

**CITY OF EL PASO, TEXAS
AGENDA ITEM
DEPARTMENT HEAD'S SUMMARY FORM**

DEPARTMENT: Financial Services Department

AGENDA DATE: May 25, 2010

CONTACT PERSON NAME AND PHONE NUMBER: Carmen Arrieta-Candelaria 915-541-4293

DISTRICT(S) AFFECTED: All

SUBJECT:

APPROVE a resolution / ordinance / lease to do what? **OR AUTHORIZE** the City Manager to do what? Be descriptive of what we want Council to approve. Include \$ amount if applicable.

That the City Manager be authorized to execute a State Energy Conservation Office Stimulus Program Loan Agreement between the City of El Paso and the Texas State Comptroller of Public Accounts in an amount not to exceed \$2,824,000 in order to fund energy efficiency projects that will be completed on or before December 31, 2011.

BACKGROUND / DISCUSSION:

Discussion of the what, why, where, when, and how to enable Council to have reasonably complete description of the contemplated action. This should include attachment of bid tabulation, or ordinance or resolution if appropriate. What are the benefits to the City of this action? What are the citizen concerns?

The City is seeking continuation of its City-wide energy and operational efficiency initiatives. This funding will enable the City to fund the street lighting project. This funding is available through the Building Efficiency and Retrofit Revolving Loan Program of the Texas Comptroller of Public Accounts; these funds are made possible through ARRA federal funding to the State.

PRIOR COUNCIL ACTION:

Has the Council previously considered this item or a closely related one?

Yes. City council previously approved a \$5,000,000 SECO loan on 8/28/07.

AMOUNT AND SOURCE OF FUNDING:

How will this item be funded? Has the item been budgeted? If so, identify funding source by account numbers and description of account. Does it require a budget transfer?

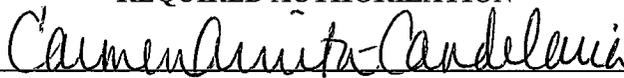
\$2,824,000 loan proceeds; payback of these funds will be made from the energy savings of retrofitting the streetlights.

BOARD / COMMISSION ACTION:

Enter appropriate comments or N/A

*****REQUIRED AUTHORIZATION*****

DEPARTMENT HEAD:



(If Department Head Summary Form is initiated by Purchasing, client department should sign also)

Information copy to appropriate Deputy City Manager

STATE OF TEXAS
 COUNTY OF TRAVIS

* STATE ENERGY CONSERVATION OFFICE
 * STIMULUS PROGRAM
 LOAN AGREEMENT

1. Parties.

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

Lender/Prime Recipient: **Comptroller of Public Accounts
 State Energy Conservation Office
 Stimulus Program
 LBJ State Office Building
 111 East 17th Street, Room 804A
 Austin, Texas 78774-0100**

Borrower/Subrecipient: **The City of El Paso
 2 Civic Center Plaza
 El Paso, Texas 79901**

2. Loan of Funds.

Subject to the terms, covenants and conditions contained in this Agreement, Lender/Prime Recipient shall loan to Borrower/Subrecipient a maximum of **Two Million Eight Hundred Twenty-Four Thousand Dollars and No Cents (\$2,824,000.00)** (hereinafter, "Loan"). Borrower/Subrecipient shall expend all funds received from Lender/Prime Recipient 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/Subrecipient'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 December 31, 2011. Lender/Prime Recipient reserves the right, in its sole discretion, to approve an extension requested by Borrower/Subrecipient to extend the Project Completion Date for the Project; the Project Completion Date may be extended only on Lender/Prime Recipient's prior written approval as provided in Section 4 of this Agreement.

3. Authority.

The Loan is authorized pursuant to: (1) Chapters 403, 447, and 2305 of the Texas Government Code; (2) the American Recover & Reinvestment Act of 2009, PL111-5 (ARRA); (3) 42 U.S.C. §§ 6321, et seq, and 10 CFR Parts 420 and 600; and Comptroller's Rules, as amended, relating to the Loan Program for Building Energy Retrofit Projects (LoanSTAR).

4. Payments.

Borrower/Subrecipient promises to pay Lender/Prime Recipient at Lender/Prime Recipient's principal place of business in Austin, Texas, or at such other place as Lender/Prime Recipient may designate, the principal sum of **Two Million Eight Hundred Twenty-Four Thousand Dollars and No Cents (\$2,824,000.00)** or such lesser amount as shall equal the aggregate amount disbursed to Borrower/Subrecipient by Lender/Prime Recipient under the terms of this Agreement together with interest on the unpaid principal computed from the date of each disbursement to Borrower/Subrecipient until the date repaid at the rate of **two percent (2.00%)** interest per annum; however, Borrower/Subrecipient's interest rates may be adjusted as per Section 4 of this Agreement. Borrower/Subrecipient 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 presentation by Borrower/Subrecipient to Lender/Prime Recipient of 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/Prime Recipient and the State of Texas, supported by bills, statements or invoices for the goods or services to be paid with the Loan installment and such other documentation that in Lender/Prime Recipient's sole discretion allows for full substantiation of the costs incurred by Borrower/Subrecipient. Borrower/Subrecipient's requests for disbursement shall be made to and received by Lender/Prime Recipient not later than sixty days (60) after Borrower/Subrecipient pays for or authorizes payment for the goods and services, and Lender/Prime Recipient shall have no obligation to make disbursements for the costs of goods and services if Borrower/Subrecipient 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/Prime Recipient to Borrower/Subrecipient shall not exceed the amount of the Loan set forth in Paragraph 2 of this Agreement.

6. Contingency.

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

7. Accounts; Audits.

If requested by Lender/Prime Recipient, Borrower/Subrecipient shall deposit disbursements of the Loan into an account with an institution the deposits of which are insured by the federal government. Borrower/Subrecipient 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/Prime Recipient's request, Borrower/Subrecipient shall promptly acquire and submit to an independent audit of such account and all funds received from Lender/Prime Recipient. All costs related to Borrower/Subrecipient's compliance with this Section shall be borne solely by Borrower/Subrecipient. 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/Subrecipient 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/Subrecipient 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/Subrecipient 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/Subrecipient 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/Subrecipient shall ensure that this paragraph concerning the authority to audit funds received indirectly by subcontractors through the Borrower/Subrecipient 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/Subrecipient relating to this Agreement.

8. Inspections.

Borrower/Subrecipient shall provide Lender/Prime Recipient, its authorized employees, agents and representatives, and authorized State of Texas and federal employees, agents and representatives, with access to the Project site and Project records. Borrower/Subrecipient shall permit such persons to make physical inspections of the Project and Project records at reasonable times before work on the Project commences, during the construction, installation, and implementation of the Project, and after work on the Project is completed. Borrower/Subrecipient 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/Prime Recipient may withhold from disbursement to Borrower/Subrecipient ten percent (10%) of the amount of the Loan pending Lender/Prime Recipient's final inspection. Lender/Prime Recipient shall make every reasonable effort to conduct the final inspection within thirty (30) days of the Project Completion Date; however, Lender/Prime Recipient reserves the right, in its sole discretion, to extend the date for final inspection or to waive the final inspection.

9. Project Specifics.

Design Review. Borrower/Subrecipient shall provide Lender/Prime Recipient, its authorized employees, agents and representatives, and authorized State of Texas and federal employees, agents and representatives, with access to all proposed, detailed project design documents and specifications, during the Project design process and at other times requested by such persons. Lender/Prime Recipient may review all project design documents and specifications at twenty five percent (25%), fifty percent (50%) and one hundred percent (100%) completion periods, with Lender/Prime Recipient's written approval required before Borrower/Subrecipient proceeds to the next phase of the project. Borrower/Subrecipient shall ensure that such documents are consistent with the project descriptions as detailed in Attachment A to this Agreement. Borrower/Subrecipient shall provide authorized persons described in this Section with access to all project documents and shall advise Borrower/Subrecipient's project engineers and other employees, agents, and representatives of this requirement. *Construction shall not begin until Lender/Prime Recipient has approved all design and specification documents.*

On Site Construction Monitoring. Borrower/Subrecipient shall provide access to Lender/Prime Recipient, its authorized employees, agents and representatives, and authorized State of Texas and federal employees, agents and representatives, to the Project site and Project documentation, at the twenty five percent (25%), fifty percent (50%) and one hundred percent completion (100%) periods. Such authorized persons may monitor Project construction and review and audit financial documents and Project records. Lender/Prime Recipient reserves the right, in its sole discretion, to limit such construction monitoring to one site visit to reduce costs on smaller Projects. Lender/Prime Recipient shall make reasonable efforts to coordinate site visits with Borrower/Subrecipient; however, Lender/Prime Recipient and other authorized persons reserve the right to make unscheduled visits for any of the purposes described in this Agreement.

10. Access to Records.

Borrower/Subrecipient shall make available to and permit Lender/Prime Recipient, its authorized employees, agents and representatives, and authorized State of Texas and federal employees, agents, and representatives to inspect any and all books, reports, documents, files, work papers, work products, receipts, documentation, applications, data, accounts, or any other information or items pertaining to the Loan Application, the Project, the Loan or this Agreement, regardless of media ("Records"). 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.

11. ARRA Reporting, Data Collection, and Access to Records Requirements.

11.1. Reporting Requirements.

Borrower/Subrecipient shall submit performance reports as required by Attachment K, attached to and incorporated in this Agreement. Borrower/Subrecipient shall promptly prepare and submit such reports as may be requested by Lender/Prime Recipient and information, in the form provided by Lender/Prime Recipient, regarding the status of the Project prior to completion of the Project. Promptly upon completion of the Project, Borrower/Subrecipient shall prepare and submit to Lender/Prime Recipient such periodic reports and information, in the form provided by Lender/Prime Recipient, on the energy use of the building or facility in which the Project is located and the changes in energy consumption resulting from the Project and the cost savings resulting from such changes.

11.2. Data Collection and Access to Records.

Borrower/Subrecipient agrees to compile and maintain information pertaining to programs or activities developed as a result of this Loan Agreement.

12. Retention.

Borrower/Subrecipient 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/Subrecipient or audit of such Records, Lender/Prime Recipient determines that specific Records are no longer required to be maintained, Lender/Prime Recipient shall advise Borrower/Subrecipient in writing and the obligation imposed on Borrower/Subrecipient by this Section shall be terminated with respect to such specific Records only.

13. Borrower/Subrecipient's Covenants.

Borrower/Subrecipient represents and warrants that:

- a) Borrower/Subrecipient has full power and authority to enter into this Agreement and this Agreement has been duly and validly authorized, executed and delivered by Borrower/Subrecipient.
- b) This Agreement does not violate any limitation on the indebtedness of Borrower/Subrecipient imposed by any statute, ordinance, charter, bylaw, or other agreement or instrument applicable to Borrower/Subrecipient and this Agreement will not be rescinded at any time by any action of Borrower/Subrecipient.
- c) Borrower/Subrecipient 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/Subrecipient 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.
- e) If Borrower/Subrecipient is a state agency, Borrower/Subrecipient shall install metering and monitoring equipment and devices required to determine changes in energy consumption and the cost savings resulting from such changes. Borrower/Subrecipient shall also prepare and submit quarterly reports to Lender/Prime Recipient documenting changes in energy consumption and the cost savings resulting from such changes.
- f) Borrower/Subrecipient shall annually budget an amount sufficient to make all payments due and payable under this Agreement.

14. Default.

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

- a) The failure of Borrower/Subrecipient to make a payment due and payable under this Agreement within the time specified in this Agreement.
- b) The failure of Borrower/Subrecipient to comply with any provision of this Agreement.

- c) The expenditure of Loan funds by Borrower/Subrecipient for purposes other than the implementation of the Project as provided in this Agreement.
- d) Borrower/Subrecipient's entry into any agreement whereby any person, corporation, business, or similar entity, other than Borrower/Subrecipient, benefits directly or indirectly from utility savings resulting from the Loan or this Agreement, without the Lender/Prime Recipient's prior written approval, until such time as the Loan is repaid in full as determined by Lender/Prime Recipient.
- e) Without the prior written consent of Lender/Prime Recipient, the sale, transfer or other disposition by Borrower/Subrecipient 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/Subrecipient to reimburse itself for funds expended by Borrower/Subrecipient 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/Subrecipient by the Texas Legislature.

In the event of Borrower/Subrecipient's default, Lender/Prime Recipient shall notify Borrower/Subrecipient of the default and Borrower/Subrecipient shall have a reasonable opportunity, not to exceed twenty (20) days, to cure Borrower/Subrecipient's default. If Borrower/Subrecipient fails to cure the default, Lender/Prime Recipient 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/Subrecipient under this Agreement and earned interest shall become immediately due. Borrower/Subrecipient 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/Prime Recipient, Borrower/Subrecipient 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/Subrecipient 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/Subrecipient has failed to repay the Loan within ninety (90) days of Lender/Prime Recipient's declaration of default under this Section, Lender/Prime Recipient may notify the Office of the Governor, Legislative Budget Board and the Texas Higher Education Coordinating Board of Borrower/Subrecipient's breach of this Agreement and the amount owing by Borrower/Subrecipient under this Agreement and recommend to the Legislative Budget Board that Borrower/Subrecipient'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/Subrecipient 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/Prime Recipient's declaration of default under this Section, Lender/Prime Recipient may

notify the Texas Education Agency of Borrower/Subrecipient's breach of this Agreement and the amount owing by Borrower/Subrecipient under this Agreement and recommend to the Texas Education Agency that funds to be allocated to Borrower/Subrecipient by the Texas Education Agency for the next succeeding year be reduced by an amount equal to the total amount due under this Agreement.

15. Amendments.

Any amendment, modification or alteration of the terms of this Agreement shall be in writing and executed by both parties; however, Lender/Prime Recipient may unilaterally amend this Agreement as provided in Section 28. Oral agreements or understandings not incorporated into this Agreement shall not be binding on the parties.

16. 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.

17. 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:

If to Lender/Prime Recipient, to
**Comptroller of Public Accounts
State Energy Conservation Office
Stimulus Program
LBJ State Office Building
111 East 17th Street, Room 804A
Austin, Texas 78774**

If to Borrower/Subrecipient, to
**The City of El Paso
2 Civic Center Plaza
El Paso, Texas 79901**

18. INDEMNIFICATION.

BORROWER/SUBRECIPIENT SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS THE STATE OF TEXAS, ITS OFFICERS, AND EMPLOYEES AND CONTRACTORS, FROM AND AGAINST ALL CLAIMS, ACTIONS, SUITS, DEMANDS, PROCEEDINGS, COSTS, DAMAGES, AND LIABILITIES, INCLUDING WITH LIMITATION ATTORNEYS' FEES AND COURT COSTS, ARISING OUT OF, CONNECTED WITH, OR RESULTING FROM ANY ACTS OR OMISSIONS OF BORROWER/SUBRECIPIENT OR ANY AGENT, EMPLOYEE, SUBCONTRACTOR, OR SUPPLIER OF BORROWER/SUBRECIPIENT IN THE EXECUTION OR PERFORMANCE OF ANY CONTRACT WITH BORROWER/SUBRECIPIENT. BORROWER/SUBRECIPIENT 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/SUBRECIPIENT 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.

19. Assignment.

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

20. 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/Prime Recipient as an agency of the State of Texas or otherwise available to Lender/Prime Recipient. The failure to enforce or any delay in the enforcement of any privileges, rights, defenses, remedies, or immunities available to Lender/Prime Recipient 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/Prime Recipient does not waive any privileges, rights, defenses, remedies or immunities available to Lender/Prime Recipient as an agency of the State of Texas, or otherwise available to Lender/Prime Recipient, by entering into this Agreement or by its conduct prior to or subsequent to entering into this Agreement. **The modification of any privileges, rights, defenses, remedies, or immunities available to Lender/Prime Recipient must be in writing, must reference this section, and must be signed by Lender/Prime Recipient to be effective, and such modification of any privileges, rights, defenses, remedies, or immunities available to Lender/Prime Recipient shall not constitute waiver of any subsequent privileges, rights, defenses, remedies, or immunities under this Agreement or under applicable law.**

21. Discrimination.

During the term of this Agreement, Borrower/Subrecipient 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/Subrecipient 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/Subrecipient certifies that it will comply with all HUB requirements, as applicable.

22. Late Payments.

If any installment due under this Agreement is not paid within thirty (30) days of its due date, Lender/Prime Recipient, at its option, may require Borrower/Subrecipient to pay a penalty equal to one and one-half percent (1.5%) of the amount of the installment then due.

23. 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.

24. Attorney's Fees.

If this Agreement is given to an attorney for collection, or if suit is brought for collection, or if it is collected through probate, bankruptcy, or other judicial proceeding, then Borrower/Subrecipient shall pay Lender/Prime Recipient all costs of collection, including reasonable attorney's fees and court costs, in addition to other amounts due. Reasonable attorney's fees shall be ten percent (10%) of all amounts due unless either party pleads otherwise.

25. Governing Law.

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

26. Taxes.

Borrower/Subrecipient is solely responsible for all state, federal and local taxes of any kind resulting from this Agreement. Lender/Prime Recipient shall have no liability for any such taxes. Borrower/Subrecipient 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/Subrecipient is an individual not residing in Texas or a business entity not incorporated in or whose principal domicile is not in Texas, the following certification applies. Borrower/Subrecipient 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/Subrecipient 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.

27. Disputes.

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

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

- a) Borrower/Subrecipient'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/Subrecipient 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/Prime Recipient and Borrower/Subrecipient otherwise entitled to notice under this Agreement. Compliance by Borrower/Subrecipient 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/Subrecipient's sole and exclusive process for seeking a remedy for an alleged breach of contract by Lender/Prime Recipient 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/Prime Recipient nor any other conduct of any representative of Lender/Prime Recipient 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/Prime Recipient and Borrower/Subrecipient 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/Prime Recipient and Borrower/Subrecipient within fifteen (15) days after written notice by one of them demanding mediation under this Section. Borrower/Subrecipient shall pay all costs of the mediation unless Lender/Prime Recipient, in its sole good faith discretion, approves its payment of all or part of such costs. By mutual agreement, Lender/Prime Recipient and Borrower/Subrecipient may use a non-binding form of dispute resolution other than mediation. The purpose of this Section is to reasonably ensure that Lender/Prime Recipient and Borrower/Subrecipient shall in good faith utilize mediation or another non-binding dispute resolution process before pursuing litigation. Lender/Prime Recipient'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/Prime Recipient of: (1) any rights, privileges, defenses, remedies or immunities available to Lender/Prime Recipient as an agency of the State of Texas or otherwise available to Lender/Prime Recipient; (2) Lender/Prime Recipient's termination rights; or (3) other termination provisions or expiration dates of this Agreement.

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

28. Compliance.

Borrower/Subrecipient shall comply with all laws, regulations, requirements and guidelines applicable to a Borrower/Subrecipient 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/Prime Recipient reserves the right, in its sole discretion, to unilaterally amend this

Agreement throughout its term to incorporate any modifications necessary for Lender/Prime Recipient's or Borrower/Subrecipient'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.

- 29. Time.** Time is of the essence in the performance of this Agreement and accordingly all time limits shall be strictly and rigidly enforced.
- 30. Conflicts.** Borrower/Subrecipient represents and warrants that Borrower/Subrecipient has no actual or potential conflicts of interest in entering into this Agreement with Lender/Prime Recipient and that Borrower/Subrecipient's receipt of disbursements under this Agreement would not reasonably create an appearance of impropriety. Borrower/Subrecipient represents and warrants that neither Borrower/Subrecipient nor any person or entity that will participate financially in this Agreement has received compensation from Lender/Prime Recipient for participation in preparation of specifications for this Agreement.
- 31. DTPA.** Borrower/Subrecipient represents and warrants that Borrower/Subrecipient has not been the subject of a Deceptive Trade Practices Act or any unfair business practice, administrative hearing, or court suit and that Borrower/Subrecipient has not been found to be guilty of such practices in such proceedings. Borrower/Subrecipient 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.
- 32. Antitrust.** Borrower/Subrecipient represents and warrants that neither Borrower/Subrecipient nor any firm, corporation, partnership, or institution represented by Borrower/Subrecipient, nor anyone acting for such firm, corporation, partnership, or institution, has violated Texas antitrust laws or federal antitrust laws.
- 33. Confidentiality.** Borrower/Subrecipient, its employees and contractors shall not disclose to anyone, directly or indirectly, any information designated by Lender/Prime Recipient as confidential or information accessed as a result of this Agreement without prior written consent of Lender/Prime Recipient. Borrower/Subrecipient 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/Subrecipient understands that Lender/Prime Recipient 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/Subrecipient is not also subject to the Texas Public Information Act, Borrower/Subrecipient shall, within three (3) days of receipt, refer to Lender/Prime Recipient any third party requests, received directly by it, for information to which Borrower/Subrecipient has access as a result of or in the course of performance under this Agreement.
- 34. Other Rights.** Borrower/Subrecipient shall have no exclusive rights or benefits other than those set forth in this Agreement.

35. Certain Claims.

Borrower/Subrecipient shall defend and indemnify Lender/Prime Recipient 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/Prime Recipient shall notify Borrower/Subrecipient of any such claim within a reasonable time of Lender/Prime Recipient's receiving notice of any such claim. Borrower/Subrecipient shall pay all reasonable costs of Lender/Prime Recipient's counsel. If Borrower/Subrecipient is notified of any claim subject to this Section, Borrower/Subrecipient shall notify Lender/Prime Recipient of such claim within five (5) working days of such notice. If Lender/Prime Recipient determines that a conflict exists between its interests and those of Borrower/Subrecipient or if Lender/Prime Recipient is required by applicable law to select separate counsel, Lender/Prime Recipient shall be permitted to select separate counsel and the reasonable costs of such Lender/Prime Recipient's counsel shall be paid by Borrower/Subrecipient. No settlement of any such claim shall be made by Borrower/Subrecipient without Lender/Prime Recipient's prior written approval. Borrower/Subrecipient shall reimburse Lender/Prime Recipient and the State of Texas for any claims, damages, losses, costs, expenses, judgments or any other amounts, including, but not limited to, attorneys' fees and court costs, arising from any such claim. Borrower/Subrecipient 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.

36. Statements.

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

37. Prohibition.

Borrower/Subrecipient acknowledges and agrees that, to the extent Borrower/Subrecipient owes any debt or delinquent taxes to the State of Texas, any payments or other amounts Borrower/Subrecipient 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/Subrecipient owes the State of Texas until the debt or delinquent taxes are paid in full. These provisions are effective at any time Borrower/Subrecipient owes any such debt or delinquency. Borrower/Subrecipient 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.

