Ken Takahashi/KT
OED Energy Grant ORD ATT A
August 4, 2010
Version #1

Department of Commerce

Innovation is in our nature.

Grant Agreement between:

City of Seattle

and

Washington State Department of Commerce
State Energy Office
State Energy Program—Energy Efficiency Credit Enhancement Grant
American Recovery and Reinvestment Act of 2009

For:

Project Name: **Seattle Energy Loan Fund ("SELF")**
Agreement Number: **F11-52112-001**

Washington State Department of Commerce
www.commerce.wa.gov

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AGREEMENT FACE SHEET

Agreement Number: F11-52112-001
Washington State Department of Commerce
State Energy Program—Energy Efficiency Credit Enhancement Grant (SEP EECE)
American Recovery and Reinvestment Act of 2009

1. Grantee City of Seattle, Office of Economic Development 700 Fifth Avenue, Suite 5752, P.O. Box 94708 Seattle, WA 98124-4708		**2. Grantee Doing Business As (optional)** N/A	
3. Grantee Representative Ken Takahashi, Business Development Finance Manager City of Seattle, Office of Economic Development Telephone (206) 684-8378		**4. COMMERCE Representative** Cory Plantenberg, State Energy Program Manager Department of Commerce P.O. Box 43173, Olympia, WA 98504-3173	
5. Agreement Amount $1,000,000.00	**6. Funding Source** Federal:☒ State:☐ Other:☐	**7. Start Date** Date of last signature below	**8. End Date** Twenty (20) years from date of last signature below
9. Federal Funds (as applicable):	**Federal Agency** United States Department of Energy	**CFDA Number** 81.041	
10. Tax ID # 91-6001275	**11. SWV #**	**12. UBI #**	**13. DUNS #** 009483561

14. Agreement Purpose

COMMERCE and Grantee have entered into this Agreement to undertake a Project that furthers the goals and objectives of State Energy Program—Energy Efficiency Credit Enhancement Grant under the American Recovery and Reinvestment Act of 2009.

COMMERCE, defined as the Washington State Department of Commerce, and the Grantee, as defined above, acknowledge and accept the terms of this grant Agreement and attachments and have executed this Agreement on the date below to start as of the date and year referenced above. The rights and obligations of both parties to this Agreement are governed by this Agreement and the following other documents incorporated by reference: **Special Terms and Conditions**; **General Terms and Condition**; **Attachment I**: Scope of Work; **Attachment II**: Estimated Budget; **Attachment III**: Additional Provisions under the American Recovery and Reinvestment Act of 2009; **Attachment IV**: Instructions on How to List Recovery Act Jobs with the Employment Security Department WorkSource System; **Attachment V**: Certification Regarding Debarment, Suspension, and Other Responsibility Matters; **Attachment VI**: Programmatic Agreement between the United States Department of Energy, the Washington State Department of Commerce and the Washington State Historic Preservation Office Regarding EECBG, SEP and WAP Undertakings; and **Attachment VII**: United States Department of Energy NEPA Guidance, NEPA Template for Categorical Exemptions, and Environmental Checklist.

FOR GRANTEE:	**FOR COMMERCE:**
Signature	Tony Usibelli, Director, Washington State Energy Office
Steve Johnson Name	Date
Acting Director, Office of Economic Development Title	**APPROVED AS TO FORM ONLY:**
Date	Sandra Adix, Assistant Attorney General
	07-30-2010 Date

PART 1. SPECIAL TERMS AND CONDITIONS

1.1. AUTHORITY

COMMERCE has awarded the Grantee a State Energy Program Energy Efficiency Credit Enhancement grant for an approved project, acting under the authority of Engrossed Second Substitute House Bill 1007, Chapter 65, Laws of 2009; Engrossed Second Substitute Senate Bill 5649, Chapter 379, Laws of 2009; United States Department of Energy, CFDA Number 81.041, Title: State Energy Program, award year: 2010; and the American Recovery and Reinvestment Act of 2009.

1.2. DEFINITIONS

As used throughout this State Energy Program (SEP) Energy Efficiency Credit Enhancement (EECE) grant agreement, the following terms shall have the meaning set forth below:

A. "Agreement" shall mean this SEP EECE grant agreement under the American Recovery and Reinvestment Act of 2009 (Recovery Act).

B. "COMMERCE" shall mean the Washington State Department of Commerce, and who is a Party to the Agreement and a recipient of the United States Department of Energy grant under the Recovery Act.

C. "Grantee" shall mean the grant recipient identified on the Agreement Face Sheet performing service(s) under this Agreement and who is a Party to the Agreement, and shall include all employees and agents of the Grantee.

D. "Lender" shall mean the financial institution or institutions with which the Grantee contracts to develop and implement an EECE Lending Program.

E. "EECE Lending Program" shall mean the program that Grantee and Lender will plan, design, and implement by employing one or more Credit Enhancement mechanisms in order to leverage lending funds for Energy Efficiency Improvement Project costs. The EECE Lending Program shall be described in Attachment I: Scope of Work.

F. "Borrower" shall mean the recipient or recipients of loans created under the EECE Lending Program administered by the Lender and/or Grantee.

G. "Energy Contractor" shall mean any firm or person employed to provide the energy efficiency construction or repair work and/or services financed through the EECE Lending Program.

H. "Project" shall mean all activities indentified in Attachment I: Scope of Work, which include but are not limited to the development and implementation of the EECE Lending Programs, and whose purpose is to leverage funding for Energy Efficiency Improvement Projects.

I. "Energy Efficiency Improvement Project" shall mean the installation, repair, retrofit, or rehabilitation work or services provided by the Energy Contractor.

J. "Credit Enhancement" shall mean the financial mechanism described in the EECE Lending Program and which is used by the Lender or/and Grantee to lower the Lender's risk, or reduce the Borrower's costs for undertaking a loan to pay for the Energy Efficiency Improvement Project costs. Credit enhancements mechanisms include but are not limited to the following:

a. Loan Loss Reserve: Grantee and Lender may use grant funds awarded by this Agreement to establish an account from which the Lender may be reimbursed for losses incurred through Borrower loan defaults.

b. Interest Rate Buy-down: Grantee may use grant funds awarded by this Agreement to purchase points in order to reduce the interest rate on loans offered by Lender to Borrower.

c. Blended Interest Rate Loan: The Lender may employ a joint loan funding structure by combining Lender funds with grant funds awarded by this Agreement and thus create a blended interest rate for the Borrower, provided that the grant funds awarded by this Agreement portion does not exceed fifty percent (50%) of any given awarded loan made to Borrower.

d. Grantee's Participation Interest in a Loan: The Grantee may purchase a portion of a loan made by Lender to Borrower, thus taking a portion of the risk in that loan and effectively reducing the Lender's risk.

e. Bond Sale: The Grantee will use grant funds awarded by this Agreement to leverage additional Lender funds structured as a private placement of tax-exempt bonds. To gain tax-exempt status for the bonds and hence lower interest rates for the Borrowers, bonds may be issued by the Grantee. The bonds are purchased by the Lender and proceeds from the bond sale used by the Lender to make loans to the Borrowers. Each transaction is implemented with a three-party agreement between Grantee, Lender, and Borrower. Grant funds will be used by the Lender in one of two ways: (i) as a debt service reserve fund backing the bonds, or (ii) a subordinated co-financing for the Lender's purchase of the bonds. Both uses enhance the credit structure of the bonds for the Lender and will lower interest rates and financing costs for the Borrower.

f. Other Credit Enhancement Mechanisms: Any other credit enhancement mechanism must be approved in writing by COMMERCE, prior to execution of this Agreement.

