Energy Efficiency and Conservation Block Grants (EECBG) or the State Energy Plan (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 for purposes of the EECBG program. 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 EECBG or 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 EECBG or SEP programs as part of the DOE's Energy Efficiency and Renewable Energy Program (EERE), part of the American Recovery and Reinvestment Act (ARRA) and set to expire in 2012. The terms of this Consultation List shall then terminate unless otherwise agreed to by the THC and CPA. This Consultation List is for the exclusive use of CPA and the EECBG and SEP programs 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;

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- 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.

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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 EECBG or 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.

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ATTACHMENT K
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 its intent to furnish the requested items at the prices quoted in its Application.

3. By signature hereon, Applicant represents and warrants that it has read and understood and shall comply with Comptroller's Anti-Fraud Policy, located on Comptroller's website at http://www.window.state.tx.us/ssv/ethics.html or http://www.window.texas.gov/ssv/ethics.html, as such Policy currently reads and as it is amended throughout the term of any resulting contract.

4. By signature hereon, Applicant represents and warrants that its prices include all costs of Applicant in providing the requested items that meet all specifications of this RFA, and that its prices will remain firm for acceptance for a minimum of ninety (90) days from deadline for submission of Application.

5. 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.

6. By signature hereon, Applicant represents and warrants that it has no actual or potential conflicts of interest in providing the requested items to Comptroller 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.

7. By signature hereon, pursuant to Section 2155.004(a), 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.

8. 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, Texas Tax Code. Under Section 2155.004(a), Texas Government Code, a state agency may not accept a bid or award a contract that includes proposed financial participation by a person who received compensation from the agency to participate in preparing the specifications or request for proposals on which the bid or contract is based. Further, 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. See Texas Government Code Section 2155.004(b).

9. 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, or anyone acting for such a firm, corporation or institution has violated the antitrust laws of this state, federal antitrust laws, nor communicated directly or indirectly the Application made to any competitor or any other person engaged in such line of business.

10. 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.

11. 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 which may result from the submission of this Application.

12. By signature hereon, Applicant represents and warrants that if a Texas address is shown as the address of the Applicant, Applicant qualifies as a Texas Bidder as defined by 34 Texas Administrative Code §20.32(68).

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13. 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

14. By signature hereon, Applicant represents and warrants that no relationship, whether by relative, business associate, capital funding contract or by any other such kinship exist between Applicant and an employee of any Comptroller component, and Applicant has not been an employee of any Comptroller 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, Texas Government Code, relating to contracting with executive head of a state agency. All such disclosures will be subject to administrative review and approval prior to Comptroller 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.

15. By signature hereon, pursuant to Section 2155.004, 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.

16. 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.

17. By signature hereon, Applicant represents and warrants its compliance with all federal laws and regulations pertaining to Equal Employment Opportunities and Affirmative Action.

18. 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.

19. By signature hereon, in accordance with Section 2155.4441, 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.

20. By signature hereon, Applicant represents and warrants that Comptroller's payments to Applicant and Applicant's receipt of appropriated or other funds under any contract resulting from this RFA are not prohibited by Section 556.005 or Section 556.008, Texas Government Code.

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21. 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.

22. Under Section 2155.006(b), Texas Government Code, a state agency may not accept a bid or award a contract, including a contract for which purchasing authority is delegated to a state agency, that includes proposed financial participation by a person who, during the five-year period preceding the date of the bid or award, has been: (1) convicted of violating a federal law in connection with a contract awarded by the federal government for relief, recovery, or reconstruction efforts as a result of Hurricane Rita, as defined by Section 39.459, Utilities Code, Hurricane Katrina, or any other disaster occurring after September 24, 2005; or (2) assessed a penalty in a federal civil or administrative enforcement action in connection with a contract awarded by the federal government for relief, recovery, or reconstruction efforts as a result of Hurricane Rita, as defined by Section 39.459, Utilities Code, Hurricane Katrina, or any other disaster occurring after September 24, 2005. Under Section 2155.006, Texas Government Code, Applicant certifies that the individual or business entity named in the Application is not ineligible to receive the specified contract and acknowledges that any contract resulting from this RFA may be terminated and payment withheld if this certification is inaccurate.

23. By signature hereon and by checking or initialing **either** Subsection (a) **or** Subsection (b), as applicable, Applicant represents and warrants the following:

    (a) __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 Section 1 of this document that would or could impair Applicant's performance under any contract resulting from this RFA, relate to the solicited or similar goods or services, or otherwise be relevant to the agency's consideration of Applicant's Application. Applicant represents and warrants that it is not aware of any such court or governmental agency actions, proceedings or investigations, etc. against Applicant or any of these individuals or entities within the five (5) calendar years immediately preceding the submission of Applicant's Application in response to this RFA. In addition, Applicant represents and warrants that it shall notify Comptroller in writing within five (5) business days of any changes to the representations or warranties in this Subsection (a) and understands that failure to so timely update Comptroller shall constitute breach of contract and may result in immediate termination of the contract.

    (b) __Applicant is unable to make the representation and warranty in Subsection (a) above and instead represents and warrants that it has included as a detailed attachment in its Application, which expressly references this Subsection (b), a complete disclosure of any such court or governmental agency actions, proceedings or investigations, etc., and specifically addresses whether any of such past, pending or threatened actions, proceedings or investigations, etc., would or could (1) impair Applicant's performance under any contract resulting from this RFA; (2) relate to the solicited or similar goods or services; or (3) be otherwise relevant to the agency's consideration of Applicant's Application. In addition, Applicant represents and warrants that it shall notify Comptroller in writing within five (5) business days of any changes to the representations or warranties in this Subsection (b) or attachments in response to Subsection (b) and understands that failure to so timely update Comptroller shall constitute breach of contract and may result in immediate termination of the contract.

    Applicant understands that an Application returned without the appropriate checked or initialed representation and warranty and the detailed attachment required in Subsection (b), when applicable, may be automatically disqualified.

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24. 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	**Date Signed**
Printed Name and Title of Authorized Signatory	**Phone Number**
Applicant Name	**Fax Number**
Federal Employer Identification Number	**E-Mail Address**
Physical Street Address	**City, State, Zip Code**
Mailing Address, if different	**City, State, Zip Code**
DUNS Number	

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ATTACHMENT L
COMPTROLLER'S RFA AND OFFICIAL RESPONSES TO QUESTIONS

Comptroller's Notice of Loan Funding Availability/Request for Applications (NOLFA/RFA) <INSERT SOLICITATION NUMBER> issued on <INSERT DATE>, and the Official Responses to Questions dated <INSERT DATE> are incorporated by reference for all purposes into this Agreement as Attachment K.

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LOAN # _____

ATTACHMENT M
BORROWER'S APPLICATION

The Application signed and dated by Borrower on <DATE> is incorporated by this reference into the Agreement as Attachment M.

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