38. Incorporation.

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

- Attachment A:** Loan Approval Statement
- Attachment B:** DOE Special Terms and Conditions Required in Grant to the Comptroller of Public Accounts and Flow down to ARRA Grants and Cooperative Agreements
- Attachment B-1:** DOE Assurance of Compliance, as completed by Borrower/Subrecipient
- Attachment B-2:** DOE Assurance of Compliance, as completed by Borrower/Subrecipient and each Borrower/Subrecipient contractor
- Attachment C:** Certifications Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion-Lower Tier Covered Transactions, as completed by Borrower/Subrecipient
- Attachment D:** Certifications Regarding Lobbying; Debarment, Suspension and Other Responsibility Matters; and Drug-Free Workplace Requirements, as completed by Borrower/Subrecipient
- Attachment E:** Disclosure of Lobbying Activities, as completed by Borrower/Subrecipient
- Attachment F:** National Policy Assurances to be Incorporated as Award Terms (version 2008), as completed by Borrower/Subrecipient
- Attachment G:** Intellectual Property Provisions, as completed by Borrower/Subrecipient
- Attachment H:** Subcontracting Provisions; Mandatory Flowdown Provision, as completed by the Borrower/Subrecipient
- Attachment I-1:** American Recover & Reinvestment Act – Borrower/Subrecipient Affidavit, as completed by Borrower/Subrecipient
- Attachment I-2:** American Recover & Reinvestment Act – Borrower/Subrecipient’s Contractor Affidavit, as completed by Borrower/Subrecipient’s Contractor(s)
- Attachment J:** Nondisclosure Agreement, as completed by Borrower/Subrecipient
- Attachment K:** ARRA Reporting Requirements, as completed by the Borrower/Subrecipient
- Attachment L:** Consultation List for Energy Efficiency and Conservation Block Grants & the State Energy Plan Programs

Borrower/Subrecipient represents and warrants that it completed and provided the following Attachments to Lender/Prime Recipient prior to executing this Agreement: B-1, B-2, C, D, E, F, G, H, I, J and K. In addition, Borrower/Subrecipient represents and warrants that each of its contractors completed and provided an Attachment B-2 to Borrower/Subrecipient and Lender/Prime Recipient prior to Borrower/Subrecipient 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.

39. Successors.

This Agreement is binding upon Borrower/Subrecipient and its successors and assigns and upon Lender/Prime Recipient and its successors and assigns.

40. Term.

Therefore, the parties hereby agree that the effective date of this Agreement is the date signed by Lender/Prime Recipient, after first having been signed by Borrower/Subrecipient. Except for the provisions of Sections 8, 9, 11, 12, 13, 19, 21, 27, 28, 37, 39, 40 and 41; and Attachments B-1, B-2, J and K, which shall survive the termination or expiration of this Agreement, this Agreement shall terminate upon repayment, in full, of the Loan.

41. Additional Terms.

Davis Bacon Act. Borrower/Subrecipient shall 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 as implemented through 29 CFR 5.5(a).” <http://www.dol.gov/esa/whe/contracts/dbra.htm>.

Buy American Act – ARRA 1606. In purchasing iron, steel and manufactured goods for this project, Borrower/Subrecipient shall comply with Section 1606 of the American Recovery and Reinvestment Act as more fully set forth in Attachment B. The requirement may be waived if the domestic product is more expensive than an identical foreign-sourced product by a certain percentage, if the product is not available domestically in sufficient quantity or quality, or if doing so is in the public interest. Borrower/Subrecipient shall comply with this provision as applicable as more fully set forth in 2 CFR Part 176.

National Environmental Policy Act. Borrower/Subrecipient shall comply with the National Environmental Policy Act, 42 U.S.C. §§4321 *et. seq.* (NEPA) and shall not take any action that will have an adverse environmental impact (e.g., physical disturbance of a site such as breaking of ground) or limit the choice of reasonable alternatives until either a NEPA clearance or final NEPA decision is provided by the National Energy Technology Laboratory (NETL) NEPA compliance Officer. If the ARRA are used for the purchase of equipment for new alternative fuel(s) refueling stations and/or purchase of equipment for retrofits of existing refueling stations, Borrower/Subrecipient shall provide additional project information and, if requested, shall prepare or provide any assistance necessary to assist DOE in the preparation of any required Environmental Impact Statements or other environmental documentation.

National Historic Preservation Act of 1966. Borrower/Subrecipient shall comply with the National Historic Preservation Act of 1966 (§§16 U.S.C. 470 *et seq*) (NHPA). In order to comply, the Borrower/Subrecipient shall:

A. For any project listed in Category A as identified in Attachment L, Borrower/Subrecipient shall provide notice to the Lender/Prime Recipient that the Borrower/Subrecipient has identified the project as a Category A project. Within 14 days of receiving the notice from the Borrower/Subrecipient, the Lender/Prime Recipient, by written notice to the Borrower/Subrecipient, may require the Borrower/Subrecipient to submit the application to the Texas Historical Commission (THC) for review and consultation and shall obtain clearance from THC before commencing project construction. If the Lender/Prime Recipient does not require the Borrower/Subrecipient to submit the application to THC, no pre-construction review of the project by THC is required.

B. For any project listed in Category B as identified in Attachment L or for any project not listed in Category A, the Borrower/Subrecipient shall submit the application to THC for review and consultation and shall obtain clearance from the THC before the Borrower/Subrecipient may commence construction of such project. Historic structures or buildings subject to further review and consultation are those structures or buildings at least forty-five (45) years of age or older from date of construction completion, that are listed in or eligible for listing in the National Register of Historic Places, that are located in a National Register listed or eligible historic district, or that are in a locally designated historic district, or are designated as State Archeological Landmarks 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 require consultation with the THC in most cases.

C. If NHPA Section 106 consultation is required, Borrower/Subrecipient is responsible for involving consulting parties and the public in compliance with NHPA Section 106 (16 U.S.C. §407f), 36 CFR 800.2, as appropriate, and any applicable guidance from DOE. Borrower/Subrecipient may request that Lender/Prime Recipient serve as a contact with DOE to facilitate the resolution of any disputes involving this agreement that may arise between the Borrower/Subrecipient and THC.

D. If, during the implementation a project, a previously unidentified property that may be eligible for inclusion in the National Register is encountered, or if a previously identified property is affected in an unanticipated manner, the Borrower/Subrecipient shall notify THC of the unanticipated discovery or affect and shall assume the responsibilities required pursuant to 36 CFR 800.13.

Solid Waste Disposal Act. Prior to the expenditure of Federal funds to store, process, or dispose of hazardous materials Borrower/Subrecipient shall comply with the Solid Waste Disposal Act, Texas Health & Safety Code, Chapter 361, and Title 30, Texas Administrative Code, Chapter 335 "Industrial Solid Waste and Municipal Hazardous Waste" administered by the Texas Commission on Environmental Quality. Sanitary or hazardous waste is defined in 40 CFR Part 260 and 30 TAC Chapter 335 to include, but not be limited to, old light bulbs, lead ballasts, piping, roofing material, discarded equipment, debris, asbestos, etc. Borrower/Subrecipient shall obtain any required permit and retain all compliance documentation related to the project.

Report of Fraud, Waste and Abuse: Texas Government Code, Section 321.022. If the administrative head of a department or entity that is subject to audit by the Texas State Auditor has reasonable cause to believe that money received from the State by the Borrower/Subrecipient or by a client or contractor of the Borrower/Subrecipient may have been lost, misappropriated, or misused, or that other fraudulent or unlawful conduct has occurred in relation to the operation of the Borrower/Subrecipient, the administrative head shall report the reason and basis for the belief to the Texas State Auditor. The Texas State Auditor may investigate the report or may monitor any investigation conducted by the Borrower/Subrecipient. See <http://sao.fraud.state.tx.us/>.

42. Merger.

This Agreement contains the entire agreement between Lender/Prime Recipient and Borrower/Subrecipient 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.

43. Signatories.

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

LENDER/PRIME RECIPIENT:

Comptroller of Public Accounts

BORROWER/SUBRECIPIENT:

The City of El Paso

By: _____
Martin A. Hubert
Deputy Comptroller

By: _____
Joyce Wilson
City Manager

Date: _____

Date: _____

**ATTACHMENT A
LOAN APPROVAL STATEMENT
For Energy Conservation Measures**

Agency: The City of El Paso
 Address: 2 Civic Center Plaza
 City: El Paso, Texas 79901
 Loan Coordinator: Ed Stuart
 Title: General Services Director
 Phone: 915-621-6821

| Building (a) | ECM | Description of Energy Conservation Measure (ECM) (b) | Estimated ECM Cost (c) | Annual Energy Cost Savings | Pay-back (yrs) | ECM Loan Amount (d) |
|--------------|-----|--|------------------------|----------------------------|----------------|-----------------------|
| Exterior | 1 | Retrofit 3,000 Street Lights with Induction Technology | \$2,360,000.00 | \$283,000.00 | 10. | \$2,360,000.00 |
| | | | \$2,360,000.00 | \$283,000.00 | 8.3 | \$2,360,000.00 |

| | |
|---------------------------|--------------|
| Engineering Audit Expense | \$215,000.00 |
| Metering and Monitoring | \$249,000.00 |

| | |
|-------------------|-----------------------|
| Escalation Cost | \$ 0.00 |
| TOTAL LOAN | \$2,824,000.00 |

@ 2% Interest

Anticipated Substantial Completion Time
 Payback (with allowance)

12 months
10. years

Additional Loan Agreement Requirements:

| | | |
|----|--|---|
| 1. | Borrower shall provide a copy of the contract between the City of El Paso and the Energy Service Company (ESCO) for construction and M&V Services. | Upon Contracting with ESCO |
| 2. | Borrower shall submit an approved UAR prior to project commencement. | As Soon As UAR Completed |
| 3. | Borrower shall submit an approved Sample Annual Savings Report. | Submit with approved UAR |
| 4. | Borrower shall provide project administrative and financial data as requested. | As Requested |
| 5. | Borrower shall provide maintenance program information as requested. | As Requested |
| 6. | Borrower shall submit Annual Savings Reports with quarterly updates following construction completion and continuing through the contract loan period. The Annual Savings Reports shall be accompanied by a third-party review report for the term of the loan or for four years, whichever is shortest. | For the Term of the Loan |
| 7. | Borrower shall have all projects, commissioning and close out completed. | On or Before 12/31/2011 |
| 8. | Borrower shall provide a Monthly Progress Report as provided in Attachment K, ARRA Reporting Requirements. | On or before the last day of each month |

Comments: _____

- a) A description of the building/facility and individual ECM is contained in the engineering report which is incorporated herein by reference and included as a part of this Attachment A.
- b) No ECMs may be canceled after loan is granted without prior written Lender/Prime Recipient approval.
- c) ECM includes cost of detail engineering design, labor, and materials to implement retrofit.
- d) 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/Prime Recipient.

ATTACHMENT B

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

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

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

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

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

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

C. Prohibition on Use of Funds. None of the funds provided under this agreement derived from ARRA, may be used by any State or local government, or any private entity, for any casino or other gambling establishment, aquarium, zoo, golf course, or swimming pool.

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

(1) to examine any records of the Subrecipient or Subrecipient Subcontractor any of its Subcontractors or any State or local agency administering such contract that pertain to, and involve transactions that relate to, the grant or subcontract; and

(2) to interview any officer or employee of the Subrecipient or Subrecipient Subcontractor agency regarding such transactions.

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

Notice of Restriction on Disclosure and Use of Data

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

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

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

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

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

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

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

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

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

G. Reserved

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

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

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

L. Certifications. With respect to funds made available to State or local governments for infrastructure investments under ARRA, the Governor, mayor, or other chief executive, as appropriate, certified by acceptance of this award that the infrastructure investment has received the full review and vetting required by law and that the chief executive accepts responsibility that the infrastructure investment is an appropriate use of taxpayer dollars. Recipient shall provide an additional certification that includes a description of the investment, the estimated total cost, and the amount of covered funds to be used for posting on the Internet. A State or local agency may not receive infrastructure investment funding from funds made available by the Act unless this certification is made and posted.

REPORTING AND REGISTRATION REQUIREMENTS UNDER SECTION 1512 OF ARRA

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

DOE ASSURANCE OF COMPLIANCE, NON DISCRIMINATION IN STATE ASSISTED PROGRAMS

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

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

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

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

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

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

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

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

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

(a) To maximize the transparency and accountability of funds authorized under the American Recovery and

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

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

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

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

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

BORROWER/SUBRECIPIENT:

By: _____
[Printed Name]
[Title]

Date: _____

ATTACHMENT B-1

DOEF 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.

The City of El Paso (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

Name and Title (Printed or Typed)

Telephone Number

Signature

Date

The City of El Paso
2 Civic Center Plaza
El Paso, Texas 79901

Telephone Number

Address

Authorized Official:

Carmen Arrieta-Candelaria, Chief Financial Officer

Name and Title (Printed or Typed)

Telephone Number

Signature

Date

ATTACHMENT B-2

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

OMB Control No.
1910-0400

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

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

The City of El Paso (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

| | |
|-----------------------------------|------------------|
| Name and Title (Printed or Typed) | Telephone Number |
| Signature | Date |

Contractor

| | |
|----------------------|------------------|
| Name of Organization | Telephone Number |
| Address | |

Authorized Official:

| | |
|--|------------------|
| Carmen Arrieta-Candelaria, Chief Financial Officer | |
| Name and Title (Printed or Typed) | Telephone Number |
| Signature | Date |

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

Instructions for Certification

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

The City of El Paso
 Organization Name

Joyce Wilson, City Manager
 Name and Title of Authorized Representative

 Signature

 Date

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

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 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

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.

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

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.

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.

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.

The City of El Paso
Name of Applicant

Pre/Award Number and/or Project Name

Joyce Wilson, City Manager
Printed Name and Title of Authorized Representative

Signature

Date

**ATTACHMENT E
DISCLOSURE OF LOBBYING ACTIVITIES**

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

| | | |
|--|---|--|
| <p>1. Type of Federal Action: _____</p> <p>a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance</p> | <p>2. Status of Federal Action: _____</p> <p>a. bid/offer/application b. initial award c. post award</p> | <p>3. Report Type: _____</p> <p>a. initial filing b. material change</p> <p>For Material Change Only: year _____ quarter _____ date of last report _____</p> |
| <p>Name and Address of Reporting Entity:</p> <p>Name _____ Address _____</p> <p>_____ Prime _____ Subawardee Tier, if known: _____</p> | | <p>5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime: _____</p> |
| <p>6. Federal Department/Agency: _____</p> | <p>7. Federal Program Name/Description CFDA Number, if applicable: _____</p> | |
| <p>8. Federal Action Number, If known: _____</p> | <p>9. Award Amount, if known: _____</p> | |
| <p>10.a. Name and Address of Lobbying Entity: (if individual, last name, first name, MI): (attach Continuation Sheet(s) SF-LLL-A, if necessary)</p> | <p>10.b. Individual Performing Services (including address if different from No. 10A) (last name, first name, MI): _____</p> | |
| <p>11. Amount of Payment (check all that apply):</p> <p>\$ _____ actual _____ planned</p> | <p>12. Form of Payment (check all that apply):</p> <p>a. cash b. in-kind; specify: nature _____ value _____</p> | |
| <p>13. Type of Payment (check all that apply):</p> <p>_____ a. retainer _____ b. one-time fee _____ c. commission _____ d. contingent fee _____ e. deferred _____ f. other; specify _____</p> | | |
| <p>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: _____</p> | | |
| <p>15. Continuation Sheet(s) SF-LLL-A attached: _____ Yes _____ No</p> | | |
| <p>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</p> | <p>Authorized Representative: <u>Joyce Wilson</u></p> <p>Title: <u>City Manager</u></p> <p>Signature: _____</p> <p>Telephone: _____</p> <p>Date: _____</p> | |

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

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

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

I. Nondiscrimination Policies

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

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

II. Environmental Policies

You must:

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

f. Underground sources of drinking water in areas that have an aquifer that is the sole or principal drinking water source, and provide any help we may need to comply with the Safe Drinking Water Act(42 U.S.C. 300h-3).

3 Comply with applicable provisions of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821-4846), as implemented by the Department of Housing and Urban Development at 24 CFR part 35. The requirements concern lead-based paint in housing owned by the Federal Government or receiving Federal assistance.

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

III. Live Organisms

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

2 **Animals and plants.**

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

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

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

IV. Other National Policies

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

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

3. **Lobbying.**

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

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

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

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

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

6. **Native American graves protection and repatriation.** If you control or possess Native American remains and associated funerary objects, you must comply with the requirements of 43 CFR part 10, the Department of the Interior implementation of the Native American Graves Protection and Repatriation Act of 1990 (25 U.S.C., chapter 32).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

15. **Trafficking in Persons**

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

1. You as the recipient, your employees, subrecipients under this award, and subrecipients' employees may not—

i. Engage in severe forms of trafficking in persons during the period of time that the award is in effect;

ii. Procure a commercial sex act during the period of time that the award is in effect;

or

iii. Use forced labor in the performance of the award or subawards under the award.

2. We as the Federal awarding agency may unilaterally terminate this award, without penalty, if you or a subrecipient that is a private entity —

i. Is determined to have violated a prohibition in paragraph a. 1 of this award term;

or

ii. Has an employee who is determined by the agency official authorized to terminate the award to have violated a prohibition in paragraph a.1. of this award term through conduct that is either—

A. Associated with performance under this award; or

B. Imputed to you or the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR part 180, "OMB Guidelines to Agencies on Government wide Debarment and Suspension (Non-procurement)," as implemented by our agency at 2 CFR part 901.

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

1. Is determined to have violated an applicable prohibition in paragraph a. 1 of this award term; or

2. Has an employee who is determined by the agency official authorized to terminate the award to have violated an applicable prohibition in paragraph a. 1 of this award term through conduct that is either—

i. Associated with performance under this award; or

ii. Imputed to the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR part 180, "OMB Guidelines to Agencies on Government wide Debarment and Suspension (Non-procurement)," as implemented by our agency at 2 CFR part 901.

c. Provisions applicable to any recipient.

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

d. Definitions. For purposes of this award term:

1. "Employee" means either:
 - i. An individual employed by you or a subrecipient who is engaged in the performance of the project or program under this award; or
 - ii. Another person engaged in the performance of the project or program under this award and not compensated by you including, but not limited to, a volunteer or individual whose services are contributed by a third party as an in-kind contribution toward cost sharing or matching requirements.
2. "Forced labor" means labor obtained by any of the following methods: the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.
3. "Private entity":
 - i. Means any entity other than a State, local government, Indian tribe, or foreign public entity, as those terms are defined in 2 CFR 175.25.
 - ii. Includes:
 - A. A nonprofit organization, including any nonprofit institution of higher education, hospital, or tribal organization other than one included in the definition of Indian tribe at 2 CFR 175.25(b).
 - B. A for-profit organization.
4. "Severe forms of trafficking in persons," "commercial sex act," and "coercion" have the meanings given at section 103 of the TWA, as amended (22 U.S.C. 7102).

V. National Policy Requirements for Subawards.

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

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

SUBRECIPIENT:

By: _____

Date: _____

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

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 grant exceeds \$10,000.

- (a) The Subrecipient 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 Subrecipient shall furnish to the Government, when requested by the Contracting Officer, all evidence and information in possession of the Subrecipient pertaining to such suit or claim. Such evidence and information shall be furnished at the expense of the Government except where the Subrecipient has agreed to indemnify the Government.
- (c) This clause shall be included in all contracts and subgrants under this grant.

REPORTING OF ROYALTIES (41 CFR 9-9.110)

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

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

RIGHTS IN TECHNICAL DATA (SHORT FORM)

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

(b) Allocation of Rights.

(1) The Government shall have:

- (i) Unlimited rights in technical data first produced or specifically used in the performance of this grant;
- (ii) The right of the Contracting Officer or his representatives to inspect, at all reasonable times up to three years after final payment under this grant, all technical data first produced or specifically used in the grant (for which inspection the Subrecipient or its contractor or Subrecipient 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 Subrecipient 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 grant provided the date requirements of this grant have been met as of the date of the private use of such data. The Subrecipient 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 Subrecipient 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 Subrecipient 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 grant by the Subrecipient, 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 Subrecipient in the performance of this grant but which is incorporated in the material furnished under the grant, provided that such license shall be only to the extent the Subrecipient now has, or prior to completion or close-out of the grant, may acquire the right to grant such license without becoming liable to pay compensation to others solely because of such grant.

(2) The Subrecipient agrees that it will not knowingly include any material copyrighted by others in any written or copyrighted material furnished or delivered under this grant without a license as provided for in subparagraph (c)

(1) (ii) of this section, or without the consent of the copyright owner, unless it obtains specific written approval of the Contracting Officer for the inclusion of such copyrighted material.

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

It is agreed that as a condition of award of this grant 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 grant or modification is based.

The City of El Paso

Organization Name

Joyce Wilson, City Manager

Name and Title of Authorized Representative

Signature

Date

ATTACHMENT H

SUBCONTRACTING PROVISIONS; MANDATORY FLOWDOWN PROVISION

Subrecipient, if subcontracting any of its performance hereunder, shall legally bind Subrecipients to perform and make such Subrecipients subject to all the duties, requirements, and obligations of Subrecipient under this Agreement. Subrecipient shall be jointly and severally liable for all performances under this Agreement, including, but not limited to, the performance of its Subrecipients 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.

Subrecipient 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 Subrecipients under this Agreement. In no event shall any provision of this Paragraph, including, but not limited to, the requirement that Subrecipient obtain the prior approval of Agency on Subrecipient's proposed subcontracts, be construed as relieving Subrecipient 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 Subrecipient. Subrecipient 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, Subrecipient 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 Subrecipient and the Subrecipient/Subrecipient, I hereby certify that Subrecipient and Subrecipient/Subrecipient will comply with the above requirements.

BORROWER/SUBRECIPIENT: _____

SUB-SUBRECIPIENT

By: _____

Date: _____

ATTACHMENT I-1

AMERICAN RECOVERY & REINVESTMENT ACT—BORROWER/SUBRECIPIENT AFFIDAVIT

This Affidavit must be signed and sworn (notarized)

I, _____, an authorized representative of: _____, a [person, sole proprietorship, partnership, corporation, limited liability company, nonprofit organization, governmental entity, political subdivision, or other entity] (circle one) that is receiving American Recovery and Reinvestment Act of 2009 (ARRA or the Act) funding, hereby swear and affirm that, to the best of my knowledge, internal controls, processes and procedures have been designed and implemented to help ensure that the recipient and its use of these funds complies with the following: applicable state law; federal law, including federal reporting requirements under Section 1512 of the Act, if applicable; rules; regulations; and other relevant guidance. I further swear and affirm that all of the statements made and information provided herein, including statements made and information provided in any attachments are true, complete, and correct, to the best of my knowledge.

I understand that I am receiving ARRA funding from _____, a [state agency, institution of higher education, governmental entity, political subdivision, or other entity] (circle one).

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

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

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

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

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

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

Borrower/Subrecipient Name

Affiant Signature

Full Name

Title

Date

Sworn and subscribed before me by the said

(Printed Name of Recipient's Authorized Representative)

this _____ day of _____, 20__.