1.3. ROLES AND RESPONSIBILITIES

COMMERCE's roles and responsibilities include but are not limited to the following:

A. COMMERCE will report to Washington Legislature and to United States Department of Energy on the SEP EECE program progress.

B. COMMERCE will manage this Agreement and disburse awarded grant funds in accordance with this Agreement.

C. COMMERCE will review and approve any and all agreements between Grantee and Lender and the EECE Lending Program(s) that result from this Agreement.

D. COMMERCE will provide the form, format, and timing associated with reporting requirements as described in Section 1.15.

The Grantee's roles and responsibilities include but are not limited to the following:

A. Grantee has the ultimate responsibility for the overall performance of the EECE Lending Program, ensuring that the performance measures and the additional funding leverage described in Attachment I: Scope of Work are met.

B. Grantee will market the EECE Lending Program to the public and potential Borrowers.

C. Grantee will enter into one or more agreements with one or more Lenders to develop and implement an EECE Lending Program designed to leverage funding for energy efficiency services and projects, as described in Section 1.12.

D. Grantee must require the Lender to leverage grant funds through one or more approved Credit Enhancement mechanisms to leverage financing for energy efficiency projects with Borrowers.

E. Grantee will ensure that Lender, Borrower, and Energy Contractor comply with all federal and state laws, including but not limited to requirements of the Recovery Act.

F. Grantee will ensure that Energy Contractors are bonded and licensed, and certified or approved to perform the work being contracted.

G. Grantee will collect and ensure that all reporting information is timely and accurately submitted to COMMERCE, as described in Section 1.15.

1.4. PURPOSE

COMMERCE and Grantee have entered into this Agreement to undertake a Project that furthers the goals and objectives of SEP EECE program under the Recovery Act. The goal of the SEP EECE program is to attain a five (5) to one (1) Lender funds leverage ratio by providing affordable financing for Borrowers to undertake Energy Efficiency Improvement Projects, as per COMMERCE'S application for SEP grant funds to United States Department of Energy (Grant No. DE-EE0000139). The Project will be undertaken by the Grantee and will include the activities described in Attachment I: Scope of Work. The Project must be undertaken in accordance with the Special Terms and Conditions and the General Terms and Conditions included in this Agreement, and with all applicable federal, state, and local laws and ordinances, including but not limited to those specifically enumerated in Attachment III: Additional Provisions under the American Recovery and Reinvestment Act of 2009.

1.5. ACKNOWLEDGEMENT OF FEDERAL FUNDING

The Grantee agrees that any publications (written, visual, or sound) but excluding press releases, newsletters, and issue analyses, issued by the Grantee describing programs or projects funded in whole or in part with federal funds under this Agreement, shall contain the following statements:

> "This project was supported by Grant No. DE-EE0000139 awarded by US Department of Energy. Points of view in this document are those of the author and do not necessarily represent the official position or policies of the US Department of Energy. Grant funds are administered by the State Energy Office, Washington State Department of Commerce."

COMMERCE, as a recipient of Recovery Act funds, is legally obligated to meet accountability and reporting requirements under the Recovery Act. The state of Washington or the federal funding source may also identify additional requirements or other changes in requirements. Such requirements may be in statute, regulation, policy, or procedure. COMMERCE is responsible for incorporating these requirements into the performance of this Agreement. Although all requirements have not yet been identified, additional reporting requirements should be expected, to include, but not limited to, performance outcomes such as created or retained jobs.

1.6. ORDER OF PRECEDENCE

In the event of an inconsistency in this Agreement, the inconsistency shall be resolved by giving precedence in the following order:

A. Applicable federal and state of Washington statutes, regulations, and guidance;

B. Special Terms and Conditions including all the attachments to this Agreement;

C. General Terms and Conditions.

1.7. GRANT AMOUNT

COMMERCE shall pay to the Grantee a grant amount not to exceed **$1,000,000.00** for the performance of all things necessary for, or incidental to, the services as set forth in this Agreement and any task identified in Attachment I: Scope of Work.

1.8. TIME OF PERFORMANCE

Term of Agreement

The **term of this Agreement shall be from the date of contract execution plus twenty (20) years**, unless terminated sooner as provided herein. At end of this Agreement, the Grantee will return the unspent portion of the disbursed EECE grant funds to COMMERCE. COMMERCE, at its discretion and upon United States Department of Energy approval, will decide how to utilize the returned funds. For the purpose of this Agreement, **unspent funds** shall mean any remaining funds in the Program Deposit Account(s) that have not been withdrawn to support or fund the Credit Enhancement mechanism(s) described in Attachment I: Scope of Work.

No later than **December 31, 2011**, the Grantee and the Lender must have implemented the EECE Lending Program(s) and met all the milestones and performance measures described in Attachment I: Scope of Work.

Executed Grantee-Lender Agreements

No later than **six (6) months** after Agreement execution, the Grantee must have executed all Grantee-Lender Agreements (as described in Section 1.12) and have met all the grant disbursement requirements (as described in Section 1.9). This will enable COMMERCE to disburse to the Grantee the entire amount of the grant awarded under this Agreement, as identified in Section 1.7.

Yearly Performance Reports

No later than **September 30, 2010, and September 30 of each year thereafter for the entire term of this Agreement**, the Grantee must submit a Performance Report of the EECE Lending Program to COMMERCE, as described in Section 1.15.

EECE Lending Program Formal Reviews

At ten (10) years and fifteen (15) years from the date of the execution of this Agreement, COMMERCE will perform a detailed EECE Lending Program review and, depending of the performance of the EECE Lending Program, discuss reallocation of EECE grant funds. The Grantee agrees that Grantee is ultimately responsible for the overall performance of the EECE Lending Program and the leverage of additional funds for making loans to Borrowers.

Compliance with National Environmental Policy Act and Section 106 of the National Historic Preservation Act of 1966

Grantee will ensure that no Energy Efficiency Improvement Project activities begin until the Borrower complied with all provisions of Section 106 of the National Historic Preservation Act of 1966 and the National Environmental Policy Act, as described in Section 1.16 and Section 1.17 respectively.

Failure to meet Time of Performance within the time frames described in this section shall constitute default under this Agreement, and as a result, this Agreement may be terminated.

1.9. DISBURSEMENTS OF GRANT PROCEEDS

The availability of funds in the SEP EECE program is made available through the Recovery Act. If funding or appropriation is not available at the time the Grantee submits a request for a grant disbursement, the issuance of a warrant will be delayed or suspended until such time funds become available. Therefore, subject to availability of funds, warrants shall be issued to the Grantee for payment of allowable expenses incurred by the Grantee while undertaking and administering approved project activities in accordance with Attachment I: Scope of Work and Attachment II: Estimated Budget. In no case the total SEP EECE grant shall exceed one hundred percent (100%) of the grant amount as indicated in Section 1.7.