Notary Public, State of Texas

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

ATTACHMENT I-2

American Recovery & Reinvestment Act – Borrower/Subrecipient’s Contractor Affidavit
This Affidavit must be signed and sworn (notarized)

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

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

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

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

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

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

Borrower/Subrecipient Name

Affiant Signature

Full Name

Title

Date

Sworn and subscribed before me by the said

(Printed Name of Recipient’s Authorized Representative)

this _____ day of _____, 20_____.

Notary Public, State of Texas

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

**ATTACHMENT J
NONDISCLOSURE AGREEMENT**

In consideration of the Comptroller retaining the services of The City of El Paso, (Contractor) and because of the sensitivity of certain information which may come under the care and control of Contractor, 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.

The City of El Paso

By: _____
Signature

Title: City Manager

Date: _____

ATTACHMENT K
ARRA REPORTING REQUIREMENTS

Subrecipient shall submit to the Comptroller the following reports:

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

A. Subrecipient Identification:

1. Subrecipient name: Provide the following information for the Subrecipient;
 - a. the official name of the Subrecipient as it appears on the Grant Agreement and DUNS #;
 - b. the street address, city, and county of the official place of business;
 - c. City, County, and U.S. Postal Zip Code + four digits;
 - d. the URL designation or address of any official web site for the Subrecipient;
 - e. U.S. Congressional District;
 - f. the state senatorial district;
 - g. the state house district;
 - h. a copy of the minutes or resolution by which the Subrecipient approved the Grant agreement and designated an authorized representative for the Subrecipient;
 - i. the grant/award number assigned to the Subrecipient by the Agency;
 - j. the date the Grant Agreement was signed (mm/dd/yyyy); and
 - k. the performance period established in the Grant Agreement during which sponsorship begins and ends.

2. Authorized Representative: Provide the following information for the person designated by the Subrecipient to represent the Subrecipient in the performance of the Grant Agreement:
 - a. the name of the authorized representative and official title, if any;
 - b. the street address, city, and county of the primary business location;
 - c. City, County, and U.S. Postal Zip Code + four digits;
 - d. area code and telephone number; and
 - e. email address.

3. Key Personnel: Provide the following information for each employee or agent designated by the Subrecipient or the Authorized Representative that may assist or serve as a representative for the Subrecipient in the performance of the Grant Agreement:
 - a. the name of the key personnel and official title, if any;
 - b. primary role served for the Subrecipient with respect to the Grant;
 - c. the street address, city, and county of the primary business location;
 - d. City, County, and U.S. Postal Zip Code + four digits;
 - e. area code and telephone number; and
 - f. email address.

4. Five most highly compensated individuals: The information required in this subsection is ONLY required when the reporting entity (A) received 80 percent or more of its annual gross revenues in Federal awards the recipient in its preceding fiscal year, and (B) received \$ 25,000,000 or more in annual gross revenues from Federal awards; and (C) the public does not have access to information about the compensation of the senior executives of the entity through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986 [26 USC §6104]. If this subsection is applicable, the report shall include:
 - a. the names and total compensation for the five most highly compensated officers of the entity;
 - b. "Total compensation" means the cash and noncash dollar value earned by the executive during the subrecipient's past fiscal year of the following: Salary and bonus; Awards of stock, stock options, and stock appreciation rights. Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with FAS 123R; Earnings for services under non-equity incentive plans. Does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees; Change in pension value. This is the change in present value of defined benefit and actuarial pension plans; Above-market earnings on deferred compensation which are not tax-qualified. Other compensation, for example, severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property if the value for the executive exceeds \$10,000.

5. Project Identification:

- a. Project Name: Provide the brief descriptive title of the project or activity as identified in the Grant Agreement.
- b. Primary Performance Location: Provide physical location of primary place of performance by:

- i. street address,
- ii. City, County, and U.S. Postal Zip Code + four digits
- iii. U.S. Congressional District;
- iv. the state senatorial district; and
- v. the state house district;

c. Project Objective: A description of the overall purpose and expected outputs and outcomes or results of the Grant Agreement, including significant deliverables and, if appropriate, units of measure.

II. MONTHLY REPORT. On the last day of each calendar month, the Subrecipient shall submit an electronic performance report found at <https://fmx.cpa.state.tx.us/fmx/index.php> (click on SECO Stimulus Reporting Tool).

In order to access the reporting tool the Subrecipient must first receive a User ID from the SECO Stimulus Grant Manager. The web reporting tool will capture project status and Department of Energy and ARRA performance metrics, including jobs created and jobs retained.

All reporting must be completed through the web reporting system. In rare situations that the web reporting tool is not available or the subrecipient is unable to access the system, a faxed, scanned or emailed report will be acceptable upon notification and approval.

III. FINAL REPORT.

1. No later than 30 days prior to the grant ending date, the Subrecipient shall submit an electronic Final Report via the web reporting tool at <https://fmx.cpa.state.tx.us/fmx/index.php> (click on SECO Stimulus Reporting Tool) through the last day of the grant performance period. All reporting must be completed through the web reporting system. In rare situations that the web reporting tool is not available or the subrecipient is unable to access the system, a faxed, scanned or emailed report will be acceptable upon notification and approval.
2. Subrecipient is required to collect and report required project information from any of its vendors or subcontractors that are remitted any funds provided under this agreement.
3. Failure to comply with the requirements of this attachment may result in termination of the grant award and the Subrecipient being ineligible for future grants.
4. The form and substance of these reporting requirements may be amended by the Comptroller at any time.

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

The City of El Paso

By: _____
Signature

Title: City Manager

Date: _____

ATTACHMENT L
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;

- Sealing, restoring, or insulating HVAC ducts, provided that the ducts are not visible in occupied spaces of the building and access to the ducts does not require demolition of walls or ceilings in occupied spaces of the building; and
- Adding or replacing existing building controls systems including HVAC control systems and the replacement of building-wide pneumatic controls with digital controls, thermostats, dampers, and other individual sensors like smoke detectors or carbon monoxide detectors (wired or non-wired).

Roofing:

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

Windows and doors:

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

Lighting and appliances:

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

Insulation:

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

Water conservation:

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

Electrical:

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

Ground-disturbing activity and site work:

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

Category B SHPO Consultation Required:

The following undertakings may affect historic properties per 36 CFR § 800.5 and will always require Section 106 review if they involve a structure that is forty-five (45) years of age or older, under the terms of Stipulation III (B) of this Agreement. Any work item or undertaking in the 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.

NOTICE OF LOAN FUND AVAILABILITY (NOLFA)
AND
REQUEST FOR APPLICATION (RFA)
NOLFA/RFA No. BE-AG1-2010
FOR

BUILDING EFFICIENCY AND RETROFIT
REVOLVING LOAN PROGRAM
OF THE
TEXAS COMPTROLLER OF PUBLIC ACCOUNTS

EL PASO ENERGY RETROFIT PROJECT

SUSAN COMBS
COMPTROLLER OF PUBLIC ACCOUNTS
STATE ENERGY CONSERVATION OFFICE
111 East 17th Street
AUSTIN, TEXAS 78774
(512) 305-8673

December 30, 2009

Dedicated to Outstanding Customer Service for a Better Community

SERVICE SOLUTIONS SUCCESS



December 24, 2009

William Clay Harris
Assistant General Counsel, Contracts
Comptroller of Public Accounts
111 E. 17th Street, Room 201
Austin, TX 78774

RE: El Paso Energy Retrofit Project Loan Submittal

Dear Mr. Harris:

Please accept the enclosed application on behalf of the City of El Paso to pursue City energy efficiency goals. The enclosed application and required state/federal documents are directly responsive to the Texas Comptroller of Public Accounts Request for Applications #TR-BE1-2010 for Building Efficiency and Retrofit Revolving Loan Program issued on October 30, 2009.

The City of El Paso is seeking \$2,824,000 in loan funding to implement the effort proposed in the application.

The City is committed to completing the project described in this submittal. Please contact me should you require additional information regarding our application.

Regards,

Patricia D. Adauto
Deputy City Manager

Enclosures

Mayor

John F. Cook

City Council

District 1

Ann Morgan Lilly

District 2

Susie Byrd

District 3

Emma Acosta

District 4

Carl L. Robinson

District 5

Rachel Quimana

District 6

Eddie Holcum Jr.

District 7

Steve Ortega

District 8

Ben O'Rourke

City Manager

Joyce A. Wilson

Development and Infrastructure Services

2 CIVIC CENTER PLAZA, EL PASO, TEXAS 7990 · 915-541-4000 · WWW.ELPASOTEXAS.GOV

"Working Together, Building for the Future"

Executive Summary

The El Paso Energy Retrofit Project proposes to continue the City's current successful energy retrofit efforts. The City is approximately 85% complete with a \$14.7 million energy retrofit project utilizing the SECO Loanstar program. Specifically, would this project include:

- Retrofit of 3,000 low-voltage street lights with high-efficiency induction street light technology in residential locations city-wide,

The project benefits are summarized below:

| SECO Metrics | Project Targets |
|---------------------------------------|-----------------------------------|
| Project payback | 10.0 years (total) |
| Street lights | 8.3 years for street lights |
| Reduction in City energy use | 2.6% |
| Reduction in City energy costs | 3.2% |
| Reduction in greenhouse gas emissions | 659 tons CO ₂ per year |
| Jobs created/retained | 31 jobs |
| Million btus saved for \$1,000 spent | 2.1 mmbtu/\$1,000 spent |
| Percent renewable energy | 0% renewable energy technology |

Note 1: CO₂ reductions based on El Paso Electric carbon intensity of 0.31 tons CO₂ per MW-hr

The project partners include the City of El Paso's General Services, Streets, Financial Services Departments and an Energy Services Company (ESCO). The City is currently evaluating submissions from five highly qualified firms to act as the City's ESCO partner. The Project Director is Stuart Ed General Services Director for the City of El Paso.

Table of Contents

| | Page |
|--|------|
| 1.0 Applicant Identifying Information | 1 |
| 2.0 Identifying Information and Statements required for all Subcontracts | 4 |
| 3.0 Project Work Breakdown Structure | 4 |
| 3.1 Summary | 4 |
| 3.2 Risk Management..... | 5 |
| 3.3 Milestone Log | 6 |
| 3.4 Project Timeline | 6 |
| 3.5 Success Criteria | 6 |
| 4.0 Conflict of Interest Statement..... | 8 |
| 4.1 Adequate Resources..... | 8 |
| 4.2 No Known Conflicts of Interest | 8 |
| 4.3 Past and Present Relationships | 8 |
| 4.4 Additional Required Statements..... | 8 |
| 5.0 Budget | 9 |
| 6.0 Compliance..... | 9 |

Attachments

- A. Loan Approval Statement
- B. DOE Required Special Terms & Conditions—ARRA Stimulus Funds
- B-1. DOE Assurance of Compliance, as completed by Borrower
- B-2. DOE Assurance of Compliance, as completed by Borrower and Each Borrower Contractor
- C. Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion-Lower Tier Covered Transactions, as completed by Borrower
- D. Certifications Regarding Lobbying; Debarment, Suspension and Other Responsibility Matters; and Drug-Free Workplace Requirements, as completed by Borrower
- E. Disclosure of Lobbying Activities, as completed by Borrower
- F. ARRA Assurances, as completed by Borrower
- G. Intellectual Property Provisions, as completed by Borrower
- H. Affidavit of Compliance
- I. Flowdown Requirements
- J. Reporting Requirements

Appendices

- A. Preliminary Engineering Assessment

1.0 Applicant Identifying Information

Name & Address: City of El Paso
2 Civic Center Plaza
El Paso, Texas 79901

Applicant Eligibility: As a Texas municipality, the City of El Paso is an eligible government entity, based on the eligibility criteria in Section 1.1 of the Request for Applications (RFA).

The City's Streets, General Services and Finance Services Departments are collaborating on this application. Facilities will be located throughout the City of El Paso.

Applicant Principal Contact: Marty Howell
Sustainability Manager
City of El Paso
2 Civic Center Plaza
El Paso, Texas 79901
Phone: (915) 541-4925
Fax: (915) 541-4576
Howelleml@elpasotexas.gov

| | |
|---|------------------|
| <u>Federal Employer Identification Number</u> | 74-600749 |
| <u>DUNS number</u> | 058873019 |
| <u>Proof of CCR registration</u> | CAGE/NCAGE 3XVY1 |
| <u>Texas Identification Number</u> | TIN: 17460007499 |

Team Information

Stuart Ed, City of El Paso, General Services Director, 2 Civic Center Plaza, El Paso, Texas, 79901
Milton Roberts, City of El Paso, Fleet Superintendent, 2 Civic Center Plaza, El Paso, Texas, 79901
Juan Cruz, City of El Paso, Energy Coordinator, 2 Civic Center Plaza, El Paso, Texas, 79901
Marty Howell, City of El Paso Sustainability Manager, 2 Civic Center Plaza, El Paso, Texas, 79901

Key Personnel:

Stuart Ed Project Director, Mr. Ed, the City's General Services Director, has over 15 years of municipal experience and is responsible for operations and maintenance of all City facilities. Mr. Ed is currently administering the City's successful \$14.7 million energy retrofit performance contract and has extensive grants management and project management experience.

Juan Cruz Project Lead, Mr. Cruz, Energy Coordinator for the City of El Paso, brings experience and knowledge in energy management, construction and facilities maintenance and operation. Mr. Cruz has worked as a civil and mechanical

engineer, and brings experience in the construction and energy management fields. Mr. Cruz has worked for ESCO's and has the knowledge needed to manage the City's performance contracts. He is well versed in the construction industry and understands all of the phases of construction and will manage the construction phases of these performance contracts. Mr. Cruz brings experience in the facilities operations and maintenance field and understands how to apply energy management to facilities as well.

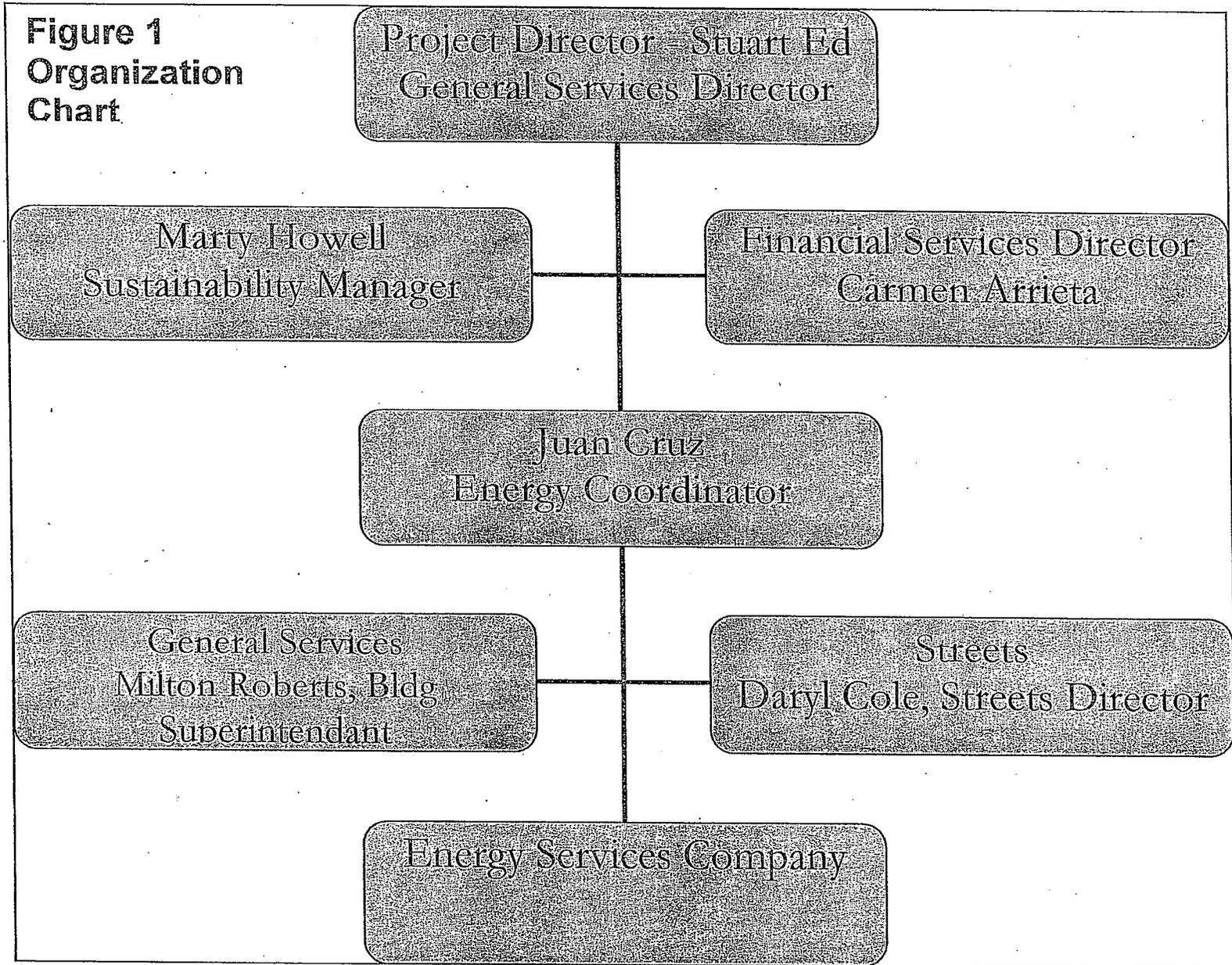
Milton Roberts

General Services Lead, Mr. Roberts, Fleet and Building Superintendent for the City of El Paso, has in-depth experience operating and maintaining fleets and facilities. As the manager of Fleet Operations in the Police Department, Mr. Roberts initiated a pilot program for the use of propane and CNG for police vehicles and worked closely with the General Services director to increase the fuel efficiency of administratively used vehicles.

Marty Howell

Project Advisor, Mr. Howell, Sustainability Manager for the City of El Paso is a registered engineer with 10 years of experience coordinating infrastructure projects with local governments.

**Figure 1
Organization
Chart**



2.0 Identifying Information and Statements Required for All Subcontracts

The Project Team issued a Request for Qualifications (RFQ#2010-085R) for Energy Services Companies to provide energy retrofits on November 10, 2009. On December 2, 2009, the City received Statements of Qualification from five highly qualified Energy Service Companies (Chevron Energy Solutions Company, Johnson Controls, Schneider Electric, Siemens Building Technologies and Trane). The City has completed evaluation of those submissions and award of the performance contract for energy retrofits is expected to be on the El Paso City Council agenda on March 30, 2010.

The selected firm will be required to provide statements, signed by an individual authorized to legally obligate the subcontractor, attesting to the fact that it will provide the services as represented in this application.

3.0 Project Work Breakdown Structure

3.1 Summary

The City proposes to continue the City's efforts to reduce energy consumption and greenhouse gas emissions by:

- o Retrofitting 3,000 low-voltage street lights with high-efficiency induction street light technology in residential locations city-wide,

This project supports the following goals contained in the City of El Paso Livable City Sustainability Plan (adopted in 2009):

- o Reduce City of El Paso total energy consumption by 30% by 2014.
- o Implement 20 City of El Paso renewable energy projects by 2015.
- o Transition 20% of City of El Paso energy use to renewable sources by 2020.
- o Reduce greenhouse gas emissions by 7% below 1990 levels by 2012.

These objectives align with SECO's programmatic goals, mission and vision. Specifically, this project will

- o Create or retain 31 local jobs
- o Utilize approximately 10 local businesses and manufacturers
- o Reduce annual City energy consumption by 2.6% (2,125,440 kw-hr)
- o Reduce annual City energy costs by 3.3%
- o Reduce greenhouse gas/CO2 emissions by 659 tons per year

Currently, the City spends over \$4 million a year for street lights, accounting for over 45% of the City's electric utility costs. This project will retrofit a portion of the City's streetlights with available technology that reduces both electricity and maintenance costs. The City will use the performance data from the street lights installed with this program to develop a master plan for retrofit of the City's remaining street lights.

The City issued a RFQ to select an ESCO on November 10, 2009. The City received submissions from five highly qualified firms (Chevron Energy Solutions Company, Johnson Controls, Schneider Electric, Siemens Building Technologies and Trane). The City has completed evaluating those submissions and award of the performance contract for energy retrofits is expected to be on the March 30, 2010 City Council agenda. The City will partner with our selected ESCO to implement our energy goals using their extensive and specialized experience in building energy efficiency retrofits and performance contracting.

The City's proposed project is ready for immediate implementation. An overview of the project elements is provided below.

The City and the City's ESCO will use formalized processes to ensure project success. The City will continue to use the successful combination of national ESCO staff and local subcontractors that have contributed to the success of the City's current LoanStar retrofit program.

3.2 Risk Management

The City will utilize the City of El Paso's Project Management System to ensure successful, timely and cost efficient project completion.

The project involves retrofit of 3,000 residential street. Potential risks to the project are related to the availability of funding, the escalation of equipment costs and the potential that procurement of the equipment is not approved by the various partner governing bodies.

The City has already received submissions from five firms to act as the City's ESCO partner in implementing this project.

The City has a solid strategy to mitigate any unforeseen circumstances. The City's project team includes experts in risk assessment, as well as professionals assigned to oversee the project's progress from beginning to end. These team members have substantial experience in dealing with similar projects in size and scope, allowing them the ability to forecast and limit most project risk.

The City will mandate that the ESCO monitor progress to determine if the project's energy conservation measures are occurring as projected and analyze any potential risks. As part of this process, the ESCO will prepare and present an annual savings verification report to the City. Additionally, the contract with the ESCO will provide training to ensure proper operation of the installed improvements and implement strategies aimed at proactively managing any risk potential.

The existing insulation and fireproofing materials at some of the City's facilities may contain asbestos containing materials (ACMs). If material is encountered during retrofit activities, that may contain asbestos or other suspect materials, workers will stop work and communicate with the City and appropriate State departments immediately to determine the appropriate next steps.

Finally, the performance contracting mechanism guarantees that the projected utility and operational savings, and improved facility performance will occur. This guarantee shifts performance risk to the ESCO.

The project team will identify and manage project risk using the following systems and methodologies:

- o Thorough and continuous planning
- o Detailed quantification of facility audits
- o Subcontract document review and legal review of terms and conditions
- o Adherence to safety programs
- o Utilization of regular and multiple communication systems
- o Utilization of superior technology
- o Competitive bidding and supplier evaluation
- o Procedures for management of asbestos, lead paint, and hazardous materials
- o Employee and customer training

- Supplier and subcontractor bonding
- Product warranties

3.3 Milestone Log

The City has identified the following four critical tasks and milestones necessary for successful completion of this project:

Task 1. Utility Assessment Report Completion

The City will team with the selected ESCO to complete the final detailed engineering analysis and design necessary to submit a Utility Assessment Report meeting SECO's requirements. The UAR will be based on the findings in the Preliminary Energy Audit (PEA) included in this submittal. The City of El Paso will review and approve the UAR and then submit the document to SECO for approval. The City and the City's ESCO partner will modify the UAR as necessary based on SECO comments.

Task 2. Implementation

The City of El Paso will manage the deployment of the ESCO's project team and execute the contract documents for the complete installation of the project. The project team will select subcontractors, vendors and suppliers for implementation of the energy conservation measures. The City of El Paso understands that SECO will conduct on-site monitoring during the project retrofit phase at three project milestones:

1. 25% completion
2. 50% completion
3. 100% completion

Task 3. On-Going Service

During project implementation and after project implementation is complete, the multi-year process of managing the guaranteed services and meeting the responsibilities as specified in the City's performance contract begins. The ESCO will be required to provide documentation that substantiates the improvements and results the City of El Paso will achieve.

During this phase of work, the ESCO will provide training for City personnel on all new equipment installed to ensure that the equipment is operated and maintained efficiently. Training the key personnel required to operate and maintain the new systems is a primary element to ensuring ongoing savings.

The City's ESCO will be required to maintain new or retrofitted equipment as outlined in the final contract. Maintenance of equipment will be also critical to ensure that anticipated savings are realized.

The City's ESCO partner will conduct ongoing measurement and verification of the project improvements. The ESCO will measure and verify the savings guaranteed to the City of El Paso. This will be a continual process as they continue to install and commission the equipment.

A Monthly Progress Report will be required to be submitted via the internet on or before the last day of the month to follow all state and Federal ARRA reporting requirements.

In addition, in accordance with the requirements of the NOLFA-RFA, a Final Completion Report will be prepared and submitted no later than 30 days after the completion of the project and will include:

1. 100% Monitoring Report and Certificate of Project Completion
2. Final Report
3. Final Voucher Request

Task 4. Third Party Measurement and Verification

This phase of the project(s) will be conducted by an approved third party to ensure fairness and equality to the both the City of El Paso and the ESCO responsible for the performance contract. Measurement and verification is the process in which data is collected to ensure that the savings the ESCO promised will actually be achieved.

| | Milestone | Deliverable | Start Date | Completion Date |
|----|--|-------------------------------------|------------|-----------------|
| 1. | Complete Utility Audit Report | | | |
| | 1.1 Prepare Draft UAR | Completed UAR | 5/1/2010 | 6/30/2010 |
| | 1.2 City Approval of Draft UAR | City Approval | 7/3/2010 | 7/21/2010 |
| | 1.3 SECO Approval of UAR | SECO-approved UAR | 7/24/2010 | 9/1/2010 |
| 2. | ECM Implementation | 3,000 retrofitted streets lights | 9/4/2010 | 6/1/2011 |
| 3. | Ongoing Service | | | |
| | 3.1 Training | Trained City Staff | 9/4/2010 | Ongoing |
| | 3.2 Reporting | Timely, accurate reports | 9/4/2010 | Ongoing |
| | 3.3 Measurement & Verification | Timely, accurate reports | 6/1/2011 | 6/1/2021 |
| 4. | 3rd Party Measurement & Verification | | | |
| | 4.1 Select 3 rd Party M&V | Contract with 3 rd Party | 9/4/2010 | 11/10/2010 |
| | 4.2 Conduct 3 rd Party M&V | 3 rd Party M&V Report | 11/10/2010 | Ongoing |

3.4 Project Timeline

See the Figure 2 on the Page 8 below for the project timeline in gantt chart format.

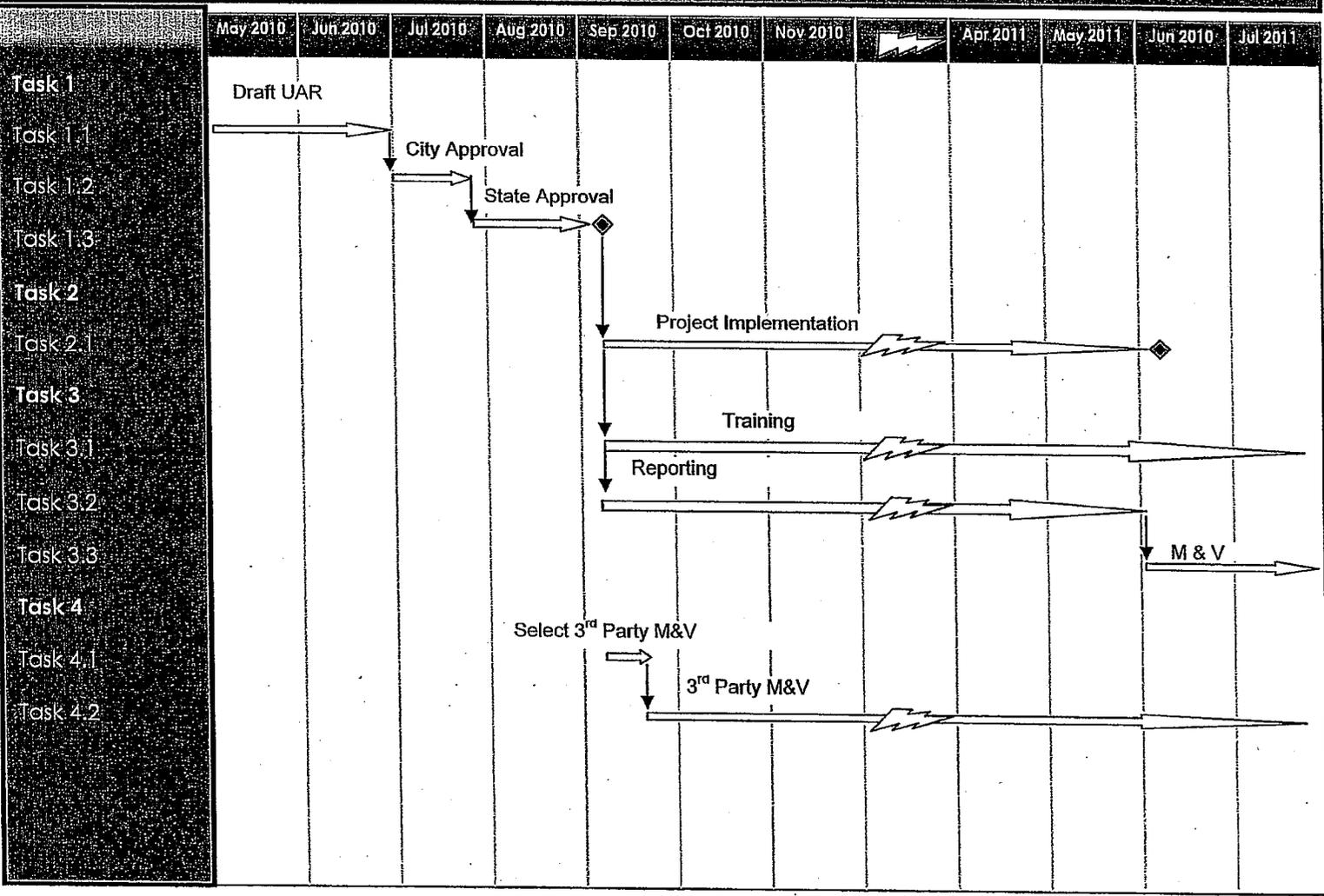
3.5 Success Criteria

The criteria for the success of the different phases of this project are defined below:

- Utility Assessment Report
 - Timely submittal and SECO approval of a final UAR detailing the energy conservation measures to be completed.
- Implementation
 - Safe, timely completion of energy conservation measures with minimal disturbance to City operations.
- Ongoing Service
 - Effective training on energy conservation measures that ensures continuing system performance.
 - Timely and accurate submittal of required SECO and City documentation and reports.
- Third Party Measurement & Verification

Timely completion of audits verifying that energy conservation measures are performing as contracted.
Timely and accurate submittal of required SECO and City documentation and reports.

Figure 2 – Project Timeline



4.0 Conflict of Interest

4.1 Adequate Resources

In submitting an application in response to RFA #BE-AG1-2010, City of El Paso represents and warrants to the Comptroller that it, and each of its subcontractors that it awards subcontracts to perform services pertaining to the project, have the requisite resources, qualifications and independence to complete the project free from outside direction, control, or influence, and are subject only to the requirements of this RFA.

4.2 No Known Conflicts of Interest

The City has no existing or potential conflicts of interest or possible issues that might create appearances of impropriety relative to this application and its future subcontractors' submission of an application. The City also does not have conflicts of interest or possible issues that might create appearances of impropriety relative to performance toward completion of the proposed project.

4.3 Past and Present Relationships

As part of the disclosure requirement, the City declares the following past (within the past 2 years) and present contractual, business, financial or personal relationships with the Comptroller: Further, the City agrees that after awarding contracts to subcontractor(s) as a result of legally mandated procurement processes, the City will provide to the Comptroller, documentation regarding subcontractor(s), past and present contractual, business, financial or personal relationships between subcontractor(s) and the City.

4.4 Additional Required Statements

In submitting an application in response to RFA #BE-AG1-2010, City of El Paso affirms 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 or any employee or representative of same, in connection with the RFA. City of El Paso has no proposed project personnel in this application who are current or recent former employees of the Comptroller or the State of Texas. The Project Team has not had any past or present contractual, business, financial or personal relationships between with the Comptroller (either the Texas Comptroller of Public Accounts, Comptroller's current employees or recent former employees).

5.0 Budget

The budget for the proposed project is summarized below:

| | Material | Labor | Profit/Ovhd | Total Cost |
|-----------------------|-----------------|--------------|--------------------|-------------------|
| Street Light Retrofit | \$1,412,000 | \$988,400 | \$423,600 | \$2,824,000 |
| Total | \$1,412,000 | \$988,400 | \$423,600 | \$2,824,000 |

All of the project costs will be subcontracted.

6.0 Compliance

In accordance with Section 3.4 of the NOLFA-RFA, the City of El Paso will comply with all federal and state statutory and regulatory requirements pertaining to compliance, reporting, and registration, including special terms and conditions as they relate to a grant award. The City will comply with:

- o Davis-Bacon Act
- o Buy American Act
- o National Environmental Policy Act (NEPA)
- o National Historic Preservation Act of 1966
- o Solid Waste Disposal Act: Texas Health & Safety Code, Chapter 361 and Title 30, Texas Administrative Code, Chapter 335
- o Report of Fraud, Waste and Abuse: Texas Government Code, Section 321.022

Attachments

ATTACHMENT A, Loan No. _____

**LOAN APPROVAL STATEMENT
For Energy Conservation Measures**

Agency: City of El Paso
 Address: 2 Civic Center Plaza
 City: El Paso, Texas, 79901
 Loan Coordinator: Stuart Ed
 Title: General Services Director
 Phone: (915) 621-6821

| Building (a) | ECM | Description of Energy Conservation Measure (ECM) (b) | Estimated ECM Cost (c) | Annual Energy Cost Savings | Pay-back (yrs) | ECM Loan Amount (d) |
|--------------|-----|--|------------------------|----------------------------|----------------|---------------------|
| NA | 1 | Retrofit 3,000 street lights with induction technology | | | | |
| | | | | | | |
| | | | | | | |
| | | | | | | |

| | |
|---------------------------|--|
| Engineering Audit Expense | |
| Metering and Monitoring | |

| | |
|-----------------|--|
| Escalation Cost | |
| Total Loan | |

Anticipated Substantial Completion Time _____

Payback (with allowance) _____

Comments:

- a) A description of the building/facility and individual ECM is contained in the engineering report which is incorporated herein by reference and included as a part of this Attachment A.
- b) No ECMs may be canceled after loan is granted without prior written Lender approval.
- c) ECM includes cost of detail engineering design, labor, and materials to implement retrofit.
- d) 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.

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

RESOLUTION OF CONFLICTING CONDITIONS

Any apparent inconsistency between Federal statutes and regulations and the terms and conditions contained in this award must be referred to the DOE Award Administrator for guidance.

AWARD AGREEMENT TERMS AND CONDITIONS

This award/agreement consists of the Grant and Cooperative Agreement cover page, plus the following:

a. Special terms and conditions.

b. Attachments:

| Attachment No. | Title |
|----------------|--|
| 1 | Intellectual Property Provisions |
| 2 | Federal Assistance Reporting Checklist |
| 3 | Budget Page(s) |
| 4 | SEP Narrative Information Worksheets |

c. Applicable program regulations (*specify*) _____ (*Date*) _____

d. DOE Assistance Regulations, 10 CFR Part 600 at <http://ecfr.gpoaccess.gov>

e. Application/proposal as approved by DOE.

f. National Policy Assurances to Be Incorporated as Award Terms in effect on date of award at http://management.energy.gov/business_doe/1374.htm.

ADVANCED UNDERSTANDING CONCERNING PUBLICLY FINANCED ENERGY IMPROVEMENT PROGRAMS

The parties recognize that the Recipient may use funds under this award for Property-Assessed Clean Energy (PACE) loans, Sustainable Energy Municipal Financing, Clean Energy Assessment Districts, Energy Loan Tax Assessment Programs (ELTAPS), or any other form or derivation of Special Taxing District whereby taxing entities collect payments through increased tax assessments for energy efficiency and renewable energy building improvements made by their constituents. The Department of Energy intends to publish "Best Practices" or other guidelines pertaining to the use of funds made available to the recipient under this award pertaining to the programs identified herein. By accepting this award, the recipient agrees to incorporate, to the maximum extent practicable, those Best Practices and other guidelines into any such program(s) within a reasonable time after notification by DOE that the Best Practices or guidelines have been made available. The recipient also agrees, by its acceptance of this award, to require its sub-recipients to incorporate to the maximum extent practicable the best practices and other guideline into any such program used by the sub-recipient."

PAYMENT PROCEDURES - ADVANCES THROUGH THE AUTOMATED STANDARD APPLICATION FOR PAYMENTS (ASAP) SYSTEM

a. Method of Payment. Payment will be made by advances through the Department of Treasury's ASAP system.

b. Requesting Advances. Requests for advances must be made through the ASAP system. You may submit requests as frequently as required to meet your needs to disburse funds for the Federal share of project costs. If feasible, you should time each request so that you receive payment on the same day that you disburse funds for direct project costs and the proportionate share of any allowable indirect costs. If same-day transfers are not feasible, advance payments must be as close as is administratively feasible to actual disbursements.

c. Adjusting payment requests for available cash. You must disburse any funds that are available from repayments to and interest earned on a revolving fund, program income, rebates, refunds, contract settlements, audit recoveries, credits, discounts, and interest earned on any of those funds before requesting additional cash payments from DOE.

d. Payments. All payments are made by electronic funds transfer to the bank account identified on the ASAP Bank Information Form that you filed with the U.S. Department of Treasury.

REBUDGETING AND RECOVERY OF INDIRECT COSTS - REIMBURSABLE INDIRECT COSTS AND FRINGE BENEFITS

a. If actual allowable indirect costs are less than those budgeted and funded under the award, you may use the difference to pay additional allowable direct costs during the project period. If at the completion of the award the Government's share of total allowable costs (i.e., direct and indirect), is less than the total costs reimbursed, you must refund the difference.

b. Recipients are expected to manage their indirect costs. DOE will not amend an award solely to provide additional funds for changes in indirect cost rates. DOE recognizes that the inability to obtain full reimbursement for indirect costs means the recipient must absorb the underrecovery. Such underrecovery may be allocated as part of the organization's required cost sharing.

USE OF PROGRAM INCOME - ADDITION

If you earn program income during the project period as a result of this award, you may add the program income to the funds committed to the award and use it to further eligible project objectives.

STATEMENT OF FEDERAL STEWARDSHIP

DOE will exercise normal Federal stewardship in overseeing the project activities performed under this award. Stewardship activities include, but are not limited to, conducting site visits; reviewing performance and financial reports; providing technical assistance and/or temporary intervention in unusual circumstances to correct deficiencies which develop during the project; assuring compliance with terms and conditions; and reviewing technical performance after project completion to ensure that the award objectives have been accomplished.

HISTORIC PRESERVATION

Prior to the expenditure of Federal funds to alter any structure or site, the Recipient is required to comply with the requirements of Section 106 of the National Historic Preservation Act (NHPA), consistent with DOE's 2009 letter of delegation of authority regarding the NHPA. Section 106 applies to historic properties that are listed in or eligible for listing in the National Register of Historic Places. In order to fulfill the requirements of Section 106, the recipient must contact the State Historic Preservation Officer (SHPO), and, if applicable, the Tribal Historic Preservation Officer (THPO), to coordinate the Section 106 review outlined in 36 CFR Part 800. SHPO contact information is available at the following link: <http://www.ncshpo.org/find/index.htm>. THPO contact information is available at the following link: <http://www.nathpo.org/map.html>.

Section 110(k) of the NHPA applies to DOE funded activities. Recipients shall avoid taking any action that results in an adverse effect to historic properties pending compliance with Section 106.

Recipients should be aware that the DOE Contracting Officer will consider the recipient in compliance with Section 106 of the NHPA only after the Recipient has submitted adequate background documentation to the SHPO/THPO for its review, and the SHPO/THPO has provided written concurrence to the Recipient that it does not object to its Section 106 finding or determination. Recipient shall provide a copy of this concurrence to the Contracting Officer.

SITE VISITS

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

REPORTING REQUIREMENTS

a. Requirements. The reporting requirements for this award are identified on the Federal Assistance Reporting Checklist, DOE F 4600.2, attached to this award. Failure to comply with these reporting requirements is considered a material noncompliance with the terms of the award. Noncompliance may result in withholding of future payments, suspension, or termination of the current award, and withholding of future awards. A willful failure to perform, a history of failure to perform, or unsatisfactory performance of this and/or other financial assistance awards, may also result in a debarment action to preclude future awards by Federal agencies.

b. Dissemination of scientific/technical reports. Scientific/technical reports submitted under this award will be disseminated on the Internet via the DOE Information Bridge (www.osti.gov/bridge), unless the report contains patentable material, protected data, or SBIR/STTR data. Citations for journal articles produced under the award will appear on the DOE Energy Citations Database (www.osti.gov/energycitations).

c. Restrictions. Reports submitted to the DOE Information Bridge must not contain any Protected Personal Identifiable Information (PII), limited rights data (proprietary data), classified information, information subject to export control classification, or other information not subject to release.

PUBLICATIONS

a. You are encouraged to publish or otherwise make publicly available the results of the work conducted under the award.

b. An acknowledgment of Federal support and a disclaimer must appear in the publication of any material, whether copyrighted or not, based on or developed under this project, as follows:

Acknowledgment: "This material is based upon work supported by the Department of Energy under Award Number(s) *DE-EE000116*."

Disclaimer: "This report was prepared as an account of work sponsored by an agency of the United States Government. Neither the United States Government nor any agency thereof, nor any of their employees, makes any warranty, express or implied, or assumes any legal liability or responsibility for the accuracy, completeness, or usefulness of any information, apparatus, product, or process disclosed, or represents that its use would not infringe privately owned rights. Reference herein to any specific commercial product, process, or service by trade name, trademark, manufacturer, or otherwise does not necessarily constitute or imply its endorsement, recommendation, or favoring by the United States Government or any agency thereof. The views and opinions of authors expressed herein do not necessarily state or reflect those of the United States Government or any agency thereof."

FEDERAL, STATE, AND MUNICIPAL REQUIREMENTS

You must obtain any required permits and comply with applicable federal, state, and municipal laws, codes, and regulations for work performed under this award.

INTELLECTUAL PROPERTY PROVISIONS AND CONTACT INFORMATION

- a. The intellectual property provisions applicable to this award are provided as an attachment to this award. A list of all intellectual property provisions may be found at http://www.gc.doe.gov/financial_assistance_awards.htm.
- b. Questions regarding intellectual property matters should be referred to the DOE Award Administrator and the Patent Counsel designated as the service provider for the DOE office that issued the award. The IP Service Providers List is found at [http://www.gc.doe.gov/documents/Intellectual_Property_\(IP\)_Service_Providers_for_Acquisition.pdf](http://www.gc.doe.gov/documents/Intellectual_Property_(IP)_Service_Providers_for_Acquisition.pdf).

LOBBYING RESTRICTIONS

By accepting funds under this award, you agree that none of the funds obligated on the award shall be expended, directly or indirectly, to influence congressional action on any legislation or appropriation matters pending before Congress, other than to communicate to Members of Congress as described in 18 U.S.C. 1913. This restriction is in addition to those prescribed elsewhere in statute and regulation.

NOTICE REGARDING THE PURCHASE OF AMERICAN-MADE EQUIPMENT AND PRODUCTS -- SENSE OF CONGRESS

It is the sense of the Congress that, to the greatest extent practicable, all equipment and products purchased with funds made available under this award should be American-made.

PRESERVATION OF OPEN COMPETITION AND GOVERNMENT NEUTRALITY TOWARDS CONTRACTORS' LABOR RELATIONS ON FEDERALLY FUNDED CONSTRUCTION PROJECTS

- a. Unless in conflict with State or local laws, you must ensure that bid specifications, project agreement, or other controlling documents in construction contracts awarded pursuant to this agreement, or pursuant to a subaward to this agreement, do not:
 1. Require or prohibit bidders, offerors, contractors, or subcontractors to enter into or adhere to agreements with one or more labor organizations, on the same or other related construction project(s); or
 2. Otherwise discriminate against bidders, offerors, contractors, or subcontractors for becoming or refusing to become or remain signatories or otherwise to adhere to agreements with one or more labor organizations, on the same or other related construction project(s).
- b. The term "construction contract" as used in this provision means any contract for the construction, rehabilitation, alteration, conversion, extension, or repair of buildings, highways, or other improvements to real property.
- c. Nothing in this provision prohibits bidders, offerors, contractors, or subcontractors from voluntarily entering into agreements with labor organizations.

NATIONAL ENVIRONMENTAL POLICY ACT (NEPA)

You are restricted from taking any action using Federal funds for projects under this award that would have an adverse effect on the environment or limit the choice of reasonable alternatives prior to DOE providing a final NEPA determination regarding these projects.

Prohibited project activities include:

Distributed Renewable Energy Technology Program

Building Efficiency/Retrofit Program – Loans for Renewable energy-related projects

Transportation Efficiency Program – Alternative Fuels activities including the purchase of equipment for new alternative fuel(s) refueling stations and/or the purchase of equipment for retrofits of existing refueling stations.

The project activities listed above will require an individual NEPA review and determination. You must submit an environmental questionnaire to the DOE Project Officer for each project activity identified above to allow DOE to conduct an individual NEPA review and determination.

If you move forward with activities that are not authorized for federal funding by the DOE Contracting Officer in advance of the final NEPA determination, you are doing so at risk of not receiving federal funding and such costs may not be recognized as allowable cost share.