Only allowable expenses incurred by Grantee after **December 15, 2009,** are eligible for reimbursement. Allowable expenses under this Agreement include incurred costs for:

A. The Project activities described in Attachment I: Scope of Work and included in Attachment II: Estimated Budget.

B. Administrative or operational activities undertaken by Grantee to develop, market, and implement the EECE Lending Program, which can amount to no more than ten percent (10%) of the grant amount as listed in Section 1.7. The allowed administrative and operational costs must be identified in Attachment II: Estimated Budget.

COMMERCE and Grantee may adjust amounts in the Attachment II: Estimated Budget category line items, except the administrative and operational costs, by ten percent (10%) or less without a formal contract amendment by written mutual agreement by both parties. Written approval shall be through the following method:

A. Written request to COMMERCE from the Grantee by email of the proposed variation;

B. Review of the request by COMMERCE; and

C. Written determination (approval/rejection) by the COMMERCE contract representative to the Grantee.

With the exception of reimbursement for costs of administrative and operational activities, in no case shall grant funds be disbursed for EECE Lending Program activities listed in the Attachment I: Scope of Work until the Grantee has met the following conditions:

A. Grantee has provided evidence of insurance to COMMERCE (as described in Section 1.18);

B. Grantee has executed the Grantee-Lender Agreement(s) and complied with all the requirements described in Section 1.12, and Grantee has provided COMMERCE with a copy of such agreement for Commerce's approval.

The disbursement of grant proceeds shall be initiated by the Grantee on a Washington State A19 Invoice Voucher form, which will be provided by COMMERCE upon Grantee's request. Disbursement requests must be supported by a copy of the **executed Grantee-Lender Agreement(s)** (as described in Section 1.12). Disbursements for administrative or operational costs, as described in this section, may be reimbursed to the Grantee before a Grantee-Lender Agreement is executed, if they are already incurred by the Grantee and are evidenced by back-up documentation, such as invoices, receipts, statements, or computer printouts.

Payment shall be considered timely if made by COMMERCE within thirty (30) calendar days after receipt of properly completed Washington State A19 Invoices. Payment shall be sent to the address designated by the Grantee.

In the event that the Grantee receives reimbursement for costs that are later determined by COMMERCE to be ineligible, these funds shall be repaid to COMMERCE by payment to the Department of Commerce, or its successor, within thirty (30) days of written notification to the Grantee.

COMMERCE may, in its sole discretion, terminate this Agreement or withhold payments claimed by the Grantee for services rendered if the Grantee fails to satisfactorily comply with any term or condition of this Agreement.

Duplication of Billed Costs

The Grantee shall not bill COMMERCE for services performed under this Agreement, and COMMERCE shall not pay the Grantee, if the Grantee is entitled to payment or has been or will be paid by any other source, including grants, for that service.

Disallowed Costs

The Grantee is responsible for any audit exceptions or disallowed costs incurred by its own organization or that of its Lender, Borrower, or Energy Contractors.

1.10. FISCAL MANAGEMENT

Grantee shall have a budgeting, accounting, and reporting system that meet the standards of Washington State Chapter 43.88 RCW – Fiscal Management, and United Stated Department of Energy CFR Title 10 Part 600 – Financial Assistance Rules, demonstrating good internal control policies, procedures, and practices.

Grantee 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.

1.11. PROGRAM DEPOSIT ACCOUNT(S)

The Grantee must deposit the grant funds disbursed by COMMERCE, less the administrative or operational approved costs (as described in Section 1.9 and identified in Attachment II: Estimated Budget), in a deposit account with the Lender (the "Program Deposit Account").

The Program Deposit Account will be used to administer the EECE Lending Program employing the Credit Enhancement described in Attachment I: Scope of Work. If the EECE Lending Program described in Attachment I: Scope of Work identifies more than one Credit Enhancement mechanism to be employed by a single Lender, then the Grantee shall open a separate dedicated Program Deposit Account for each Credit Enhancement mechanism. The Grantee may move funds from one Program Deposit Account to another Program Deposit Account upon prior written approval from COMMERCE.

The Grantee acknowledges that if the Grantee is a state or local government entity, the grant funds disbursed under this Agreement may not be placed on deposit with a nonprofit financial institution, such as a credit union, or into a for-profit financial institution that is not a member of the Washington Public Deposit Protection Program (WPDPP).

If the Lender is a credit union or a financial institution that is not a WPDDP member, the Grantee may chose to place the EECE funds into one or more Loan Loss Reserve accounts or any other types of accounts necessary for the administration of the EECE Credit Enhancement(s) described in Attachment

I: Scope of Work. Accordingly, any reference in this Agreement to the "Program Deposit Account(s)" shall mean the "Loan Loss Reserve Account(s)" or the account(s) necessary for the administration of the Credit Enhancement(s) described in Attachment I: Scope of Work.

All allowable deposit and withdrawal activities in and from the Program Deposit Account(s) must be identified and described in the Grantee-Lender Agreement(s).

Financial and accounting systems should be revised as necessary to segregate, track, and maintain all the Program Deposit Accounts apart and separate from each other and from other accounts. No part of the Program Deposit Account(s) shall be commingled with any other funds or used for a purpose other than that of making payments allowable under this Agreement and under the Grantee-Lender Agreement(s).

All interest earnings proceeds, if any, from the Program Deposit Account(s) may be used by Grantee to provide additional SEP EECE funds to the EECE Lending Program or to pay for Grantee's administrative or operational costs that are in addition to the ten percent (10%) of the grant amount, as described in Section 1.9.

COMMERCE reserves the right to request the Grantee to provide copies of monthly and/or annual statements identifying all the activities in the Program Deposit Account(s).

The Grantee-Lender Agreement(s) must include a provision stating the rules for operating and maintaining the Program Deposit Account(s).

1.12. GRANTEE-LENDER AGREEMENT

No later than **ninety (90) days after Agreement execution**, Grantee and Lenders will draft and execute all the Grantee-Lender Agreements, depending on the number of Lenders with which the Grantee will contract, that will outline in detail the development and implementation of the EECE Lending Program.

At a minimum, the Grantee-Lender Agreement(s) will include provisions or descriptions for the following:

A. Credit Enhancement Mechanism: The Grantee-Lender Agreement must describe in detail the financial mechanism used by the Lender to reduce risk and create credit enhancement for Borrowers.

B. Program Deposit Account(s): The Grantee-Lender Agreement must include a provision stating the rules for setting, operating, and maintaining the Program Deposit Account(s), as described in Section 1.11.

C. Time of Performance: The Grantee-Lender Agreement must include a detailed timeline outlining, at a minimum, the development, marketing, implementing, monitoring, and performance measuring of the EECE Lending Program.

D. Unspent Funds at Project Completion: The Grantee-Lender Agreement must include a provision requiring the Lender to return the unspent funds (as defined in Section 1.8) to the Grantee at the end of the Grantee-Lender Agreement.

E. Marketing and Outreach: The Grantee-Lender Agreement must describe the Lender's and Grantee's activities to market and advertise the loan program resulting from the implementation of the EECE Lending Program.

F. Risk Sharing: The Grantee-Lender Agreement must describe the plan for the Grantee and Lender to share the risk in mitigating Borrower loan defaults or loan losses.

G. Dispute Resolution: The Grantee-Lender Agreement must include a provision by which disputes between the Grantee and Lender are resolved.

H. Underwriting Procedures and Selection of Borrower: The Grantee-Lender Agreement must describe the underwriting procedures and selection process undertaken by Lender in order to select and award loans to Borrowers.

I. Preliminary Energy Audit: The Grantee-Lender Agreement must require that all Energy Efficiency Improvement Projects undergo a preliminary Energy Audit that outlines the steps necessary to improve energy efficiency and that estimate the energy savings resulting from the completion of the Energy Efficiency Improvement Project, as described in Section 1.14.

J. Environmental and Cultural Resources Review Process: The Grantee-Lender Agreement must include a provision requiring the Lender to ensure that all Borrowers comply with the National Environmental Policy Act and Section 106 of the National Historic Preservation Act, as described in Section 1.16 and Section 1.17 respectively.

K. Selecting and Monitoring the Energy Contractor: The Grantee-Lender Agreement must describe the selection process for the Energy Contractor and the process followed by the Grantee and/or Lender to ensure Energy Contractor's compliance with performance standards and licensing, as described in Section 1.20. The Grantee-Lender Agreement must also include a provision requiring compliance with all codes requirements, as described in Section 1.21.

L. Performance and Accountability Measures: The Grantee-Lender Agreement must indicate a preliminary estimate of energy savings and describe the process to measure the success of the EECE Lending Program. The performance measures must be specific, measurable, and time limited.

M. Job Creation and Retention: The Grantee-Lender Agreement must indicate a preliminary estimate and describe the process to measure actual job creation and retention as a result of the implementation of the EECE Lending Program.

N. Insurance Requirements: The Grantee-Lender Agreement must include a provision requiring, at a minimum, evidence of Lender's Bankers Blanket Bond Fidelity insurance.

O. American Recovery and Investment Act of 2009 Requirements: The Grantee-Lender Agreement must include provisions for all requirements of the Recovery Act, as described in Attachment III. Grantee and Lender shall ensure that all Borrowers, Energy Contractors,

and any subcontractors hired as a result of this Agreement are in compliance with all federal and state laws, including compliance with all requirements of the Recovery Act.

P. Other Federal and State Requirements: The Grantee-Lender Agreement must include provisions for the following:

a. Nondiscrimination Provision (as described in Section 1.19);

b. Performance Standards and Licensing (as described in Section 1.20);

c. Code Requirements (as described in Section 1.21);

d. Prevailing Wage Law (as described in Section 1.22);

e. Work Hours and Safety Standards (as described in Section 1.23);

f. Federal and State Requirements (as described in Section 1.24);

g. Record Keeping and Access to Records (as described in Section 1.25).

1.13. FINAL AMENDMENT AND CERTIFIED PROJECT COMPLETION REPORT

The Grantee shall initiate a Project Completion Amendment (Final Amendment) by submitting a Certified Project Completion Report when activities identified in Attachment I: Scope of Work are complete or in twenty (20) years from the execution of this Agreement, whichever comes first. COMMERCE will supply the Grantee with the Certified Project Completion Report forms upon request.

In the Certified Project Completion Report, the Grantee will provide the following information to the COMMERCE:

A. A certified statement of the actual dollar amounts spent in completing the Project as identified in Attachment I: Scope of Work and budgeted for in Attachment II: Estimate Budget;

B. A summary of all activities in the Program Deposit Account(s);

C. Evidence documenting compliance with financial audit requirements, as described in Section 2.8.

Grantee must return to COMMERCE the unspent funds (as defined in Section 1.8) remaining in the Program Deposit Account(s) at the time of project completion.

1.14. PRELIMINARY ENERGY AUDITS

To create energy savings, the Grantee must ensure that a preliminary energy audit will be performed and recorded prior to any loans being made to Borrower for energy efficiency improvements to a property. The energy audit findings will be used as a benchmark for future energy audits that may be required to measure obtained energy savings.

The Grantee shall include these requirements in the Grantee-Lender Agreement(s), as described in Section 1.12.

1.15. REPORTS

The Grantee, at such times and on such forms as COMMERCE and/or the United States Department of Energy may require, must furnish energy audit reports and submit monthly, quarterly, and/or yearly progress reports, the Certified Project Completion Report, and other reports as may be requested.

No later than **September 30, 2010, and September 30 of each year thereafter for the entire term of this Agreement**, the Grantee must submit a Performance Report of the EECE Lending Program to COMMERCE. The Performance Report must be accompanied by a statement summarizing the activities in the Program Deposit Account(s). The form and format of the Performance Report will be provided by COMMERCE.

All sub-recipients and their partners, contractors, and/or vendors are responsible for reporting pursuant to **Section 1512** of the Recovery Act (as described in Attachment III). COMMERCE, as a prime recipient of Recovery Act funds, must comply with the Recovery Act's extensive reporting requirements, including quarterly financial and programmatic reporting. COMMERCE will require quarterly reports from the Grantee in order to fulfill its obligation. All sub-recipient receiving Recovery Act funds may expect that a standard form(s) and/or reporting mechanism will be made available to help streamline the process. The Grantee agrees to provide to COMMERCE all reports, documentation, or other information, as may be required to meet reporting obligations under the Recovery Act. The Grantee's receipt of funds is contingent on meeting the Section 1512 reporting requirements, which is subject to change without notice.

Additional instructions and guidance regarding the required reporting will be provided as they become available. For planning purposes, however, Grantee should be aware of the current Recovery Act section 1512(c) requirements.

Sub-recipient (Grantee and Lender) Reports

Not later than **five (5) days after the end of each calendar quarter** (January 5, April 5, July 5, and October 5 throughout the Agreement period), the Grantee must submit a report to COMMERCE that contains, but is not limited to, the following:

A. Financial data;

B. Sub-recipient (and if applicable, vendor) full-time employees: jobs created or retained reported as single number; jobs directly funded by Recovery Act;

C. Project activity milestones (based on Attachment I: Scope of Work);

D. Energy savings on a per dollar invested basis;

E. Energy saved (kwh, therms, gallons, BTUs, etc.);

F. Renewable energy capacity installed;

G. Greenhouse gas emissions reduced;

H. Other funds leveraged;

I. Data related to vendors paid more than $25,000 in a single purchase;

J. Key metrics that will vary by project type per United States Department of Energy guidance.

Failure to file periodic reports as requested in this section may result in termination of this Agreement.

1.16. HISTORICAL AND CULTURAL ARTIFACTS

The Grantee acknowledges that all Energy Efficiency Improvement Projects funded by this Agreement are subject to Section 106 of the National Historic Preservation Act of 1966, unless an exemption has been obtained under a programmatic agreement. Grantee acknowledges receipt of the "Programmatic Agreement between the United States Department of Energy, the Washington State Department of Commerce and the Washington State Historic Preservation Office Regarding EECBG, SEP and WAP Undertakings," dated February 5, 2010, as included in Attachment VI: Programmatic Agreement between the United States Department of Energy, the Washington State Department of Commerce and the Washington State Historic Preservation Office Regarding EECBG, SEP and WAP Undertakings.

Grantee agrees that Grantee is legally and financially responsible for compliance with all laws, regulations, and agreements related to the preservation of historical or cultural artifacts, and agrees to hold harmless the State of Washington in relation to any claim related to such historical or cultural artifacts discovered, disturbed, or damaged as a result of Grantee's Project or the Energy Efficiency Improvement Projects funded under this Agreement.