If DOE determines that NEPA requires the preparation of an environmental assessment (EA) or environmental impact statement (EIS) for a project you propose, you will be responsible for paying the cost of preparing an EA or EIS. Preparation of these types of NEPA documents can require 6-24 months. Accordingly you should carefully consider whether such projects are consistent with the objectives of the ARRA and will allow the expenditure of funds within the time periods allowed for by that statute.

This restriction does not preclude you from: *performing information gathering, analysis, documentation, dissemination and training and providing technical advice and planning assistance for the activities listed above.*

Nor does this restriction preclude you from conducting the following project activities:

Energy Education Outreach Program

Administration

Energy Sector Training Centers

Transportation Efficiency Program – Traffic Signal activities and Alternative Fuels activities including the incremental cost of plug-in hybrid vehicles, alternative fuel vehicles (CNG, LNG, LPG, Electric) and the incremental costs of retrofitting diesel vehicles to alternative fuel vehicles.

Building Efficiency/Retrofit Program – Loans for commissioning, controls, HVAC, lighting, building shell, and water efficiency project activities

DECONTAMINATION AND/OR DECOMMISSIONING (D & D) COSTS

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

SPECIAL PROVISIONS RELATING TO WORK FUNDED UNDER AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009

Preamble

The American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, (Recovery Act) was enacted to preserve and create jobs and promote economic recovery, assist those most impacted by the recession, provide investments needed to increase economic efficiency by spurring technological advances in science and health, invest in transportation, environmental protection, and other infrastructure that will provide long-term economic benefits, stabilize State and local government budgets, in order to minimize and avoid reductions in essential services and counterproductive State and local tax increases. Recipients shall use grant funds in a manner that maximizes job creation and economic benefit.

The Recipient shall comply with all terms and conditions in the Recovery Act relating generally to governance, accountability, transparency, data collection and resources as specified in Act itself and as discussed below.

Recipients should begin planning activities for their first tier subrecipients, including obtaining a DUNS number (or updating the existing DUNS record), and registering with the Central Contractor Registration (CCR).

Be advised that Recovery Act funds can be used in conjunction with other funding as necessary to complete projects, but tracking and reporting must be separate to meet the reporting requirements of the Recovery Act and related guidance. For projects funded by sources other than the Recovery Act, Contractors must keep separate records for Recovery Act funds and to ensure those records comply with the requirements of the Act.

The Government has not fully developed the implementing instructions of the Recovery Act, particularly concerning specific procedural requirements for the new reporting requirements. The Recipient will be provided these details as they become available. The Recipient must comply with all requirements of the Act. If the recipient believes there is any inconsistency between ARRA requirements and current award terms and conditions, the issues will be referred to the Contracting Officer for reconciliation.

Definitions

For purposes of this clause, Covered Funds means funds expended or obligated from appropriations under the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5. Covered Funds will have special accounting codes and will be identified as Recovery Act funds in the grant, cooperative agreement or TIA and/or modification using Recovery Act funds. Covered Funds must be reimbursed by September 30, 2015.

Non-Federal employer means any employer with respect to covered funds – the contractor, subcontractor, Borrower, or recipient, as the case may be, if the contractor, subcontractor, Borrower, or recipient is an employer; and any professional membership organization, certification of other professional body, any agent or licensee of the Federal government, or any person acting directly or indirectly in the interest of an employer receiving covered funds; or with respect to covered funds received by a State or local government, the State or local government receiving the funds and any contractor or subcontractor receiving the funds and any contractor or subcontractor of the State or local government; and does not mean any department, agency, or other entity of the federal government.

Recipient means any entity that receives Recovery Act funds directly from the Federal government (including Recovery Act funds received through grant, loan, or contract) other than an individual and includes a State that receives Recovery Act Funds.

Special Provisions

A. Flow Down Requirement

Recipients must include these special terms and conditions in any subaward.

B. Segregation of Costs

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

C. Prohibition on Use of Funds

None of the funds provided under this agreement derived from the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, may be used by any State or local government, or any private entity, for any casino or other gambling establishment, aquarium, zoo, golf course, or swimming pool.

D. Access to Records

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

- (1) to examine any records of the contractor or Borrower, any of its subcontractors or subBorrowers, or any State or local agency administering such contract that pertain to, and involve transactions relation to, the subcontract, subcontract, grant, or subgrant; and
- (2) to interview any officer or employee of the contractor, Borrower, subBorrower, or agency regarding such transactions.

E. Publication

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

Notice of Restriction on Disclosure and Use of Data

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

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

F. Protecting State and Local Government and Contractor Whistleblowers.

The requirements of Section 1553 of the Act are summarized below. They include, but are not limited to:

Prohibition on Reprisals: An employee of any non-Federal employer receiving covered funds under the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing, including a disclosure made in the ordinary course of an employee's duties, to the Accountability and Transparency Board, an inspector general, the Comptroller General, a member of Congress, a State or Federal regulatory or law enforcement agency, a person with supervisory authority over the employee (or other person working for the employer who has the authority to investigate, discover or terminate misconduct, a court or grant jury, the head of a Federal agency, or their representatives information that the employee believes is evidence of:

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

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

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

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

Requirement to Post Notice of Rights and Remedies: Any employer receiving covered funds under the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, shall post notice of the rights and remedies as required therein. (Refer to section 1553 of the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, www.Recovery.gov, for specific requirements of this section and prescribed language for the notices.).

G. Request for Reimbursement

RESERVED

H. False Claims Act

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

I. Information in supporting of Recovery Act Reporting

Recipient may be required to submit backup documentation for expenditures of funds under the Recovery Act including such items as timecards and invoices. Recipient shall provide copies of backup documentation at the request of the Contracting Officer or designee.

J. Availability of Funds

Funds appropriated under the Recovery Act and obligated to this award are available for reimbursement of costs until September 30, 2015.

K. Additional Funding Distribution and Assurance of Appropriate Use of Funds

Certification by Governor -- Not later than April 3, 2009, for funds provided to any State or agency thereof by the American Reinvestment and Recovery Act of 2009, Pub. L. 111-5, the Governor of the State shall certify that: 1) the state will request and use funds provided by the Act; and 2) the funds will be used to create jobs and promote economic growth.

Acceptance by State Legislature -- If funds provided to any State in any division of the Act are not accepted for use by the Governor, then acceptance by the State legislature, by means of the adoption of a concurrent resolution, shall be sufficient to provide funding to such State.

Distribution -- After adoption of a State legislature's concurrent resolution, funding to the State will be for distribution to local governments, councils of government, public entities, and public-private entities within the State either by formula or at the State's discretion.

L. Certifications

With respect to funds made available to State or local governments for infrastructure investments under the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, the Governor, mayor, or other chief executive, as appropriate, certified by acceptance of this award that the infrastructure investment has received the full review and vetting required by law and that the chief executive accepts responsibility that the infrastructure investment is an appropriate use of taxpayer dollars. Recipient shall provide an additional certification that includes a description of the investment, the estimated total cost, and the amount of covered funds to be used for posting on the Internet. A State or local agency may not receive infrastructure investment funding from funds made available by the Act unless this certification is made and posted.

REPORTING AND REGISTRATION REQUIREMENTS UNDER SECTION 1512 OF THE RECOVERY ACT

(a) This award requires the recipient to complete projects or activities which are funded under the American Recovery and Reinvestment Act of 2009 (Recovery Act) and to report on use of Recovery Act funds provided through this award. Information from these reports will be made available to the public.

(b) The reports are due no later than ten calendar days after each calendar quarter in which the recipient receives the assistance award funded in whole or in part by the Recovery Act.

(c) Recipients and their first-tier recipients must maintain current registrations in the Central Contractor Registration (<http://www.ccr.gov>) at all times during which they have active federal awards funded with Recovery

Act funds. A Dun and Bradstreet Data Universal Numbering System (DUNS) Number (<http://www.dnb.com>) is one of the requirements for registration in the Central Contractor Registration.

(d) The recipient shall report the information described in section 1512(c) of the Recovery Act using the reporting instructions and data elements that will be provided online at <http://www.FederalReporting.gov> and ensure that any information that is pre-filled is corrected or updated as needed.

REQUIRED USE OF AMERICAN IRON, STEEL, AND MANUFACTURED GOODS (COVERED UNDER INTERNATIONAL AGREEMENTS)—SECTION 1605 OF THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009

(a) *Definitions.* As used in this award term and condition—

Designated country —(1) A World Trade Organization Government Procurement Agreement country (Aruba, Austria, Belgium, Bulgaria, Canada, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea (Republic of), Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, and United Kingdom;

(2) A Free Trade Agreement (FTA) country (Australia, Bahrain, Canada, Chile, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Israel, Mexico, Morocco, Nicaragua, Oman, Peru, or Singapore); or

(3) A United States-European Communities Exchange of Letters (May 15, 1995) country: Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovak Republic, Slovenia, Spain, Sweden, and United Kingdom.

Designated country iron, steel, and/or manufactured goods —(1) Is wholly the growth, product, or manufacture of a designated country; or

(2) In the case of a manufactured good that consist in whole or in part of materials from another country, has been substantially transformed in a designated country into a new and different manufactured good distinct from the materials from which it was transformed.

Domestic iron, steel, and/or manufactured good —(1) Is wholly the growth, product, or manufacture of the United States; or

(2) In the case of a manufactured good that consists in whole or in part of materials from another country, has been substantially transformed in the United States into a new and different manufactured good distinct from the materials from which it was transformed. There is no requirement with regard to the origin of components or subcomponents in manufactured goods or products, as long as the manufacture of the goods occurs in the United States.

Foreign iron, steel, and/or manufactured good means iron, steel and/or manufactured good that is not domestic or designated country iron, steel, and/or manufactured good.

Manufactured good means a good brought to the construction site for incorporation into the building or work that has been—

(1) Processed into a specific form and shape; or

(2) Combined with other raw material to create a material that has different properties than the properties of the individual raw materials.

Public building and public work means a public building of, and a public work of, a governmental entity (the United States; the District of Columbia; commonwealths, territories, and minor outlying islands of the United States; State and local governments; and multi-State, regional, or interstate entities which have governmental functions). These buildings and works may include, without limitation, bridges, dams, plants, highways, parkways, streets, subways, tunnels, sewers, mains, power lines, pumping stations, heavy generators, railways, airports, terminals, docks, piers, wharves, ways, lighthouses, buoys, jetties, breakwaters, levees, and canals, and the construction, alteration, maintenance, or repair of such buildings and works.

Steel means an alloy that includes at least 50 percent iron, between .02 and 2 percent carbon, and may include other elements.

(b) *Iron, steel, and manufactured goods.* (1) The award term and condition described in this section implements—

(i) Section 1605(a) of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5) (Recovery Act), by requiring that all iron, steel, and manufactured goods used in the project are produced in the United States; and

(ii) Section 1605(d), which requires application of the Buy American requirement in a manner consistent with U.S. obligations under international agreements. The restrictions of section 1605 of the Recovery Act do not apply to designated country iron, steel, and/or manufactured goods. The Buy American requirement in section 1605 shall not be applied where the iron, steel or manufactured goods used in the project are from a Party to an international agreement that obligates the recipient to treat the goods and services of that Party the same as domestic goods and services. This obligation shall only apply to projects with an estimated value of \$7,443,000 or more.

(2) The recipient shall use only domestic or designated country iron, steel, and manufactured goods in performing the work funded in whole or part with this award, except as provided in paragraphs (b)(3) and (b)(4) of this section.

(3) The requirement in paragraph (b)(2) of this section does not apply to the iron, steel, and manufactured goods listed by the Federal Government as follows:

[*Award official to list applicable excepted materials or indicate "none"*]

(4) The award official may add other iron, steel, and manufactured goods to the list in paragraph (b)(3) of this section if the Federal Government determines that—

(i) The cost of domestic iron, steel, and/or manufactured goods would be unreasonable. The cost of domestic iron, steel, and/or manufactured goods used in the project is unreasonable when the cumulative cost of such material will increase the overall cost of the project by more than 25 percent;

(ii) The iron, steel, and/or manufactured good is not produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality; or

(iii) The application of the restriction of section 1605 of the Recovery Act would be inconsistent with the public interest.

(c) *Request for determination of inapplicability of section 1605 of the Recovery Act or the Buy American Act.* (1)(i) Any recipient request to use foreign iron, steel, and/or manufactured goods in accordance with paragraph (b)(4) of this section shall include adequate information for Federal Government evaluation of the request, including—

(A) A description of the foreign and domestic iron, steel, and/or manufactured goods;

(B) Unit of measure;

(C) Quantity;

(D) Cost;

(E) Time of delivery or availability;

(F) Location of the project;

(G) Name and address of the proposed supplier; and

(H) A detailed justification of the reason for use of foreign iron, steel, and/or manufactured goods cited in accordance with paragraph (b)(4) of this section.

(ii) A request based on unreasonable cost shall include a reasonable survey of the market and a completed cost comparison table in the format in paragraph (d) of this section.

(iii) The cost of iron, steel, or manufactured goods shall include all delivery costs to the construction site and any applicable duty.

(iv) Any recipient request for a determination submitted after Recovery Act funds have been obligated for a project for construction, alteration, maintenance, or repair shall explain why the recipient could not reasonably foresee the need for such determination and could not have requested the determination before the funds were obligated. If the recipient does not submit a satisfactory explanation, the award official need not make a determination.

(2) If the Federal Government determines after funds have been obligated for a project for construction, alteration, maintenance, or repair that an exception to section 1605 of the Recovery Act applies, the award official will amend the award to allow use of the foreign iron, steel, and/or relevant manufactured goods. When the basis for the exception is nonavailability or public interest, the amended award shall reflect adjustment of the award amount, redistribution of budgeted funds, and/or other appropriate actions taken to cover costs associated with acquiring or using the foreign iron, steel, and/or relevant manufactured goods.. When the basis for the exception is the unreasonable cost of the domestic iron, steel, or manufactured goods, the award official shall adjust the award amount or redistribute budgeted funds, as appropriate, by at least the differential established in 2 CFR 176.110(a).

(3) Unless the Federal Government determines that an exception to section 1605 of the Recovery Act applies, use of foreign iron, steel, and/or manufactured goods other than designated country iron, steel, and/or manufactured goods is noncompliant with the applicable Act.

(d) *Data.* To permit evaluation of requests under paragraph (b) of this section based on unreasonable cost, the applicant shall include the following information and any applicable supporting data based on the survey of suppliers:

Foreign and Domestic Items Cost Comparison

| Description | Unit of measure | Quantity | Cost (dollars)* |
|--|-----------------|----------|-----------------|
| <i>Item 1:</i> | | | |
| Foreign steel, iron, or manufactured good | | | |
| Domestic steel, iron, or manufactured good | | | |
| <i>Item 2:</i> | | | |
| Foreign steel, iron, or manufactured good | | | |
| Domestic steel, iron, or manufactured good | | | |

[List name, address, telephone number, email address, and contact for suppliers surveyed. Attach copy of response; if oral, attach summary.]

[Include other applicable supporting information.]

*[*Include all delivery costs to the construction site.]*

WAGE RATE REQUIREMENTS UNDER SECTION 1606 OF THE RECOVERY ACT

(a) Section 1606 of the Recovery Act requires that all laborers and mechanics employed by contractors and subcontractors on projects funded directly by or assisted in whole or in part by and through the Federal Government pursuant to the Recovery Act shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code.

Pursuant to Reorganization Plan No. 14 and the Copeland Act, 40 U.S.C. 3145, the Department of Labor has issued regulations at 29 CFR parts 1, 3, and 5 to implement the Davis-Bacon and related Acts. Regulations in 29 CFR 5.5 instruct agencies concerning application of the standard Davis-Bacon contract clauses set forth in that section. Federal agencies providing grants, cooperative agreements, and loans under the Recovery Act shall ensure that the standard Davis-Bacon contract clauses found in 29 CFR 5.5(a) are incorporated in any resultant covered contracts that are in excess of \$2,000 for construction, alteration or repair (including painting and decorating).

(b) For additional guidance on the wage rate requirements of section 1606, contact your awarding agency. Recipients of grants, cooperative agreements and loans should direct their initial inquiries concerning the application of Davis-Bacon requirements to a particular federally assisted project to the Federal agency funding the project. The Secretary of Labor retains final coverage authority under Reorganization Plan Number 14.

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

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

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

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

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

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.

City of El Paso (Hereinafter called the "Borrower") 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 Borrower 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 Borrower 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 Borrower by the Department of Energy, this assurance obligates the Borrower 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 Borrower for the period during which it retains ownership or possession of the property. In all other cases, this assurance obligates the Borrower for the period during which the Federal assistance is extended to the Borrower by the Department of Energy.

Employment Practices

Where a primary objective of the Federal assistance is to provide employment or where the Borrower's employment practices affect the delivery of services in programs or activities resulting from Federal assistance extended by the Department of Energy, the Borrower 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 Borrower shall require any individual, organization, or other entity with whom 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 Borrower agrees to compile and maintain information pertaining to programs or activities developed as a result of the Borrower'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

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.

City of El Paso (Hereinafter called the "Borrower") 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 Borrower 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 Borrower 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 Borrower by the Department of Energy, this assurance obligates the Borrower 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 Borrower for the period during which it retains ownership or possession of the property. In all other cases, this assurance obligates the Borrower for the period during which the Federal assistance is extended to the Borrower by the Department of Energy.

Employment Practices

Where a primary objective of the Federal assistance is to provide employment or where the Borrower's employment practices affect the delivery of services in programs or activities resulting from Federal assistance extended by the Department of Energy, the Borrower 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 Borrower shall require any individual, organization, or other entity with whom 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 Borrower agrees to compile and maintain information pertaining to programs or activities developed as a result of the Borrower'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 Borrower agrees to submit requested data to the Department of Energy regarding programs and activities developed by the Borrower from the use of Federal funds extended by the Department of Energy. Facilities of the Borrower (including the physical plants, buildings, or other structures) and all records, books, accounts, and other sources of information pertinent to the Borrower'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 Borrowers 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 Borrower 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 Borrower, 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 Borrower.

Borrower Certification

The Borrower 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 Borrower upon written request to DOE.)

~~Designated Responsible Employee~~
~~Name and Title (Printed or Typed)~~ ~~Telephone Number~~
~~Signature~~ ~~Phone~~

Contractor _____

Name of Organization _____

Telephone Number

City of El Paso _____

(915) 541-4855

Address _____

Authorized Official: Ms. Patricia Duran Adauto

Name and Title: Deputy City Manager

Telephone Number (915) 541-4855

Signature Patricia A Adauto

Date 12/24/09

ATTACHMENT C

Contract No. _____

**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 which 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.

City of El Paso
Organization Name

Ms. Patricia Duran Aduato, Deputy City Manager
Name and Title of Authorized Representative

Patricia A. Aduato
Signature

12/24/09
Date

ATTACHMENT D

Contract No. _____

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

Borrowers should refer to the regulations cited below to determine the certification to which they are required to attest. Borrowers 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 (Nonprocurement) 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 subrecipients 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 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
(GRANTEES OTHER THAN INDIVIDUALS)**

- (1) The grantee 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 grantee'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 grantee'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 of 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 grantee 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)

City of El Paso

2 Civic Center Plaza

El Paso, TX, 79901

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

ALTERNATE II (GRANTEES WHO ARE INDIVIDUALS)

- (1) The grantee 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.

SIMPSON-CRAIG AMENDMENT

Borrower 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 earning 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 Downpayment 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 Borrower, I hereby certify that the Borrower will comply with the above certifications.

City of El Paso _____
Name of Borrower

BE-AG1-2010 _____
Pre/Award Number and/or Project Name

Name, Title: Ms. Patricia Duran Adauto, Deputy City Manager
Printed Name and Title of Authorized Representative

Patricia Adauto
Signature

12/24/09

ATTACHMENT F
National Energy Policy Act Assurances as Award Terms
(Version August 2008)

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

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

I. Nondiscrimination Policies

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

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

II. Environmental Policies

You must:

- 1 Comply with applicable provisions of the Clean Air Act (42 U.S.C.740 I, et. seq.) and Clean Water Act (33 U.S.C. 1251, et. seq.), as implemented by Executive Order 11738 [3 CFR,1971-1975 Comp., p. 799] and Environmental Protection Agency rules at 40 CFR part 32, Subpart J.
- 2 Immediately identify to us, as the awarding agency, any potential impact that you find this award may have on:
 - a. The quality of the human environment, including wetlands, and provide any help we may need to comply with the National Environmental Policy Act (NEPA, at 42 U.S.C. 4321 et. seq.) and assist us to prepare Environmental Impact Statements or other environmental documentation. In such cases, you may take no action that will have an adverse environmental impact (e.g., physical disturbance of a site such as breaking of ground) or limit the choice of reasonable alternatives until we provide written notification of Federal compliance with NIEPA, as implemented by DOE at 10 CFR part 1021.

b. Flood-prone areas, and provide any help we may need to comply with the National Flood Insurance Act of 1968 and Flood Disaster Protection Act of 1973 (42 U.S.C. 4001 et. seq.), which require flood insurance, when available, for Federally assisted construction or acquisition in flood-prone areas, as implemented by DOE at 10 CFR part 1022.

c. Use of land and water resources of coastal zones, and provide any help we may need to comply with the Coastal Zone Management Act of 1972(16 U.S.C. 1451, et. seq.).

d. Coastal barriers along the Atlantic and Gulf coasts and Great Lakes' shores, and provide help we may need to comply with the Coastal Bathers Resource Act (16 U.S.C. 3501 et. seq.), concerning preservation of barrier resources.

e. Any existing or proposed component of the National Wild and Scenic Rivers system, and provide any help we may need to comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. 1271 et seq.).

f. Underground sources of drinking water in areas that have an aquifer that is the sole or principal drinking water source, and provide any help we may need to comply with the Safe Drinking Water Act(42 U.S.C. 300h-3).

3 Comply with applicable provisions of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821-4846), as implemented by the Department of Housing and Urban Development at 24 CFR part 35. The requirements concern lead-based paint in housing owned by the Federal Government or receiving Federal assistance.

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

III. Live Organisms

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

2 Animals and plants.

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

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

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

IV. Other National Policies

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

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

3. **Lobbying.**

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

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

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

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

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

6. **Native American graves protection and repatriation.** If you control or possess Native American remains and associated funerary objects, you must comply with the requirements of 43 CFR part 10, the Department of the Interior implementation of the Native

American Graves Protection and Repatriation Act of 1990 (25 U.S.C., chapter 32).

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

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

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

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

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

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

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

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

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

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

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

a. Any property listed or eligible for listing on the National Register of Historic Places that will be affected by this award, and provide any help we may need, with respect to this award, to comply with Section 106 of the National Historic Preservation Act of 1966 (16 U.S.C. 4700, as implemented by the Advisory Council on Historic Preservation regulations at 36 CFR part 800 and Executive Order 11593, "Identification and Protection of Historic Properties," [3 CFR, 1971-1975 Comp., p. 559].