If historical or cultural artifacts are discovered during any construction work resulting from this Agreement, the Grantee must ensure that Borrower shall immediately stop construction, and implement reasonable measures to protect the discovery site from further disturbance, take reasonable steps to ensure confidentiality of the discovery site, restrict access to the site, and notify the concerned tribe's cultural staff or committee and the state's historical preservation officer at the Washington State Department of Archaeology and Historic Preservation (DAHP). If human remains are uncovered, Grantee must ensure that Borrower reports the presence and location of the remains to the coroner and local enforcement immediately, then contact both DAHP and the concerned Tribe's cultural staff or committee.

The Grantee shall require this provision to be contained in all contracts between Borrower and Energy Contractor for work or services related to or resulting from Attachment I: Scope of Work. In no case shall any construction or repair activities begin until all provisions of Section 106 of the National Historic Preservation Act of 1966 have been complied with.

In addition to the requirements set forth in this Agreement, the Grantee must ensure that Borrower complies with Revised Code of Washington (RCW) 27.44 regarding Indian Graves and Records; RCW 27.53 regarding Archaeological Sites and Resources; RCW 68.60 regarding Abandoned and Historic Cemeteries and Historic Graves; and Washington Administrative Code (WAC) 25-48 regarding Archaeological Excavation and Removal Permits.

The Grantee shall include these requirements in the Grantee-Lender Agreement(s), as described in Section 1.12.

1.17. NATIONAL ENVIRONMENTAL POLICY ACT

The Grantee acknowledges that all Energy Efficiency Improvement Projects funded by this Agreement are subject to National Environmental Policy Act (NEPA) requirements, unless a categorical exemption has been obtained. The Grantee acknowledges receipt of United States Department of Energy NEPA guidance, dated May 27, 2010, as included in Attachment VII: United States Department of Energy NEPA Guidance, NEPA Template for Categorical Exemptions, and Environmental Checklist.

The Grantee shall include these requirements in the Grantee-Lender Agreement(s), as described in Section 1.12.

1.18. INSURANCE

The Grantee must provide insurance coverage as set out in this section. The intent of the required insurance is to protect COMMERCE, should there be any claims, suits, actions, costs, damages, or expenses arising from any loss, or negligent or intentional act, or omission of the Grantee or its Lender, or agents of either, while performing under the terms of this Agreement.

The insurance required shall be issued by an insurance company authorized to do business within the State of Washington. Except for Professional Liability or Errors and Omissions Insurance, the insurance shall name the State of Washington, its agents, officers, and employees as additional insureds under the insurance policy. All policies shall be primary to any other valid and collectable insurance. The Grantee shall instruct the insurers to give COMMERCE thirty (30) calendar days advance notice of any insurance cancellation, non-renewal, or modification.

The Grantee shall submit to COMMERCE, within fifteen (15) calendar days of the Agreement execution date, a certificate of insurance that outlines the coverage and limits defined in this insurance section. During the term of this Agreement, the Grantee shall submit renewal certificates not less than thirty (30) calendar days prior to the expiration of each policy required under this section.

The Grantee shall provide insurance coverage that shall be maintained in full force and effect during the term of this Agreement, as follows:

A. Commercial General Liability Insurance Policy. Provide a Commercial General Liability Insurance Policy, including contractual liability, written on an occurrence basis, in adequate quantity to protect against legal liability arising out of Agreement activity but no less than $1,000,000 per occurrence. Additionally, the Grantee is responsible for ensuring that its Lender provide adequate insurance coverage for the activities arising out of the Grantee-Lender Agreement(s), as described in Section 1.12.

B. Automobile Liability. In the event that performance pursuant to this Agreement involves the use of vehicles, owned or operated by the Grantee or its Lender, automobile liability insurance shall be required. The minimum limit for automobile liability is $1,000,000 per occurrence, using a Combined Single Limit for bodily injury and property damage.

C. Professional Liability, Errors and Omissions Insurance. The Grantee shall maintain Professional Liability or Errors and Omissions Insurance. The Grantee shall maintain minimum limits of no less than $1,000,000 per occurrence to cover all activities by the Grantee and licensed staff employed or under contract to the Grantee. The State of Washington, its agents, officers, and employees need not be named as additional insureds under this policy.

D. Fidelity Insurance. Every officer, director, employee, or agent who is authorized to act on behalf of the Grantee for the purpose of receiving or depositing funds into program accounts or issuing financial documents, checks, or other instruments of payment for program costs shall be insured to provide protection against loss:

a. The amount of fidelity coverage secured pursuant to this Agreement shall be $100,000 or the highest of planned reimbursement for the Agreement period, whichever is lowest. Fidelity insurance secured pursuant to this paragraph shall name COMMERCE as beneficiary.

b. The Lender or any subcontractors that receive $10,000 or more per year in funding through this Agreement shall secure fidelity insurance as noted above. Fidelity insurance secured by Lender and subcontractors pursuant to this paragraph shall name the Grantee as beneficiary.

c. The Grantee shall provide, at COMMERCE's request, copies of insurance instruments or certifications from the insurance issuing agency. The copies or certifications shall show the insurance coverage, the designated beneficiary, who is covered, the amounts, the period of coverage, and that COMMERCE will be provided thirty (30) days advance written notice of cancellation.

Additional Provisions

The above insurance policy shall include the following provisions:

A. Additional Insured. The State of Washington, COMMERCE, its elected and appointed officials, agents and employees shall be named as an additional insured on all general liability, excess, umbrella, and property insurance policies. All insurance provided in compliance with this Agreement shall be primary as to any other insurance or self-insurance programs afforded to or maintained by the State.

B. Identification. The policy must reference COMMERCE's Agreement number and the State agency name.

C. Insurance Carrier Rating. All insurance and bonds should be issued by companies admitted to do business within the State of Washington and have a rating of A-, Class VII or better in the most recently published edition of Best's Reports. Any exception shall be reviewed and approved by COMMERCE's Risk Manager, or the Risk Manager for the State of Washington, before the Agreement is accepted or work may begin. If an insurer is not admitted, all insurance policies and procedures for issuing the insurance policies must comply with Chapter 48.15 RCW and 284-15 WAC.

D. Excess Coverage. By requiring insurance herein, COMMERCE does not represent that coverage and limits will be adequate to protect Grantee and such coverage and limits shall not limit Grantee's liability under the indemnities and reimbursements granted to COMMERCE in this Agreement.

Local Government Grantees that Participate in a Self-Insurance Program

With prior approval from COMMERCE, the Grantee may provide the coverage above under a self-insured/liability pool or self-insured risk management program. In order to obtain permission from COMMERCE, the Grantee shall provide: (1) a description of its self-insurance program, and (2) a certificate and/or letter of coverage that outlines coverage limits and deductibles. All self-insured risk management programs or self-insured/liability pool financial reports must comply with Generally Accepted Accounting Principles (GAAP) and adhere to accounting standards promulgated by: (1) Governmental Accounting Standards Board (GASB), (2) Financial Accounting Standards Board (FASB), and (3), the Washington State Auditor's annual instructions for financial reporting. Grantee's participating in joint risk pools shall maintain sufficient documentation to support the aggregate claim liability information reported on the balance sheet. The State of Washington, its agents, and employees need not be named as additional insured under a self-insured property/liability pool, if the pool is prohibited from naming third parties as additional insured.