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

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

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

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

15. **Trafficking in Persons**

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

- 1. You as the recipient, your employees, subrecipients under this award, and subrecipients' employees may not—

- i. Engage in severe forms of trafficking in persons during the period of time that the award is in effect;
- ii. Procure a commercial sex act during the period of time that the award is in effect;

or

- iii. Use forced labor in the performance of the award or subawards under the award.
2. We as the Federal awarding agency may unilaterally terminate this award, without penalty, if you or a subrecipient that is a private entity —

- i. Is determined to have violated a prohibition in paragraph a. 1 of this award term;

or

- ii. Has an employee who is determined by the agency official authorized to terminate the award to have violated a prohibition in paragraph a.1 of this award term through conduct that is either—

- A. Associated with performance under this award; or

- B. Imputed to you or the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR part 180, "OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," as implemented by our agency at 2 CFR part 901.

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

1. Is determined to have violated an applicable prohibition in paragraph a. 1 of this award term; or

2. Has an employee who is determined by the agency official authorized to terminate the award to have violated an applicable prohibition in paragraph a. 1 of this award term through conduct that is either—

- i. Associated with performance under this award; or

- ii. Imputed to the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR part 180, "OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," as implemented by our agency at 2 CFR part 901.

c. Provisions applicable to any recipient.

1. You must inform us immediately of any information you receive from any source alleging a violation of a prohibition in paragraph a.1 of this award term.

2. Our right to terminate unilaterally that is described in paragraph a.2 orb. of this section:

- i. Implements section 106(g) of the Trafficking Victims Protection Act of 2000 (TVA), as amended (22 U.S.C. 7104(g)), and

- ii. Is in addition to all other remedies for noncompliance that are available to us under this award.

3. You must include the requirements of paragraph a. 1 of this award term in any subaward you make to a private entity.

d. Definitions. For purposes of this award term:

1. "Employee" means either:

- i. An individual employed by you or a subrecipient who is engaged in the performance of the project or program under this award; or

- ii. Another person engaged in the performance of the project or program under this award and not compensated by you including, but not limited to, a volunteer or individual whose services are contributed by a third party as an in-kind contribution toward cost sharing or matching requirements.

2. "Forced labor" means labor obtained by any of the following methods: the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.
3. "Private entity":
 - i. Means any entity other than a State, local government, Indian tribe, or foreign public entity, as those terms are defined in 2 CFR 175.25.
 - ii. Includes:
 - A. A nonprofit organization, including any nonprofit institution of higher education, hospital, or tribal organization other than one included in the definition of Indian tribe at 2 CFR 175.25(b).
 - B. A for-profit organization.
4. "Severe forms of trafficking in persons," "commercial sex act," and "coercion" have the meanings given at section 103 of the TWA, as amended (22 U.S.C. 7102).

V. National Policy Requirements for Subawards.

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

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

PA Adauto

SUBRECIPIENT:

By: Ms. Patricia Duran Adauto, Deputy City Manager
[Printed Name and Title]

Date: 12/24/09

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

SUBCONTRACTOR

By: _____
[Printed Name and Title]

Date: _____

ATTACHMENT G, Loan No. _____
Contract No. _____
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 Grantee 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 grant exceeds \$10,000.

- (a) The Grantee 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 Grantee 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 Grantee shall furnish to the Government, when requested by the Contracting Officer, all evidence and information in possession of the Grantee pertaining to such suit or claim. Such evidence and information shall be furnished at the expense of the Government except where the Grantee has agreed to indemnify the Government.
- (c) This clause shall be included in all contracts and subgrants under this grant.

REPORTING OF ROYALTIES (41 CFR 9-9.110)

If this grant is in an amount which exceeds \$10,000 and if any royalty payments are directly involved in the grant or are reflected in the grant price to the Government, the Grantee agrees to report in writing to the Patent Counsel (with notification by Patent Counsel to the Contracting Officer) during the performance of this grant and prior to its completion of final settlement the amount of any royalties or other payments paid or to be paid by it directly to others in connection with the performance of this grant together with the names and addresses of licensors to whom such payments are made and either the patent numbers involved or such other information as will permit the identification of the patents or other basis on which the royalties are to be paid. The approval of DOE of any individual payments or royalties shall not stop the Government at any time from contesting the enforceability, validity or scope of, or title to, any patent under which a royalty or payments are made.

RIGHTS IN TECHNICAL DATA (SHORT FORM)

- (a) Definitions. The definitions of terms set forth in DEAR 927.401 apply to the extent these terms are used herein.
- (b) Allocation of Rights.
 - (1) The Government shall have:
 - (i) Unlimited rights in technical data first produced or specifically used in the performance of this grant;
 - (ii) The right of the Contracting Officer or his representatives to inspect, at all reasonable times up to three years after final payment under this grant, all technical data first produced or specifically used in the grant (for which inspection the Grantee or its contractor or subgrantee 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 Grantee 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 grant provided the date requirements of this grant have been met as of the date of the private use of such data. The Grantee 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 Grantee 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 Grantee 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 grant by the Grantee, 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 Grantee in the performance of this grant but which is incorporated in the material furnished under the grant, provided that such license shall be only to the extent the Grantee now has, or prior to completion or close-out of the grant, may acquire the right to grant such license without becoming liable to pay compensation to others solely because of such grant.

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

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

It is agreed that as a condition of award of this grant 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 grant or modification is based.

City of El Paso
Organization Name

Ms. Patricia Duran Adauto, Deputy City Manager
Name and Title of Authorized Representative

PA Adauto
Signature

12/24/09
Date

ATTACHMENT H
AMERICAN RECOVERY & REINVESTMENT ACT--RECIPIENT AFFIDAVIT

This Affidavit must be signed and sworn (notarized) and returned with all Applications for this RFA

I, Joyce A. Wilson, an authorized representative of: the City of El Paso, a [person, sole proprietorship, partnership, corporation, limited liability company, nonprofit organization, governmental entity, political subdivision, or other entity] (circle one) that is receiving American Recovery and Reinvestment Act of 2009 (ARRA or the Act) funding, hereby swear and affirm that, to the best of my knowledge, internal controls, processes and procedures have been designed and implemented to help ensure that the recipient and its use of these funds complies with the following: applicable state law; federal law, including federal reporting requirements under Section 1512 of the Act, if applicable; rules; regulations; and other relevant guidance. I further swear and affirm that all of the statements made and information provided herein, including statements made and information provided in any attachments are true, complete, and correct, to the best of my knowledge.

I understand that I am receiving ARRA funding from Texas Comptroller of Public Accounts, a [state agency, institution of higher education, governmental entity, political subdivision, or other entity] (circle one).

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

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

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

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

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

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

City of El Paso

Recipient Name

Patricia D. Adauto

Affiant Signature

Ms. Patricia Duran Adauto

Full Name

Deputy City Manager

Title

Date

Sworn and subscribed before me by the said

(Printed Name of Recipient's Authorized Representative)

this 24 day of December, 2009.

Notary Public, State of Texas

Notary's printed name: Maria Melendez My commission expires: 9-22-2012 (Seal)



ATTACHMENT I
Contract No.

SUBCONTRACTING PROVISIONS; MANDATORY FLOWDOWN PROVISION

Grantee, if subcontracting any of its performance hereunder, shall legally bind subgrantees to perform and make such subgrantees subject to all the duties, requirements, and obligations of Grantee under this Agreement. Grantee shall be jointly and severally liable for all performances under this Agreement, including, but not limited to, the performance of its subgrantees 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 Section XIX of the Agreement.

Grantee 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 subgrantees under this Agreement. In no event shall any provision of this Paragraph, including, but not limited to, the requirement that Grantee obtain the prior approval of Agency on Grantee's proposed subcontracts, be construed as relieving Grantee 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 Grantee. Grantee 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, Grantee 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 Grantee and the Subgrantee/Subrecipient, I hereby certify that Grantee and Subgrantee/Subrecipient will comply with the above requirements.

City of El Paso
GRANTEE

Patricia D. Adauto
SUBGRANTEE/SUBRECIPIENT:

By: Ms. Patricia Duran Adauto, Deputy City Manager
[Printed Name]
[Title]

Date: 12/24/09

- (iii) U.S. Congressional District;
- (iv) the state senatorial district; and
- (v) the state house district;

c. Project Objective: A description of the overall purpose and expected outputs and outcomes or results of the Grant Agreement, including significant deliverables and, if appropriate, units of measure.

B. MONTHLY REPORT. On 25th day of each calendar month, the Grantee shall submit a report in the format required by the Comptroller containing the following information:

I. Grantee Identification:

- a. Grantee name: Provide the name of the Grantee as it appears on the Grant Agreement.
- b. Report Contact: Provide the name of person preparing and submitting the report and contact information including telephone number and email address.
- c. Award Number: Provide the grant/award number (if any) assigned to the Grantee by the Agency.
- d. Grant Dates: Provide the date the Grant Agreement was signed (mm/dd/yyyy) and the performance period established in the Grant Agreement during which sponsorship begins and ends.
- e. Changes to the Initial Information Report: Provide any amendments or changes to the information provided in the Initial Information Report.

II. Grant Award/Budget Information:

- a. Total Amount of Grant: Provide the anticipated total amount of cash to be disbursed to Grantee by the expiration date of the Grant Agreement, respectively.
- b. Amount of Grant Funds Received: Provide the cumulative amount of cash received by the Grantee as of the reporting period end date.
- c. Amount of Grant funds Disbursed: Provide the cumulative amount of cash disbursed by the Grantee as of the reporting period end date.
- d. Cost Status: Show funds budgeted and funds disbursed for each budget item. If cost sharing is required break out by Comptroller share, Grantee share, and total costs.

III. Project Information:

- a. Project Name: Provide the brief descriptive title of the project or activity as identified in the Grant Agreement.
- b. Project Objective: A description of the overall purpose and expected outputs and outcomes or results of the Grant Agreement, including significant deliverables and, if appropriate, units of measure.
- c. Schedule Status: List milestones, anticipated completion dates and actual completion dates. If you submitted a project management plan with your application, you must use this plan to report schedule and budget variance.
- d. Progress Evaluation: Provide a brief description of overall progress on each project objective (such as: Not started; Less than 50% completed; Completed 50% or more; Fully Completed) and a comparison of the actual accomplishments with the goals and objectives established for the period and reasons why the established goals were not met.
- e. Project Efforts: Provide a brief narrative of any changes in approach or aims and reasons for change (remember significant changes to the objectives and scope require prior approval by the contracting officer), actual or anticipated problems or delays and actions taken or planned to resolve them; and any absence of key personnel or changes in consortium/teaming arrangement.
- g. Product or technology transfer activities: A description of any product produced or technology transfer activities accomplished during this reporting period, such as:
 - (i) Publications (list journal name, volume, issue); conference papers; or other public releases of results;
 - (ii) Web site or other Internet sites that reflect the results of this project;
 - (iii) Networks or collaborations fostered;
 - (iv) Technologies/Techniques;
 - (v) Inventions/Patent Applications
 - (vi) Other products, such as data or databases, physical collections, audio or video, software or netware, models, educational aid or curricula, instruments or equipment.

IV. Job Created/Retained:

a. Definitions: In providing information for Jobs Created/Retained, please use the following definitions:

“Jobs created” means those new positions created and filled, or previously existing unfilled positions that are filled, as a result of funding provided pursuant to this Grant Agreement. A job reported as a job created cannot be also reported as a job retained.

“Jobs retained” means those previously existing filled positions that are retained as a result of funding provided pursuant to this Grant Agreement. This description may rely on job titles, broader labor categories, or the contractor's existing practice for

describing jobs as long as the terms used are widely understood and describe the general nature of the work. A job reported as a job retained cannot be also reported as a job created.

"The United States and outlying areas" means the 50 States, the District of Columbia, the Commonwealths of Puerto Rico, and the Northern Mariana Islands, the Territories of American Samoa, Guam, and the U.S. Virgin Islands; and the Minor outlying islands of Baker, Howland, Jarvis, Midway, and Navassa Islands; Johnston, Palmyra, and Wake Atolls, and Kingman Reef.

b. Jobs Created:

- (i) The number of jobs created in the United States and outlying areas;
- (ii) a brief description of the types of jobs created; and
- (iii) the anticipated or likely duration of the jobs created.

c. Jobs Retained:

- (i) The number of jobs retained in the United States and outlying areas;
- (ii) a brief description of the types of jobs retained; and
- (iii) the anticipated or likely duration of the jobs retained.

V. Technical Measures:

- a. Number of alternative fuel vehicles purchased;
- b. Number of conventional vehicles converted to alternative fuel use;
- c. Number of new alternative refueling stations emplaced;
- d. Number of new carpools and vanpools formed;
- e. Number of energy-efficient traffic signals installed; and
- f. Number of street lane-miles for which synchronized traffic signals were installed.

C. FINAL REPORT. No later than 30 days following the grant ending date, the Grantee shall submit a Final Report in the format required by the Comptroller containing all the information required for the Monthly Report cumulative through the last day of the grant performance period.

2. Grantee shall require any of its Sub-Grantees or subcontractors that are remitted any funds provided under this agreement to submit the reports identified in this attachment substituting the word "Grantee" and replacing it with Sub-grantee or subcontractor, as appropriate.

3. Failure to comply with the requirements of this attachment may result in termination of the grant award and the Grantee being ineligible for future grants.

4. The form and substance of these reporting requirements may be amended by the Comptroller at any time.

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

City of El Paso

GRANTEE:

By: Ms. Patricia Duran Adauto, Deputy City Manager
[Printed Name and Title]

Date:

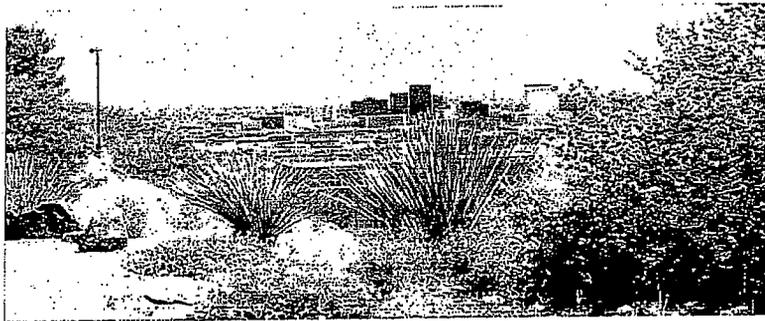
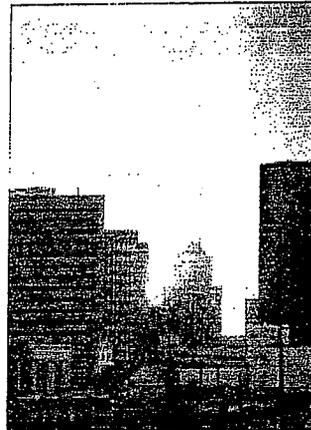
12/24/09

Appendix A – Preliminary Energy Audit

Preliminary Energy Assessment

for

The City of El Paso



Submitted:

December 23, 2009

Revised:

March 17, 2010

Submitted by:

Johnson Controls, Inc.
1320 Goodyear Drive
El Paso, Texas 79926

Submitted to:

The City of El Paso
2 Civic Center Plaza
El Paso, Texas 79901

TABLE OF CONTENTS

Section 1 – Table of Contents1

Section 2 – Executive Summary2

Section 3 – Base Year Energy Consumption & Costs4

Section 4 – Electric Rate Schedule Analysis.....5

Section 5 – ECM Recommendations.....7

Section 6 – Analyst Certification9



Executive Summary

In August 2008, the City of El Paso entered into a Phase I Energy Savings Performance Contract (ESPC) project with Johnson Controls (JCI) to implement infrastructure improvements for 53 facilities and 6,600 traffic signals. Project included solar heating systems for seven indoor pools. Construction on the Phase I project is scheduled to be completed in March 2010. Table 1 shows the final financials for the Phase I project:

| Cost (\$) | Annual Savings (\$) | Electric Savings | Utility Rebate (\$) |
|------------|---------------------|------------------|---------------------|
| 14,767,054 | 1,573,402 | 45% | 292,000 |

In October 2009, the City made a request for JCI to develop a Preliminary Energy Assessment (PEA) report for street light opportunities. These opportunities were analyzed during the Phase I audit but not included in the construction project.

The results of this report are based upon preliminary audits, development of site-specific Energy Conservation Measures (ECM's), and estimation of utility cost savings as well as preliminary, turn-key engineering design and implementation costs.

The initial estimate of the potential annual utility savings opportunity is **\$283,000**.

Co-Authored Solutions

JCI develops solutions *with* its customer, not *for* its customer. This ensures that concerns and requirements of the City of El Paso are identified at each step along the performance contracting process. This proposal was developed in conjunction with the Departments of General Services and Streets. Key personnel involved were Mr. Stuart Ed, Mr. Marty Howell, Mr. Daryl Cole, Mr. Larry Nichols, Mr. Juan Cruz and other staff members within the various departments.

Baseline Energy Summary

Table 2 summarizes the annual energy history provided by the City of El Paso. A more thorough survey of data and usage will be required during the detailed study to ensure accurate information is obtained and utilized.

| Site | Qty | Cond. Area (SF) | Annual Electric (kWh) | Annual Electric (\$) |
|---------------|-------|-----------------|-----------------------|----------------------|
| Street Lights | 3,000 | NA | 3,983,040 | 462,257 |



Recommendation

Based on the analysis summarized in this PEA, JCI recommends that the City of El Paso proceed with the Detailed Audit phase. The preliminary results clearly indicate an excellent opportunity to develop a self-funded project.

Table 3 - Project Financial Summary

| ECM # | Scope of Work | Simple Payback (Years) | Cost (\$) | Annual Electric Savings (kWh) | Annual Electric Savings (\$) |
|-------|--------------------------------------|------------------------|------------------|-------------------------------|------------------------------|
| 1 | Street Light Upgrade - 3000 Fixtures | 8.3 | 2,360,000 | 2,125,440 | 283,000 |
| | Engineering Audit | | 215,000 | | |
| | Final Engineering | | 120,000 | | |
| | Metering & Monitoring | | 22,500 | | |
| | Construction Management & Training | | 92,500 | | |
| | Performance & Payment Bonds | | 14,000 | | |
| | Totals | 10.0 | 2,824,000 | 2,125,440 | 283,000 |

As shown in Table 1, JCI has been successful in acquiring utility rebates on behalf of the City for the ESPC Phase I project. JCI will research all opportunities to secure additional utility rebates and grants for the scope of work of this project.

The implementation of this self-funded project will result in infrastructure improvements, substantially reduced operating costs and reduced air pollution. Project electric savings of 53 % will assist the City in meeting the Senate Bill 12 mandate requiring the City to reduce electrical consumption by 5% annually from 2007 to 2013.



Base Year Energy Consumption & Costs

Street Lights

City of El Paso has approximately 23,700 street lights which are billed by El Paso Electric (EPE) through 33 different account numbers. EPE monthly charges vary depending on lamp watts, fixture owner, pole owner and maintenance responsibilities.

The following provides the base year electric consumption & cost summary for 3,000 street lights selected for this project.

Table 4 - Street Lights Base Year Electric Summary

| Street Light Type | EPE Account # | Qty | Fixture Watts (Ea) | Lamp Watts (Ea) | Annual Electric (kWh) | Annual Electric (\$) |
|-------------------|---------------|-------|--------------------|-----------------|-----------------------|----------------------|
| 100W HPS | 2045-8012-01 | 1,000 | 124 | 100 | 535,680 | 81,129 |
| 250W HPS | 2045-8086-01 | 1,000 | 313 | 250 | 1,352,160 | 156,381 |
| 400W HPS | 2045-8058-01 | 1,000 | 485 | 400 | 2,095,200 | 224,747 |
| Totals | | | | | 3,983,040 | 462,257 |

For the EPE Account #'s shown in Table 4, the City owns the fixtures and the poles and EPE maintains the fixtures.

The annual electric consumption & costs shown in Table 4 are calculated based on the EPE rate schedule & 1,000 street lights for each type.



Electric Rate Schedule Analysis

For this PEA, only EPE Rate Schedules 8 is applicable.

Street light accounts are billed according to Rate Schedule 8 whereas the street lights are not metered. The monthly charges vary depending on lamp watts, fixture owner, pole owner and maintenance responsibilities.

Rate 8 is the governmental street lighting and signal service rate. This rate applies to mercury vapor and high pressure sodium vapor street lights, freeway lighting and traffic signals.



Rate Tariff – Rate Schedule 8

Summary of Billing Component Charges

| | |
|--------------------------|--|
| Number of Lamps | Varies per account |
| Lamp Charge | Depends on type of lamp and varies per account |
| Run Hours | 1000 hrs/month* |
| Secondary Fuel Charge | Adjusted for cost of fuel |
| Secondary Fuel Surcharge | Adjusted for cost of fuel |
| Applicable Taxes | Tax Exempt |

*This quantity is set by the local utility

For this PEA, the following street light electric charges were utilized for savings calculations:

| Street Light Type | Monthly Base Charge (\$ per Fixture) | Secondary Fuel Charge (\$/kWh) | Secondary Fuel Surcharge (\$/kWh) |
|-------------------|--------------------------------------|--------------------------------|-----------------------------------|
| Existing 100W HPS | 4.91 | 0.03473 | 0.00673 |
| Existing 250W HPS | 8.36 | 0.03473 | 0.00673 |
| Existing 400W HPS | 11.49 | 0.03473 | 0.00673 |
| New 60W Fixture | 1.50 | 0.03473 | 0.00673 |
| New 150W Fixture | 3.00 | 0.03473 | 0.00673 |
| New 220W Fixture | 4.00 | 0.03473 | 0.00673 |

Note: For new light fixtures, City will be responsible for maintenance



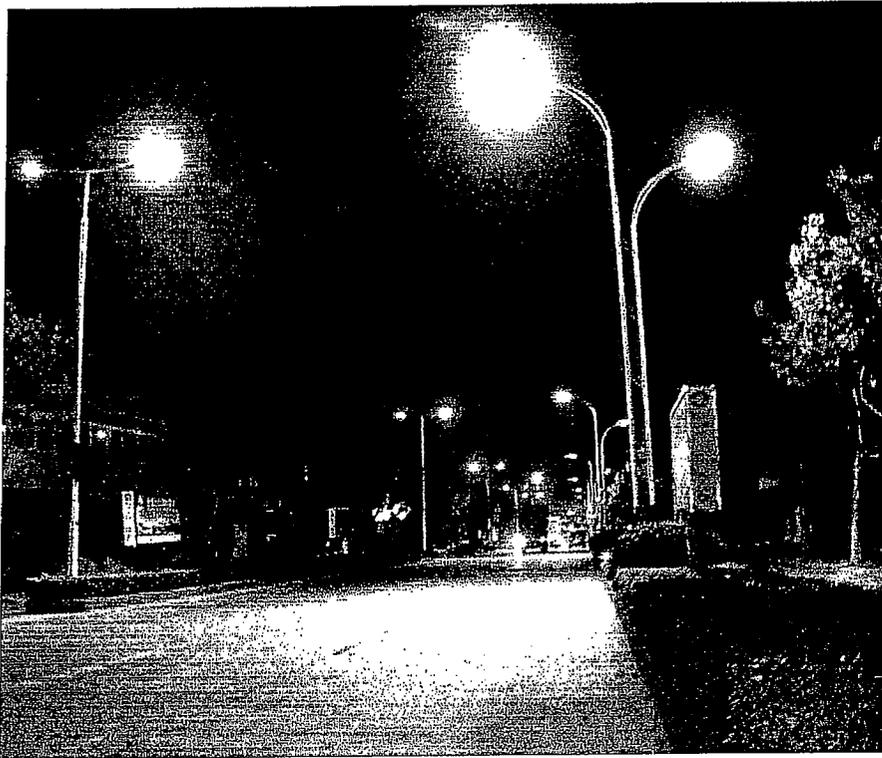
Intellectual property © 2010, Johnson Controls. Confidential. All rights reserved.



ECM Recommendations

ECM #1: Street Light Upgrades

This ECM will include the replacement of existing high pressure sodium (HPS) street light fixtures with new induction or LED fixtures.



Side by side comparison – HPS (left side) vs. Induction (right side)

Summary Data

| | |
|-------------------------------|-----------|
| Annual Electric Savings (kWH) | 2,125,440 |
| Annual Electric Savings (\$) | 283,000 |
| Cost (\$) | 2,360,000 |
| Simple Payback (Years) | 8.3 |



Intellectual property © 2010, Johnson Controls. Confidential. All rights reserved.



Scope of Work

The following is a summary of the new street light fixtures:

| Existing Street Light Type | New Street Light Type | Qty |
|----------------------------|-----------------------|-------|
| 100W HPS | 60W Induction | 1,000 |
| 250W HPS | 150W Induction | 1,000 |
| 400W HPS | 220W Induction | 1,000 |

New street light fixtures will include:

- New dark sky compliant cobra fixtures with photocells
- Induction or LED technology
- Stepdown transformers where required



The following will be analyzed further during the Detailed Audit:

- Induction & LED technology
- Sample installations to assist with final new fixture selections
- Retrofit existing fixtures to reduce costs
- Grouping of stepdown transformers
- Lighting distribution improvements
- City vs. EPE maintenance costs
- Available utility rebates & grants

Operation & Maintenance

City will be responsible maintenance of new street light fixtures. Expected life of new lamps is 15 years and induction lamps include a 10-year product warranty.



Intellectual property © 2010, Johnson Controls. Confidential. All rights reserved.



Analyst Certification

The undersigned certifies that the data and the cost reduction estimates presented are factual, accurate, reasonable and in accordance with generally accepted engineering practices to the best of the analyst's knowledge and that this knowledge is based on the analyst's on-site investigation of the facilities involved.

Robert Romine
Signature

3/17/10
Date

ENGINEER
Title



SAMPLE LOAN AGREEMENT

This document would be executed if a loan award is made.

NOTE - Items in red would be completed by the Comptroller's office upon agreement execution.

COMPTROLLER OF PUBLIC ACCOUNTS
STATE ENERGY CONSERVATION OFFICE
LBJ State Office Building
111 East 17th Street, Room 1114
AUSTIN, TEXAS 78774-0100

**NOTICE OF LOAN FUND AVAILABILITY (NOLFA)
AND
REQUEST FOR APPLICATION (RFA)**

NOLFA/RFA No. BE-AG2-2010

FOR

**BUILDING EFFICIENCY AND RETROFIT
REVOLVING LOAN PROGRAM**

OF THE

TEXAS COMPTROLLER OF PUBLIC ACCOUNTS

SUSAN COMBS
COMPTROLLER OF PUBLIC ACCOUNTS
STATE ENERGY CONSERVATION OFFICE
111 East 17th Street
AUSTIN, TEXAS 78774
(512) 305-8673

March 5, 2010

PART I GENERAL INFORMATION

1.0 Background

The Comptroller of Public Accounts (Comptroller) issues this second round of Notice of Loan Funding Availability (NOLFA) and Request for Applications (RFA No. BE-AG2-2010) to provide approximately \$41 million in ARRA funds in the form the Building Efficiency and Retrofit Program revolving loan fund to increase the efficiency of governmental buildings and facilities throughout the State. Such activities are being pursued in order to reduce energy use; reduce energy costs; reduce greenhouse gas emission reductions and to install additional renewable energy technologies in the State. If awarded under the terms of this NOLFA/RFA, loans are anticipated to have a maximum project cap of up to ten million dollars (\$10,000,000) to perform energy efficiency and retrofit activities through an Energy Savings Performance Contract at a low interest rate of 2% and, depending on the project, a payback term of either 10 or 15 years.

The American Recovery and Reinvestment Act of 2009, Public Law, PL 111-5 (2009) (ARRA) was passed to provide funds to stimulate economic recovery, investment and creation of new jobs and opportunities for all Americans including Texans. The U.S. Department of Energy (DOE) is responsible for distribution and management of ARRA funds to states through State Energy Offices created pursuant to 42 U.S.C. 6321. The Comptroller's Stimulus Program has applied for and the Comptroller has been awarded ARRA funds to support the Comptroller's State Energy Program (SEP) for energy efficiency, renewable energy, energy assurances and other initiatives, which are managed by the State Energy Conservation Office (SECO). The Comptroller and SECO specifically reserve the right to make more than one award of a loan (s) under the terms of this Notice of Loan Fund Availability (NOLFA) and Request for Applications (RFA).

1.1 Definitions

Eligible Governmental Entities may apply for loans under the Building Efficiency and Retrofit Program, which is a revolving loan program, administered by the Comptroller and State Energy Conservation Office (SECO). The Building Efficiency and Retrofit Program's revolving loan fund provides an ongoing revenue source for funding energy efficiency improvement projects at a reduced interest rate, and is designed to assist those governmental entities with financing for their energy cost reduction efforts. The funds are awarded on a competitive basis in which an eligible governmental entity may apply through a Request for Application (RFA) administered by the Comptroller of Public Accounts (CPA) office. Applicants must meet eligibility requirements, be able to comply with and expend ARRA grant funds, if awarded, in accordance with the Comptroller's and ARRA requirements. Applicants receiving an ARRA grant award, if any, ("Borrower/Grantee") as a result of this NOLFA/RFA, must be able to begin performance on or about February 1, 2010, or on a date agreeable to the Comptroller.

1.2 Authority

The issuance of this NOLFA/RFA is authorized pursuant to Chapters 403, 447, and 2305 of the Texas Government Code; ARRA; 42 U.S.C. §§ 6321, *et seq.*, and 10 CFR Parts 420 and 600; and the Comptroller Program Rules, as amended.

1.3 Comptroller's Rights

The Comptroller and the State of Texas may, in their sole discretion, exercise the following rights including but not limited to:

- cancellation of the NOLFA/RFA;
- suspension of the NOLFA/RFA process and issuance of NOLFA/RFA addenda, if necessary;
- rejection, in whole or in part, of any and all applications received in response to this NOLFA/RFA;
- waiver of administrative deficiencies and/or minor technicalities in applications received;
- utilization of any and all ideas submitted in the applications received;
- directing any Applicant to submit application modifications addressing subsequent NOLFA/RFA amendments, if applicable;
- elimination of any requirements that are not met by all Applicants upon notice to all parties submitting applications;
- with the concurrence of the Applicant, making typographical corrections to applications;
- with the written concurrence of the Applicant, changing computational error;
- requesting Applicants to clarify their applications and/or submit additional information pertaining to their applications;
- requesting discussions of applications with any Applicant; and
- selection of one or more qualified applicants to this NOLFA/RFA without discussion of applications with the respective Applicants.

The decision of the Comptroller, or its designee, with regard to the above shall be administratively final. The Comptroller will not reimburse Applicants for any cost related to application preparation or submission. Applicants are responsible for any expense related to the preparation and submission of an Application. All applications shall become a part of the Comptroller's official Stimulus Grant Program files and shall be available for public inspection, if an award is authorized.

1.4 Borrower/Grantee Obligations

The Borrower shall be liable, both individually and severally, for, and the Comptroller shall look solely to Borrower for compliance with all the requirements of this NOLFA/RFA and the resulting Loan Agreement if any. Borrower shall be the sole point of contract responsibility and shall not be relieved of the non-compliance of any subcontractor.

1.5 Schedule of Events

The Comptroller anticipates that the selection of one or more Borrowers and execution of the Loan Agreements, if any, shall proceed according to the following schedule:

| | |
|------------------------------|--|
| <u>March 5, 2010</u> | Issuance of NOLFA/RFA (after 10:00 a.m. Central Standard Time [CST]) |
| <u>March 12, 2010</u> | Deadline for Non-Mandatory Letters of Intent to Apply (2:00 p.m. CST) |
| <u>March 12, 2010</u> | Deadline for Submission of Questions (2:00 p.m. CST) |
| <u>March 19, 2010</u> | Release of Official Response to Questions (or as soon thereafter as practical) |
| <u>April 22, 2010</u> | Deadline for Submission of Applications (2:00 p.m. CST) <u>(Late applications will not be considered. Please review the delivery details in section 1.8 Deadline for Submission of Applications.)</u> |
| | Loan Agreement Execution (or as soon thereafter as practical) |

The above dates are subject to change. Notices of changes to the Schedule to Events will be posted on the Electronic State Business Daily, located at: <http://esbd.cpa.state.tx.us>; and may also be posted on the SECO Stimulus Website.

1.6 Comptroller Issuing Office

Inquiries concerning this NOLFA/RFA must be in writing and received by the Issuing Office no later than 2:00 p.m. (CST) on Friday, March 12, 2010. Questions may be submitted by fax to (512) 463-3669. Telephone inquiries will not be accepted. The Comptroller will post its responses to questions received by the deadline electronically on the ESD at: (<http://esbd.cpa.state.tx.us>) on or about March 19, 2010, or as soon thereafter as practical.

Inquiries concerning this NOLFA/RFA must be in writing and directed to:

William Clay Harris
Assistant General Counsel, Contracts
Comptroller of Public Accounts
PO Box 13528, Room 201
Austin, Texas 78711-3528

1.7 Non-Mandatory Letters of Intent

Applicants should submit a non-mandatory, non-binding Letter of Intent to apply to the Issuing Office no later than 2:00 p.m. (CST) on Friday, March 12, 2010. For this NOLFA/RFA, submission of a Letter of Intent is NOT Mandatory and is NOT a prerequisite to submitting an application. A Letter of Intent should clearly identify the name, address, fax number, e-mail address for individuals that submit an application on behalf of the Applicant and it should be signed by an authorized signatory. Non-mandatory letters of intent must be addressed to the Assistant General Counsel, Contracts, at the address provided in the foregoing section, above. Letters of Intent should be submitted via fax to (512) 463-3669.

1.8 Deadline for Submission of Applications

A fully-signed original and fifteen (15) complete copies of each application must be submitted to and received by the Issuing Office no later than 2:00 p.m. (CST), on Thursday, April 22, 2010. The Comptroller prefers hand or overnight delivery to:

**William Clay Harris
Assistant General Counsel, Contracts
Comptroller of Public Accounts
Issuing Office
111 E. 17th Street, Room 201
Austin, Texas 78774
Telephone: 512-305-8673**

Delivery persons must arrange for access to the Issuing Office in advance with the Comptroller Security Desk on the ground floor of the LBJ Building. Delivery persons will not be allowed to board the elevators to reach the Issuing Office without being escorted by an employee of the Issuing Office. Delivery persons should arrive at the Comptroller Security Desk no later than 40 minutes before the deadline in order to ensure escort and delivery prior to the deadline. Delivery persons must carry and present a valid and current photo identification card to the Security Desk in order to receive an escort. Proposals arriving at the Comptroller Security Desk which are not in sealed and properly labeled boxes or which arrive after the deadline under this RFP will not be accepted by the Comptroller and the delivery person will not be allowed to deliver them to the Issuing Office or leave them with the Comptroller.

However, if sending an application by regular mail, certified mail, or express mail, it is incumbent upon the Applicant to allow for sufficient time to permit delivery by the U.S. Postal Service and by mail services internal to the Comptroller. The Applicant is solely responsible for allowing sufficient time for the timely arrival of the application in the Issuing Office. The Applicant must allow for the time taken by the U.S. Postal Service or any other delivery service and the Comptroller internal mail services to deliver the application to the Issuing Office. Applications sent via U. S. Postal Service must be sent to:

**William Clay Harris
Assistant General Counsel, Contracts
Comptroller of Public Accounts
Issuing Office
P.O. Box 13528
111 East 17th Street, Room 201
Austin, Texas 78711-3528
Telephone: 512-305-8673**

All applications must be received in the Issuing Office by the required deadline. Time and date stamp of the Issuing Office shall be the final determinant of whether an application has been timely received by the Comptroller.

Faxed and E-mailed applications are not acceptable; late applications may not be considered and will be returned unopened.

PART II
GENERAL APPLICATION REQUIREMENTS

2.0 General Application & Submission Requirements

Applications must be complete and must respond to the Comptroller's Submission Requirements and all attachments must be signed where applicable and all documentation organized as required in Section 2.2 below to be considered. Applications not organized in this manner may be disqualified. Applications must be complete. Failure to provide all required information may also result in disqualification.

Applications must be labeled with NOLFA/RFA No. BE-AG2-2010; NOTICE OF LOAN FUND AVAILABILITY (NOLFA) AND REQUEST FOR APPLICATIONS (RFA) FOR BUILDING EFFICIENCY AND RETROFIT REVOLVING LOAN PROGRAM

It is the Applicant's responsibility to appropriately mark and deliver the application **to the Issuing Office** by the specified time and date. Pages shall be numbered and contain an organized, paginated table of contents corresponding to the section and pages of the application.

2.1 Organization of Applications

Applications will be comprised of the following documents and must be signed where applicable and submitted in the following order:

- A) Transmittal Letter
- B) Executive Summary
- C) Table of Contents
- D) Applicant Identifying Information
- E) Identifying Information and Statements required for all Subcontracts
- F) Work Breakdown Structure
- G) Preliminary Energy Audit (PEA) and/or Utility Audit Report (UAR)
- H) Attachment A: Loan Approval Statement;
- I) Attachment B: DOE Required Special Terms & Conditions—ARRA Stimulus Funds;
- J) Attachment B-1: DOE Assurance of Compliance, as completed by Borrower;
- K) Attachment B-2: DOE Assurance of Compliance, as completed by Borrower and each Borrower contractor;
- L) Attachment C: Certifications Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion-Lower Tier Covered Transactions, as completed by Borrower;
- M) Attachment D: Certifications Regarding Lobbying; Debarment, Suspension and Other Responsibility Matters; and Drug-Free Workplace Requirements, as completed by Borrower;
- N) Attachment E: Disclosure of Lobbying Activities, as completed by Borrower;
- O) Attachment F: ARRA Assurances, as completed by Borrower;
- P) Attachment G: Intellectual Property Provisions, as completed by Borrower;
- Q) Attachment H: Affidavit of Compliance;
- R) Attachment I: Flowdown Requirements;
- S) Attachment J: Reporting Requirements

2.2 Transmittal Letter

Applicant must submit a transmittal letter with its application that identifies the Eligible Governmental Entity submitting the application, and it must include a commitment by the Applicant to complete the Project described in its Application in response to the requirements of the NOLFA/RFA. The transmittal letter must be signed by a person legally authorized to bind the Applicant to the representations in the Application. Applications submitted in response to this NOLFA/RFA are irrevocable for ninety (90) calendar days following the closing date. This period may be extended at the Comptroller's request.

2.3 Executive Summary

Applicant must provide an Executive Summary of its application and a representation that the application addresses all of the requirements of this NOLFA/RFA. The Executive Summary must contain a summary of the proposed activity suitable for dissemination to the public. It should be a self-contained document that identifies the name of the Applicant, the project director/principal investigator(s), the project title, the objectives of the project, a description of the project, including methods to be employed, the potential impact of the project (i.e., benefits, outcomes), and major participants (for collaborative projects). This document must not include any proprietary or sensitive business information as it may be made available to the public. The Executive Summary must be written in no smaller than 11' font and not exceed two (2) standard 8.5" by 11" pages single spaced with all margins on each page not to be less than 1 inch.

2.4 Table of Contents

Pages of the application shall be numbered and the application shall contain an organized, paginated table of contents corresponding to the section title and pages of the application.

2.5 Applicant Identifying Information

The following identifying information must be provided in each application:

- Name and address of Eligible Governmental Entity submitting the application;
- Proof that Applicant is an Eligible Governmental Entity and name and location of major offices, buildings, plants, and other facilities that relate to Applicant's Project(s) under this NOLFA/RFA;
- Name, title, address, telephone number, e-mail address and fax number of Applicant's principal contact person regarding the Loan/Grant;
- Federal Employer Identification Number, see <http://www.irs.gov/businesses/small/article/0,,id=98350,00.html>;
- DUNS number, see http://www.dnb.com/US/duns_update;
- Proof of CCR registration, see <http://www.ccr.gov>; and
- Texas Identification Number, see <http://www.window.state.tx.us/taxinfo/taxforms/ap-152.pdf>; and
- Full name and address for each member, partner, and employee of the Applicant who will be involved.

The application must identify all key personnel who are to be part of the Applicant's proposed team and provide their relevant experience. The Comptroller reserves the right, in its sole discretion, to approve each member of the team and Applicant will replace team members as the Comptroller requires.

Applicant must provide an organizational chart of its personnel, indicating lines of authority, names, titles, and functions of individuals assigned. Applicant must assign and identify in the application a Project Director for the Project and provide the person's business telephone number.

2.6 Identifying Information and Statements Required for All Subcontracts

Applications must identify plans for subcontracting and outline the relationships envisioned. After awarding contracts to subcontractors as a result of legally mandated solicitation processes, Applicants must provide statements from each of its awarded subcontractors, signed by an individual authorized to legally obligate each subcontractor, attesting to the fact that it will provide the services for Applicant as represented in the Applicant's application.

2.7 Work Breakdown Structure

The Project Work Breakdown Structure must include a detailed description of proposed Project(s) for which ARRA funding is requested which should include, but is not necessarily limited to: strategies, quality control mechanisms, and timelines for implementation of the proposed project(s) through completion. This Project Work Breakdown Structure shall include Applicant's description of its proposed project(s) and each requirement below.

- A. **Project Summary:** Provide a description of the Project that includes the objective, goals, and expected results.
- B. **Risk Management:** Provide a summary description of the proposed approach to identify, analyze, and respond to perceived risks associated with the proposed Project. Project risk events are uncertain future events that, if realized, impact the success of the Project. At a minimum, include the initial identification of significant technical, resource, and management issues that have the potential to impede project progress and strategies to minimize impacts from those issues.
- C. **Milestone Log:** Provide quantitative milestones for achieving Project deliverables and goals for each budget period or phase of the project. Each milestone should include a description, planned implementation and planned completion date.
- D. **Project Timeline:** Provide a Project timeline, preferably as a Gantt Chart, organized by task and subtask, as described in the Project Summary. The timeline should include a start date and end date for each task. The timeline should show interdependencies between tasks and include the milestones that are identified in the Milestone Log.
- E. **Success Criteria at Decision Points:** Provide success criteria for each decision point in the Project, including go/no-go decision points and the conclusions of budget periods and the entire Project. The success criteria should be objective and stated in terms of specific, measurable, and repeatable data. The success criteria shall pertain to desirable outcomes, results, and observations about the Project.

2.8 Budget

Applicant must provide a proposed budget detailing the amount of funding requested that is necessary to successfully complete its Project. In developing the proposed budget, Applicant must consider the following:

- Indirect costs, advance payments, and administrative overhead are not allowable;
- Funding will be disbursed on a cost reimbursement basis only;
- ARRA funding may not supplant or replace existing state, ratepayer, or other funding;
- Applicant must provide a detailed justification of each Cost Classification Category;
- Applicant must provide budget information related to the following allowable Cost Classification Categories:
- Subcontracts – Identify Project work to be completed by subcontractors and the portion of Project costs that will be allocated to their effort.

Expenses are subject to evaluation and written acceptance by Comptroller and must be properly documented and permissible under the Grant Agreement and Comptroller's Grant guidelines.

2.9 Conflict of Interest Statement Required

In submitting an application in response to this NOLFA/RFA, a Applicant represents and warrants to the Comptroller that it and each of its subcontractors that it awards subcontracts to perform services pertaining to the Project, have the requisite resources, qualifications and independence to complete the project free from outside direction, control, or influence, and are subject only to the requirements of this NOLFA/RFA. Applicants that cannot make this representation and warranty should not respond to this NOLFA/RFA.

In its application, each Applicant must disclose any existing or potential conflicts of interest or possible issues that might create appearances of impropriety relative to Applicant's and its future subcontractors' submission of a application, possible selection as Grantee or its performance toward completion of the Project.

As part of this disclosure requirement, each Applicant must include in its application all past and present contractual, business, financial or personal relationships between Applicant and the Comptroller. After awarding contracts to subcontractors as a result of legally mandated solicitation processes, Applicants must provide to the Comptroller documentation regarding subcontractor(s), past and present contractual, business, financial or personal relationships between subcontractor(s) and the Comptroller. For purposes of this disclosure requirement, "past" is defined as within the two (2) calendar years prior to the deadline for submission of applications in response to this NOLFA/RFA. For purposes of this disclosure requirement, "the Comptroller" is defined as the statewide elected official who heads the state agency, Texas Comptroller of Public Accounts, as well as the Comptroller's employees or recent former employees. For purposes of this disclosure requirement, "recent former employees" are defined as those Comptroller employees who have terminated agency employment within the two (2) calendar years prior to the deadline for submission of applications in response to this NOLFA/RFA. For each item, Applicant must provide a detailed explanation of why Applicant does or does not believe such item poses a conflict of interest, potential conflict of interest, or appearance of impropriety issue relative to Applicant's submission of an application, possible selection as the Grantee or its performance toward completion of the Project.

For purposes of this NOLFA/RFA, “personal relationship” is defined as a current or past connection other than a clearly contractual, business, financial or similar relationship and includes family relationships or other connections outside simply providing a response to this NOLFA/RFA. For this purpose, “family relationship” means a relationship within the third degree of consanguinity or second degree of affinity; see Chapter 573, Tex Gov’t Code, which defines these degrees of consanguinity and affinity. Connections other than such family relationships fall within this definition and must be disclosed if a reasonable person could expect the connection to diminish the Applicant’s independence of judgment or effectiveness in the performance toward completion of the Project, Applicant’s responsibilities to the Comptroller or the State toward completion of the Project. Connections also fall within this definition if a reasonable person could expect the connection, within the overall context of the Applicant’s submission of an application, possible selection as the Grantee/Borrower or its performance toward completion of the Project, to create an issue for the Comptroller’s consideration relative to a potential appearance of impropriety or conflict of interest. Connections also fall within this definition if the relationship is with a Comptroller or other State of Texas employee with authority to make decisions or recommendations on state contracting or procurement or this NOLFA/RFA. For purposes of this provision, those persons with authority to make decisions or recommendations are those persons who fall within the definition of “purchasing personnel” in Section 2262.004(a)(2), Tex Gov’t Code.