Grantee shall provide annually to COMMERCE a summary of coverages and a letter of self insurance, evidencing continued coverage under Grantee's self-insured/liability pool or self-insured risk management program. Such annual summary of coverage and letter of self insurance will be provided on the anniversary of the start date of this Agreement.

1.19. NONDISCRIMINATION PROVISION

During the performance of all work and services resulting from this Agreement, the Grantee shall comply with all federal and state nondiscrimination laws, including, but not limited to Chapter 49.60 RCW, Washington's Law Against Discrimination, and 42 U.S.C. 12101 et seq., the Americans with Disabilities Act (ADA).

In the event of the Grantee's noncompliance or refusal to comply with any applicable nondiscrimination law, regulation, or policy, this Agreement may be rescinded, canceled, or terminated in whole or in part, and the Grantee may be declared ineligible for further contracts with COMMERCE. The Grantee shall, however, be given a reasonable time in which to cure this noncompliance.

The Grantee shall include these requirements in the Grantee-Lender Agreement(s), as described in Section 1.12.

1.20. PERFORMANCE STANDARDS AND LICENSING

The Grantee shall comply with all applicable local, state, and federal licensing and accrediting requirements/standards, and any other standard or criteria established by COMMERCE to assure quality of services necessary for the performance of all work and services resulting from this Agreement and additional requirements contained in all documents incorporated by reference in the Agreement.

The Grantee shall include these requirements in the Grantee-Lender Agreement(s), as described in Section 1.12.

1.21. CODE REQUIREMENTS

The Grantee must ensure that all construction and rehabilitation projects resulting from this Agreement satisfy the requirements of applicable local, state, and federal building, mechanical, plumbing, fire, energy, and barrier-free codes. Compliance with the Americans with Disabilities Act of 1990, 28 C.F.R. Part 35 will be required, as specified by the local building department.

The Grantee shall include these requirements in the Grantee-Lender Agreement(s), as described in Section 1.12.

1.22. PREVAILING WAGE LAW, DAVIS-BACON ACT

The Grantee must ensure that all laborers and mechanics contracting for work on a construction project funded through this Agreement shall comply with prevailing wage laws by paying the federal or state prevailing wages, whichever one is higher, as specified below.

Section 1606 of the Recovery Act requires that all laborers and mechanics employed as a result of this Agreement 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 the 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 CRF 5.5 instruct agencies concerning application of 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, alternation or repair (including painting and decorating).

The Davis-Bacon Act, 40 U.S.C. 276a-276a-5, and related federal acts provide that all laborers and mechanics employed in the performance or work or services resulting from this Agreement shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor. Individual homeowners receiving loans under a revolving loan fund program are not required to comply with Davis-Bacon Act.

The Grantee shall include these requirements in the Grantee-Lender Agreement(s), as described in Section 1.12.

1.23. WORK HOURS AND SAFETY STANDARDS

The Grantee must ensure that, where applicable, all contracts resulting from this Agreement awarded in excess of $100,000 for construction and other purposes that involve the employment of mechanics or laborers must include a provision for compliance with Section 102 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333), as supplemented by Department of Labor regulations (29 CFR part 5). Under Section 102 of the Act, each contractor is required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than 1 ½ times the basic rate of pay for all hours worked in excess of 40 hours in the work week. Section 107 of the Act is applicable to construction work and provides that no laborer or mechanic is required to work in

surroundings or under working conditions which are unsanitary, hazardous, or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

The Grantee shall include these requirements in the Grantee-Lender Agreement(s), as described in Section 1.12.

1.24. FEDERAL AND STATE REQUIREMENTS

In performing under this Agreement, the Grantee shall comply with all applicable laws, ordinances, codes, regulations, and policies of local, state and federal governments, including, but not limited to:

A. State of Washington

- State Budgeting, Accounting and Reporting System, Chapter 43.88 RCW.
- Executive Order #83-01, Establishing Policies for Minority and Women's Business Enterprises.
- Law Against Discrimination, Chapter 49.60 RCW.
- Boards of directors or officers of nonprofit corporations—Liability—Limitations, RCW 4.24.264.
- Office of Minority and Women's Business Enterprises, Chapter 39.19 RCW, Chapter 326-02 WAC.
- Public Disclosure Act, Chapter 42.17 RCW.
- Airborne contaminants, Chapter 296-841, WAC
- Affirmative Action for Employment of Vietnam-era and Disabled Veterans, Laws of 1985, Chapter 43.43 RCW.
- Chapter 70.103 RCW, Lead-based paint.
- Chapter 365-230 WAC, Accreditation of lead-based paint training programs and the certification of firms and individuals conducting lead-based paint activities.
- Regulations for Barrier Free Facilities, Chapter 51.50 WAC.

B. United States Department of Energy

- Energy Conservation in Existing Buildings Act of 1976, as amended (Public Law 94-385; 42 USC 6851).
- National Energy Conservation Policy Act of 1978, as amended (Public Law 95-619; 42 USC 1474 and 6861-6873).
- Weatherization Assistance Program for Low-Income Persons, as amended (10 CFR 440, Final Rule).
- Financial Assistance Rules, as amended (10 CFR 600).

C. Administration/Financial Management

- Functions Guidelines for Finance and Compliance Audit of Federally Assisted Programs (GAO).
- Standards for Audit of Governmental Organizations, Programs, Activities.
- Audits 24 CFR part 570.492, 493, as applicable.
- Audits of States, Local Governments, and Non-Profit Organizations. OMB Circular A-133.

- Cost Principles Applicable to Grants and Contracts with State, Local, and Indian Tribal Governments. OMB Circular A-87, 2 CFR Part 225, Subpart A, Ch. II, part 225.
- Grants and Cooperative Agreements with State and Local governments for State, Local and Indian Tribal Governments, OMB Circular A-102. Grants Management Common Rule (State and Local Government) 24 CFR Parts 24, 85, 87.
- Uniform Administrative Requirements for Grants and Agreements with Nonprofit Organizations, OMB Circular A-110.
- Cost Principles for Nonprofit Organizations, OMB Circular A-122, 2 CFR Part 230.

D. Affirmative Action/Laws Against Discrimination

- Nondiscrimination in Benefits, Title VI of the Civil Rights Act of 1964, Public Law 88-352, 42 USC 2000d.
- Age Discrimination Act of 1975, Public Law 94-135, 42 USC 6101-07, 45 CFR Subtitle A, Part 90.
- Equal Employment Opportunity, Executive Order 11246, as amended by Executive Order 11375 and supplemented in U.S. Department of Labor regulations, 41 CFR 60.
- Section 3, Housing and Urban Development Act of 1969, 12 USC 1701u (see 24 CFR 570.607(b)).
- Employment Under Federal Contracts, Rehabilitation Act of 1973, Section 503, 29 USC 793.
- Nondiscrimination under Federal Grants and Programs, Rehabilitation Act of 1973, Section 504, 29 USC Section 794.
- 39 CFR, Part 777.22, Relocation Assistance for Displaced Persons, Displaced Persons - Title II and III of the Uniform Relocation Assistance and Real Property Acquisition Act of 1970, Public Law 91-846.
- Americans with Disabilities Act of 1990, Public Law 101-336, 42 USC 12101, *et seq.*
- Creating a National Women's Business Enterprise Policy, Executive Order 12138, 44 FR 29637.
- Executive Order 11246, as amended by EO 11375, 11478, 12086 and 12102.
- Fair Housing Act (42 USC 3601-19) and implementing regulations at 24 CFR part 100.
- Section 504 of the Rehabilitation Act of 1973 and implementing regulations at 24 CFR Chapter 8.
- Handicapped Employees of Government Contractors, Rehabilitation Act of 1973, Section 503, 29 USC 793.
- Handicapped Recipients of Federal Financial Assistance, Rehabilitation Act of 1973, Section 504, 29 USC Section 794.
- Minority Business Enterprises, 15 USC 631, and 41 CFR Chapter 60.
- Nondiscrimination and Equal Opportunity, 24 CFR Part 583.
- Nondiscrimination in employment, Title VII of the Civil Rights Act of 1964, Public Law 88-352, 42 USC, Chapter 21.
- Nondiscrimination in Federally Assisted Programs, 10 CFR part 1040.

- Nondiscrimination in Federally Assisted Construction Contracts, Executive Order 11246, 42 USC 2000e, as amended by Executive Order 11375, 41 CFR 60.

E. Conflicts of Interest

- Anti-Kickback Act, 41 USC 51-58.

F. Environmental Standards

- National Environmental Policy Act of 1969, 42 USC 4321 et seq. and the implementing regulations of 24 CFR 58 (HUD) and 40 CFR 1500 - 1518 (Council on Environmental Quality).
- Lead-Based Paint Poisoning Prevention Act, 42 USC 4821-4846.
- Lead-Safe Housing Rule, 24 CFR 35.
- Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 USC 4851-4856.
- Flood Disaster Protection Act of 1973, 42 USC 4001-4128.

G. Notification Concerning Historic Places Identification

- National Historic Preservation Act of 1966, as amended (16 USC 469a-1 et seq. and 470).
- Executive Order 11593, Protection and Enhancement of the Cultural Environment; 1971, as amended.

H. Labor, Safety, and Building Code Standards

- Federal Fair Labor Standards Act, 29 USC, Chapter 8.
- Contract Work Hours and Safety Standards, 40 USC Subtitle II, Part A, Chapter 37.
- Department of Labor regulations, 29 CFR Part 5.
- All rental units assisted with federal funds must satisfy the requirements of applicable local, state, federal housing code requirements for the duration of the affordability period.
- 29 CFR 1926.62, Lead in Construction.

I. Minority and Women-Owned Business Enterprises

- Creating a National Women's Business Enterprise Policy Executive Order 12138, 44 FR 29637, 3 CFR.
- Minority Business Enterprise Development, Executive Order 12432, 48 FR 32551
- Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor, 41 CFR Chapter 60.
- Minority Business Enterprises, Executive Order 11625, 15 U.S.C. 631, and 41 CFR 1-1.1310-2(a).

J. Notification Concerning Historic Places Identification

- National Historic Preservation Act of 1966, as amended (16 USC 469a-1 et seq. and 470).
- Executive Order 11593, Protection and Enhancement of the Cultural Environment; 1971, as amended.

K. Notification Concerning Violating Facilities

- Environmental Protection Agency, 42 USC, Sec. 4321 et seq.

L. Political Activity

- Hatch Political Activity Act, 5 USC 1501-8.
- Executive Order 12250, 28 CFR 41.
- Certification Regarding Lobbying, 24 CFR 87, Appendix A to Part 87.
- Lobbying and Disclosure, 31 USC 1352.

M. Privacy

- Privacy Act of 1974, 5 USC 552(a).

The Grantee also assures compliance with all applicable provisions of the Recovery Act as enacted and as hereafter amended.

When applicable, notwithstanding the fact that Grantee is a local government, the Grantee must comply with the following federal requirements:

A. Uniform Administrative requirements for Grants and Other Local Agreements with Institutions of Higher Education, Hospitals and Other Non Profit Organizations, OMB Circular 110;

B. Cost Principles for Nonprofit Organizations, OMB Circular A-122;

C. Office of Management and Budget (OMB) Revised Circular A-133 "Audits of States, Local Governments, and Non-Profit Organizations;

D. Cost Principles for State, Local and Indian Tribal Governments, OMB Circular A 87, 2 CFR, Part 225;

E. Grants and Cooperative Agreements with State and Local Governments, OMB Circular A 102, (if the Grantee is a local government or federally recognized Indian tribal government).

The Grantee shall include these requirements in the Grantee-Lender Agreement(s), as described in Section 1.12.

1.25. RECORDING KEEPING AND ACCESS TO RECORDS

These terms supersede the terms in Section 2.30. Records Maintenance in General Terms and Conditions.

COMMERCE, the COMMERCE agents, and duly authorized officials of the state and federal governments shall have full access and the right to examine, copy, excerpt, or transcribe any pertinent documents, papers, records, and books of the Grantee and of persons, firms, or organizations with which the Grantee may contract, involving transactions related to this Project and this Agreement.

The Grantee agrees to retain these records for a period of **twenty-six (26) years** from the date of Agreement execution. This includes but is not limited to financial reports. If any litigation, claim or audit is started before the expiration of the twenty-six (26) year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved.

The Grantee shall include these requirements in the Grantee-Lender Agreement(s), as described in Section 1.12.

1.26. AMENDMENTS, MODIFICATIONS, AND WAIVERS

These terms supersede the terms in Section 2.3. Amendments in General Terms and Conditions and Section 2.41. Waiver.

The Grantee may request an amendment of this Agreement for the purpose of modifying the Attachment I: Scope of Work or for extending the time of performance as provided for in Section 1.8. Any revision to the scope of work must be approved by COMMERCE. No modification or amendment resulting in an extension of time shall take effect until a request has been received and approved by COMMERCE.

No conditions or provisions of this Agreement may be waived unless approved by COMMERCE in writing. No waiver of any default or breach by any party shall be implied from any failure to take action upon such default or breach, if the default of breach persists or repeats.

1.27. TERMINATION FOR CONVENIENCE

These terms supersede the terms in Section 2.39. Termination for Convenience in General Terms and Conditions.

COMMERCE may terminate this Agreement in the event that federal or state funds are no longer available to COMMERCE, or are not appropriated for the purpose of meeting COMMERCE's obligations under this Agreement. COMMERCE shall notify the Grantee in writing of its determination to terminate and the reason for such termination. The effective date of the termination will be determined by the COMMERCE. If this Agreement is so terminated, COMMERCE shall be liable only for payment required under the terms of this Agreement for services rendered or goods delivered prior to the effective date of termination. Nothing in this section shall affect Grantee's obligations to repay the unused balance of the grant or the unspent funds as defined in Section 1.8.

PART 2. GENERAL TERMS AND CONDITIONS

2.1. DEFINITIONS

As used throughout this Agreement, the following terms shall have the meaning set forth below:

A. "Authorized Representative" shall mean the Director and/or the designee authorized in writing to act on the Director's behalf.

B. "Grantee" shall mean the entity identified on the face sheet performing service(s) under this Agreement, and shall include all employees and agents of the Grantee.