In submitting an application in response to this NOLFA/RFA, an Applicant affirms 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 or any employee or representative of same, in connection with this NOLFA/RFA.

Applicants must disclose any proposed personnel in its application who are current or recent former employees of the Comptroller or the State of Texas. Recent former employees are defined above.

Disclosures under these provisions are information that will be evaluated by the Comptroller; however, all information provided will not necessarily lead to a restriction or disqualification. Issues will be considered on a case by case basis in the best interests of the State of Texas.

If an Applicant is in doubt about whether information should be disclosed, Applicant may submit a question during the official period for submission of questions. Failure to disclose any required information under these provisions may be cause for application disqualification or Loan Agreement resulting from this NOLFA/RFA. The Comptroller reserves the right, in its sole discretion, to determine if an issue should result in application disqualification or termination of the Loan Agreement resulting from this NOLFA/RFA.

If circumstances change or additional information is obtained subsequent to submission of applications, the Applicant’s duty to disclose under these provisions continues under the term of the Loan Agreement and does not end with submission of an application or receipt of grant award.

2.10 Confidential Information; Nondisclosure; Open Records

If an award is approved under this NOLFA/RFA, responses to this NOLFA/RFA are subject to release as public information unless the application or specific parts of the response can be shown to be exempt from the Texas Public Information Act. All Applicants are advised to consult with their legal counsel regarding disclosure issues and take the appropriate precautions to safeguard

trade secrets or any other proprietary information. The Comptroller assumes no obligation or responsibility relating to the disclosure or nondisclosure of information submitted by Applicants.

If Applicant believes that any portion of an application is confidential, then Applicant must so specify. The Applicant must stamp in bold red letters the term "CONFIDENTIAL" on that specific part or page of the application which Applicant believes to be confidential. The Applicant must submit in writing specific detailed reasons, including any relevant legal authority, stating why Applicant believes the material to be confidential. Vague and general claims as to confidentiality will not be accepted. The Comptroller will be the sole judge as to whether a claim is general and/or vague in nature. All applications and parts of applications which are not marked as confidential will be automatically considered public information after the award of a grant. An application resulting in an award may be considered public information even though parts are marked confidential.

In the event Comptroller receives a request for portions of an application marked as "confidential" as specified above, Comptroller shall forward such request to the Office of the Attorney General for an opinion on whether such information may be withheld from disclosure under the Texas Public Information Act. Comptroller will notify the Applicant subject to the request when the information is forwarded to the Office of the Attorney General. Applicants are advised that Comptroller is obligated to comply with the Attorney General's decision, including any such decision calling for the release of information marked "confidential" by an Applicant. **Copyrighted applications are unacceptable and are subject to disqualification as non-responsive**

PART III
GRANT REQUIREMENTS & REQUIRED REPORTING

3.0 General Requirements

Through ARRA, the Building Efficiency and Retrofit Program will provide \$134.8 million to finance Energy Cost Reduction Measures (ECRM) in governmental buildings and facilities through a revolving loan mechanism. ECRMs are individual retrofits/measures that are expected to reduce energy costs. Governmental Entities will pay back loans through the savings realized from their ECRMs. The following are the general requirements for the Building Efficiency and Retrofit revolving loan program.

1. All projects are to be conducted under Energy Savings Performance Contracts. For explanation of an Energy Saving Performance Contract please go to: http://www.seco.cpa.state.tx.us/sa_pc.htm.
2. Funds are available to retrofit existing buildings. A building retrofit refers to an improvement to building infrastructure that reduces utility (energy and water) costs. If the retrofit proposed is 50% or greater of a defined space, then it is considered “new construction” and is required to meet the current state energy code. Please see the LoanSTAR Guidelines, Volume I, Section II, C, Classifying Project Types. (http://www.seco.cpa.state.tx.us/lr/lr_guideline.php)
3. Funds are available for new construction. Financing the incremental cost increase between standard efficiency equipment and high efficiency equipment are eligible and must meet the current state energy code requirements.
4. The maximum loan amount shall not exceed \$10 million dollars.
5. The interest rate is set at two (2%) percent.
6. The term of the loan is for ten (10) years or less; if at least ten (10%) percent of the project cost contains renewable energy technologies; the term of the loan may qualify for up to a fifteen (15)-year payback.
7. The project must demonstrate a simple payback period of ten 10-years or less (or if renewable energy included fifteen (15) years or less) to qualify. The individual ECRMs must demonstrate a simple payback of less than the ECRM’s economic useful life.
8. Project expenses will be reimbursed on a “cost reimbursement” basis. No advance of funds is allowed.
9. Borrower will be required to comply with federal ARRA requirements including OMB reporting requirements and the Solid Waste Disposal Act, and, if applicable, the Davis-Bacon Act and related prevailing wage laws, buy American provisions, the National Environmental Policy Act, and the National Historic Preservation Act. Applicants understand and will see that the State Historical Preservation Office (SHPO) is consulted in any project award that may include a building or site of historical importance. In this regard, SHPO guidance will be solicited and followed to insure that the historical significance of the building will be preserved.

10. SECO will conduct periodic on-site monitoring visits on all building retrofit projects.
11. All improvements financed through the Building Efficiency and Retrofit Program shall meet minimum efficiency standards (as prescribed by applicable building energy codes). Examples of projects that are acceptable for ARRA funding are those that may include:
 - a) Building and mechanical system commissioning and optimization.
 - b) Energy management systems and equipment control automation.
 - c) High efficiency heating, ventilation and air conditioning systems, boilers, heat pumps and other heating and air conditioning projects.
 - d) High efficiency lighting fixtures and lamps.
 - e) Building Shell Improvements (insulation, adding reflective window film, radiant barriers, and cool roof.)
 - f) Load Management Projects, e.g. applying pinch technology for system designs that maximize energy utilization.
 - g) Energy Recovery Systems, e.g. heat exchangers and pinch technology assisted work.
 - h) Low flow plumbing fixtures, high efficiency pumps. Renewable energy efficiency projects are strongly encouraged wherever feasible, and may include installation of distributed technology such as of rooftop solar water and space heating systems; geothermal heat pumps, or electric generation with photovoltaic or small wind and solar-thermal systems or projects.
 - i) Renewable energy efficiency projects are strongly encouraged wherever feasible, and may include installation of distributed technology such as of rooftop solar water and space heating systems; geothermal heat pumps (only closed loop systems with no greater than 5 ton capacity), or electric generation with photovoltaic or small wind and solar-thermal systems. If there are closed-loop geothermal heat pumps greater than 5 ton capacity involved, then applicants will be responsible for further NEPA review by DOE in the event of an award. If renewable generation greater than 20 KW is involved, applicants will be responsible for further NEPA review by DOE.

3.1 Building Efficiency and Retrofit Program

3.1.a Project Retrofit Phase

1. Borrower shall utilize an Energy Savings Performance Contract (ESPC) to conduct the building efficiency and retrofit project. As part of the ESPC loan application submittal, a Preliminary Energy Assessment (PEA) report will be required.
2. PEAs must include Energy Cost Reduction Measures (ECRMs) that will be completed to reduce utility (energy and water) costs. Project costs and simple paybacks must also be documented for each ECRM in the PEA.
3. PEAs will be reviewed by the Comptroller's State Energy Conservation Office (SECO) to determine technical viability and if technical viability is determined. Those PEAs determined to be technically viable will be further evaluated by the Evaluation Selection Committee.
4. Projects selected will then require the completion of a Utility Assessment Report (UAR) which will be structured in accordance with SECO requirements (http://www.seco.cpa.state.tx.us/sa_pc.htm). If applicants have completed UARs, they may be submitted in lieu of the PEA with the loan applications. Submitted UARs will be reviewed by SECO to determine technical viability. Those UARs (submitted with the loan application) determined to be technically viable will be further evaluated by the Evaluation Selection Committee. UARs for selected applicants qualify for reimbursement of expenses as part of the loan process.
5. Project ECRM design, measurement and verification standards that utilize standard engineering practices.

6. Only Borrower projects that meet the simple pay requirements, energy savings targets, and SECO's LoneSTAR guidelines for Performance Contracting will be considered.
7. Borrower will develop a detailed project budget that includes a Work Breakdown Structure (WBS) for each major element required to install the retrofit. The WBS should include, at a minimum, the following Cost Categories:
 - a) Labor
 - b) Materials (including equipment)
 - c) Overhead and Profit
8. Borrower will ensure that implementation costs include funds for the removal and proper disposal of materials and equipment to be replaced. These materials would include, but not be limited to, light bulbs, ballasts, switches, controls, HVAC equipment, refrigerants, pumps, fans, blowers, piping, valves, conduit, wiring, and boilers. Special care should be taken to budget sufficient funds to properly dispose of hazardous materials. All waste disposals must be conducted in compliance with local, State of Texas, and federal rules and regulations.
 - a) As specified in the State Energy Program approved by the DOE under DOE Order 451.1A, Renewable Energy-related projects are subject to NEPA determination.
9. SECO will conduct on-site monitoring during project retrofit phase at three project milestones:
 - a) 25% completion,
 - b) 50% completion, and
 - c) 100% completion milestone.
10. Borrower shall prepare and submit a Monthly Progress Report via the internet on or before the last day of the month and follow all state and Federal ARRA reporting requirements.
11. Funds must be expended and project completed by December 2011 in accordance with ARRA funding requirements.
12. Borrower shall prepare and submit Final Completion Report no later than 30-days after the completion of the project. The Final Completion Report shall include:
 - a) 100% Monitoring Report and Certificate of Project Completion
 - b) Final Report
 - c) Final Voucher Request

3.1.b. Loan Repayment Phase

1. SECO will review Final Completion Report completeness and for compliance with LoanSTAR requirements.
2. Borrower requests loan amortization table from SECO after receiving notification that SECO accepts Final Completion Report.
3. Borrower's UAR must include a Measurement and Verification Plan that:
 - a) Identifies and documents project costs and paybacks.
 - b) Includes a plan to track savings for the life of the project
 - c) Includes a plan for 3rd party collection of source data and verification of actual energy savings for at least 4 years after the end of the project.
 - d) Measures, verifies and compiles data into a final report. The information should be consistent with the plan presented in the UAR. This report will become part of the contract.
 - e) Includes both construction and post-construction activities.
4. Borrower's repayment of loan to SECO will commence within 60-days after end of project and continue on a quarterly basis, using State of Texas fiscal year quarters, until loan

- Agreement is fully satisfied.
5. Borrower must submit an annual Energy Savings Report, with updates each Quarter, for the lifetime of the loan.
 6. An Event of Loan Default shall be deemed to exist if any one or more of the following events occurs:
 - a) Failure to comply with any term or condition of the Approved Agreement.
 - b) Misrepresentation of facts attested to in the project proposal submitted for review by SECO, including material misrepresentation of facts regarding the eligibility of the Borrower;
 - c) Purchase and/or installation of ineligible improvements using the approved Loan amount;
 - d) Failure of the Borrower to complete the eligible improvements as set forth in the project proposal submitted for review by SECO or in a manner consistent with the purpose of achieving energy savings, including failure to purchase and/or install all or any portion of the eligible improvements within 60- days following the proposed completion date;
 - e) Failure of the Borrower to submit the Certificate of Project Completion within 30 days following the proposed completion date.

3.3 Reporting Requirements

Reporting requirements for project applications are as follows:

- ARRA Section 1512, DOE, OMB, and state issued rules and regulations impose an array of reporting requirement on the Comptroller who must, in turn, rely on its Borrowers in order to meet these reporting obligations. The Grant Agreement, and in particular Attachment J to the Grant Agreement, specifically identifies the initial and monthly reporting requirements that the Borrower shall provide. Due to the importance of the reporting requirements, a Borrower's failure to meet its reporting obligations under the Grant Agreement may result in termination of the grant award and the entity being ineligible for future grants.
- An initial information report shall be submitted that provides key Borrower and project information that will likely remain constant through the term of grant including the congressional representatives for Borrower's primary location and primary project locations and key personnel. Additionally, when the Borrower, sub-Borrower, or subcontractor has received 80% of its gross revenue or more than \$25 million from federal awards in the last year and the grant award or sub-award is over \$25,000, then such entity must also provide the names and compensation of the five most highly compensated individuals of the Borrower, sub-Borrower, or subcontractor, as applicable.

The required information that must be provided in the Monthly Report. It is summarized as follows:

I. Borrower Identification. Must include the Borrower name, the contact information for the individual filing the report, grant award number, and grant award date and performance period.

II. Grant Award/Budget Information. This portion must include the grant award amount, the cumulative total amount of funds received at the time of the report, the cumulative total amount of funds disbursed by the Borrower at the time of the report,

and show funds budgeted and funds disbursed for each budget item.

III. Project Information. This information must include the Project name, performance location, Project objective and status, a progress evaluation comparing the objectives to the status, and description of Project efforts that may adversely affect obtaining the objectives. Also, a brief description of any products produced or technology transfer activities accomplished that reflect accomplishments of the Project.

IV. Job Created/Retained. Borrowers must provide a tally of the jobs created or retained as a result of the grant funding and a brief description of the types of jobs and anticipated or likely duration.

V. Technical Measures. Reports must include, for the Building Efficiency and Retrofit Revolving Loan Program, the technical measures which are the number of buildings retrofitted; the number of square footage of buildings retrofitted; number of Audits performed, projected energy savings, greenhouse gas emissions reduced due to retrofit and, number and size of systems installed – both standard energy efficiency and renewable energy efficiency measures.

- Borrower shall require that any of its sub-Borrowers or subcontractors shall provide monthly reports that provide the information necessary for the Borrower to fulfill its reporting obligations.

Comptroller reserves the authority to change these requirements as the federal government more fully identifies the information that it will require of the Comptroller.

3.4 Compliance

The ARRA grant funds are federal appropriations and as such, are subject to federal rules and regulations. All Borrowers must comply with all federal and state statutory and regulatory requirements pertaining to compliance, reporting, registration, including special terms and conditions as they relate to a grant award and as identified herein. Of particular importance to the use of these funds, Borrower shall comply with all of the following:

- **Davis-Bacon and related federal Acts.**
 - ARRA, Section 1606 requires that the Davis-Bacon and related federal acts bulleted below apply when federal funds in excess of \$2,000 are used for the construction, alteration, or repair (including painting and decorating) of public buildings or public works. These acts require that the contractors and subcontractors pay their laborers and mechanics employed under the contract no less than the locally prevailing wages and fringe benefits for corresponding work on similar projects in the area. These acts also require that the contractors and subcontractors document compliance with these acts.
 - Borrower shall be responsible for insuring that these acts are enforced when funds provided pursuant to the NOLFA/RFA are used for any construction, alteration, or repair (including painting and decorating) of public buildings or public works in excess of \$2,000.
 - For more information related to compliance, see:
<http://www.dol.gov/esa/whd/contracts/dbra.htm>

- The statutory citations for these acts are:
 - 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 as implemented through 29 CFR 5.5(a).

- **Buy American Act**

ARRA, Section 1606 requires that if a Borrower uses ARRA funds on projects for the construction, alteration, maintenance, or repair of a public building or public work, then the Borrower must either:

- Take appropriate steps to insure that all of the iron, steel, and manufactured goods used in the project are produced in the United States, unless the product is subject to an international trade agreement; or
- Obtain an exception from the Department of Energy that
 - The cost of the product will increase project cost by 25%
 - The product is not available in sufficient and reasonably available commercial quantities of sufficient quality; or
 - Enforcement of the Buy America provision is inconsistent with the public interest.
- The regulatory reference is 2 Code of Federal Regulations Part 176 and may be read at:
<http://edocket.access.gpo.gov/2009/pdf/E9-9073.pdf>

- **National Environmental Policy Act** (NEPA, 42 U.S.C. §§4321 *et seq.*).

Each Borrower shall agree to comply with the **National Environmental Policy Act** (NEPA, 42 U.S.C. §§4321 *et seq.*) and not take any action that will have an adverse environmental impact (e.g., physical disturbance of a site such as breaking of ground) or limit the choice of reasonable alternatives until either a NEPA clearance or final NEPA decision is provided by the National Energy Technology Laboratory (NETL) NEPA compliance Officer. Any Project(s) using these funds for the purchase of equipment for new alternative fuel(s) refueling stations and/or purchase of equipment for retrofits of existing refueling stations will additionally be required to provide additional project information and support to DOE in order to comply with the NEPA.

Further, for the identified Project(s), Borrower shall comply with and provide any assistance necessary to prepare or assist DOE in the preparation of any required Environmental Impact Statements or other environmental documentation.

- **National Historic Preservation Act of 1966** (16 U.S.C. §§470 *et seq.*)

Any Project(s) using these funds must comply with the **National Historic Preservation Act of 1966** (16 U.S.C. 4700). Consequently, Borrower shall provide the assurance as provided in the Grant Agreement that Borrower identify any

property listed or eligible for listing on the National Register of Historic Places that will be affected by this award, and comply with or assist with the compliance of Section 106 of the National Historic Preservation Act of 1966 and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C.469a-1, et seq.).

- **Solid Waste Disposal Act: Texas Health & Safety Code, Chapter 361, and Title 30, Texas Administrative Code, Chapter 335**

Any Project(s) using these funds for the storage, processing, or disposal of hazardous materials shall comply with the **Solid Waste Disposal Act**, Texas Health & Safety Code, Chapter 361, and Title 30, Texas Administrative Code, Chapter 335 “Industrial Solid Waste and Municipal Hazardous Waste” administered by the Texas Commission on Environmental Quality. Solid or hazardous waste is defined in 40 CFR Part 260 and 30 TAC Chapter 335 and includes, but is not limited to, old light bulbs, lead ballasts, piping, roofing material, discarded equipment, debris, asbestos, etc. More information is available at <http://www.tceq.state.tx.us/nav/permits/hiw.html>. Prior to the expenditure of Federal funds to dispose of sanitary or hazardous waste, the Borrower may be required to provide documentation that it has prepared a disposal plan for sanitary or hazardous waste generated by the proposed activities.

Report of Fraud, Waste and Abuse: Texas Government Code, Section 321.022

If the administrative head of a department or entity that is subject to audit by the Texas State Auditor has reasonable cause to believe that money received from the State by the Borrower or by a client or contractor of the Borrower may have been lost, misappropriated, or misused, or that other fraudulent or unlawful conduct has occurred in relation to the operation of the Borrower, the administrative head shall report the reason and basis for the belief to the Texas State Auditor. The Texas State Auditor may investigate the report or may monitor any investigation conducted by the Borrower. See <http://sao.fraud.state.tx.us/>.

**PART IV
APPLICATION EVALUATION AND SELECTION**

4.0 Evaluation Process

The Comptroller will establish an Evaluation Committee for the full review and evaluation of eligible applications. The Evaluation Committee shall include employees of the Comptroller and may include other impartial individuals who are non-Comptroller employees.

The Comptroller's legal counsel will review the applications for eligibility, compliance with the terms of this NOLFA/RFA, and thoroughness. The Comptroller's legal counsel shall then distribute copies of those applications found to be in compliance to the members of the Evaluation Committee for their independent review and evaluation.

The Evaluation Committee shall review and individually score each written application. The Evaluation Committee shall then have the option of selecting the top scoring applications and may, but is not required to, call the top scoring Applicants to come to Austin for an interview. At the interviews, if the Evaluation Committee so chooses, the Applicants will be asked a series of questions and scored regarding their applications to the questions.

The Evaluation Committee reserves the right, in its sole discretion, to proceed directly to scoring and selection without the necessity of any oral interviews.

Upon the selection of the Successful Applicants (s), if any, the Comptroller shall proceed with Grant Agreement negotiations and attempt to finalize a Loan Agreement with the apparent Successful Applicants. If a Loan Agreement cannot be successfully negotiated within a reasonable period of time, negotiations will be terminated, and negotiations with the next highest-ranking Applicant may commence. The process may continue until one or more Loan Agreements are signed or the NOLFA/RFA is withdrawn. However, Comptroller may at any time, upon failure of negotiations, choose to reissue or withdraw the NOLFA/RFA rather than continue with negotiations.

If Comptroller decides, in its sole discretion, to award more than one grant, the Comptroller may proceed with negotiations in the above-described manner with more than one Applicant simultaneously.

As soon as possible after the execution of a written Loan Agreement with Borrower(s), all other Applicants shall be provided with formal notification via facsimile. Comptroller shall make every reasonable effort to fax this notification within one (1) business day of the date all Loan Agreements are fully executed.

4.1 Selection Criteria

Only those applications that meet minimum qualifications and meet eligibility requirements shall be evaluated and scored. Evaluation Criteria and relative weights for this NOLFA/RFA are as set forth below: *Only eligible Applications will be evaluated and scored according to the following criteria and weights:*

Criterion 1: Best Value Considerations, Including Projected Energy Savings, Number of Jobs Created, and other factors (45%)

- Applicants' Projects are Ready to Go;
- Payback period of project/quicker payback given more points;

- Projected energy savings attributed to eligible energy efficiency measures in order to achieve an annual 10 million BTUs saved per for every \$1,000 spent;
- More renewable technology incorporated above 10% scored higher
- Applicant provided reasonable and feasible projected green house gas emissions reductions;
- Projected number of jobs created and retained;
- Other funds leveraged;
- Geographic diversity; and
- Projected energy savings.

Criterion 2: Team Expertise and Prior Experience (35%)

- Ability to assemble a team necessary to successfully accomplish the objectives of the proposed Project;
- Qualifications, expertise, and experience of identified key personnel in areas relevant to the proposed work;
- Organizational and individual experience and degree of success achieved in conducting Projects of similar scope and nature;
- Appropriateness of the planned assignment of responsibilities and level of effort among individuals and corporate team member; and
- Adequacy of the Applicant and/or team resources to successfully complete the proposed work.

Criterion 3: Technical Approach and Work Plan/ Statement of Work (25%)

- Responsiveness and relevance of the application to the programmatic goals and requirements identified in this announcement for this area of interest;
- Likelihood of successfully completing the proposed Project based on the adequacy and thoroughness of the technical approach for the proposed work including;
- Clarity, completeness, and adequacy of the detailed description of the work to be performed;
- Adequacy and appropriateness of the schedule including the duration and sequencing of tasks and the scheduling of Project milestones and decision points;
- Adequacy of the proposed data collection and reporting activities;
- Appropriateness of the planned level of manpower; and
- Adequacy of the discussion of safety and environmental compliance considerations (indicating an adequate understanding of required certifications, licenses, permits, NEPA implications, etc).