C. "COMMERCE" shall mean the Department of Commerce, or its successor agency.

D. "Personal Information" shall mean information identifiable to any person, including, but not limited to, information that relates to a person's name, health, finances, education, business, use or receipt of governmental services or other activities, addresses, telephone numbers, social security numbers, driver license numbers, other identifying numbers, and any financial identifiers.

E. "State" shall mean the state of Washington.

F. "Subgrantee" shall mean one not in the employment of the grantee, who is performing all or part of those services under this Agreement under a separate contract with the Grantee. The terms "subgrantee" and "subgrantees" mean subgrantee(s) in any tier.

2.2. ALL WRITINGS CONTAINED HEREIN

This Agreement contains all the terms and conditions agreed upon by the parties. No other understandings, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind any of the parties hereto.

2.3. AMENDMENTS

This Agreement may be amended by mutual agreement of the parties. Such amendments shall not be binding unless they are in writing and signed by personnel authorized to bind each of the parties.

2.4. AMERICANS WITH DISABILITIES ACT (ADA)

The Grantee must comply with the ADA, which provides comprehensive civil rights protection to individuals with disabilities in the areas of employment, public accommodations, state and local government services, and telecommunications.

2.5. APPROVAL

This Agreement shall be subject to the written approval of COMMERCE's Authorized Representative and shall not be binding until so approved. The Agreement may be altered, amended, or waived only by a written amendment executed by both parties.

2.6. ASSIGNMENT

Neither this Agreement, nor any claim arising under this Agreement, shall be transferred or assigned by the Grantee without prior written consent of COMMERCE.

2.7. ATTORNEYS' FEES

Unless expressly permitted under another provision of the Agreement, in the event of litigation or other action brought to enforce Agreement terms, each party agrees to bear its own attorneys fees and costs.

2.8. AUDIT

A. General Requirements

Grantees are to procure audit services from the State Auditor's Office based on the following guidelines under the Single Audit Act.

The Grantee shall maintain its records and accounts so as to facilitate the audit requirement and shall ensure that Subgrantees also maintain auditable records.

The Grantee is responsible for any audit exceptions incurred by its own organization or that of its Subgrantees.

COMMERCE reserves the right to recover from the Grantee all disallowed costs resulting from the audit.

As applicable, Grantees required to have an audit must ensure the audits are performed in accordance with Generally Accepted Auditing Standards (GAAS); Government Auditing Standards (the Revised Yellow Book) developed by the Comptroller General.

Responses to any unresolved management findings and disallowed or questioned costs shall be included with the audit report. The Grantee must respond to COMMERCE requests for information or corrective action concerning audit issues within thirty (30) days of the date of request.

B. Federal Funds Requirements - OMB Circular A-133 Audits of States, Local Governments and Non-Profit Organizations

Grantees expending $500,000 or more in a fiscal year in federal funds from all sources, direct and indirect, are required to have an audit conducted in accordance with Office of Management and Budget (OMB) Revised Circular A-133 "Audits of States, Local Governments, and Non-Profit Organizations." Revised OMB A-133 requires the Grantee to provide the auditor with a schedule of Federal Expenditure for the fiscal year(s) being audited. The Schedule of State Financial Assistance must be included. Both schedules include:

Grantor agency name
Federal agency
Federal program name

Other identifying agreement numbers
Catalog of Federal Domestic Assistance (CFDA) number
Grantor agreement number
Total award amount including amendments (total grant award)
Beginning balance
Current year revenues
Current year expenditures
Ending balance
Program total

If the Grantee is a state or local government entity, the Office of the State Auditor shall conduct the audit. Audits of nonprofit organizations are to be conducted by a certified public accountant selected by the Grantee in accordance with OMB Circular A-110 "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations."

The Grantee shall include the above audit requirements in any subcontracts.

In any case, the Grantee's financial records must be available for review by COMMERCE.

C. Documentation Requirements

The Grantee must send a copy of any required audit Reporting Package as described in OMB Circular A-133, Part C, Section 320(c) no later than nine (9) months after the end of the Grantee's fiscal year(s) to:

Department of Commerce
ATTN: Audit Review and Resolution Office
906 Columbia Street SW, Fifth Floor
PO Box 48300
Olympia WA 98504-8300

In addition to sending a copy of the audit, when applicable, the Grantee must include:

- Corrective action plan for audit findings within three (3) months of the audit being received by COMMERCE.
- Copy of the Management Letter.

2.9. CERTIFICATION REGARDING DEBARMENT, SUSPENSION OR INELIGIBILITY AND VOLUNTARY EXCLUSION—PRIMARY AND LOWER TIER COVERED TRANSACTIONS

A. Grantee, defined as the primary participant and it principals, certifies by signing these General Terms and Conditions that to the best of its knowledge and belief that they:

1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency.

2) Have not within a three-year period preceding this Agreement, 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 or private agreement or transaction, violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, receiving stolen property, making false claims, or obstruction of justice;

3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this section; and

4) Have not within a three-year period preceding the signing of this Agreement had one or more public transactions (Federal, State, or local) terminated for cause of default.

B. Where the Grantee is unable to certify to any of the statements in this Agreement, the Grantee shall attach an explanation to this Agreement.

C. The Grantee agrees by signing this Agreement that 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 COMMERCE.

D. The Grantee further agrees by signing this Agreement that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," as follows, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions:

LOWER TIER COVERED TRANSACTIONS

1) The lower tier grantee certifies, by signing this Agreement 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 lower tier grantee is unable to certify to any of the statements in this Agreement, such grantee shall attach an explanation to this Agreement.

E. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, person, primary covered transaction, principal, and voluntarily excluded, as used in this section, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact COMMERCE for assistance in obtaining a copy of these regulations.

2.10. CONFIDENTIALITY/SAFEGUARDING OF INFORMATION

A. "Confidential Information" as used in this section includes:

1) All material provided to the Grantee by COMMERCE that is designated as "confidential" by COMMERCE;

2) All material produced by the Grantee that is designated as "confidential" by COMMERCE; and

3) All Personal Information in the possession of the Grantee that may not be disclosed under state or federal law. "Personal Information" includes but is not limited to information related to a person's name, health, finances, education, business, use of government services, addresses, telephone numbers, social security number, driver's license number and other identifying numbers, and "Protected Health Information" under the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA).

B. The Grantee shall comply with all state and federal laws related to the use, sharing, transfer, sale, or disclosure of Confidential Information. The Grantee shall use Confidential Information solely for the purposes of this Agreement and shall not use, share, transfer, sell or disclose any Confidential Information to any third party except with the prior written consent of COMMERCE or as may be required by law. The Grantee shall take all necessary steps to assure that Confidential Information is safeguarded to prevent unauthorized use, sharing, transfer, sale or disclosure of Confidential Information or violation of any state or federal laws related thereto. Upon request, the Grantee shall provide COMMERCE with its policies and procedures on confidentiality. COMMERCE may require changes to such policies and procedures as they apply to this Agreement whenever COMMERCE reasonably determines that changes are necessary to prevent unauthorized disclosures. The Grantee shall make the changes within the time period specified by COMMERCE. Upon request, the Grantee shall immediately return to COMMERCE any Confidential Information that COMMERCE reasonably determines has not been adequately protected by the Grantee against unauthorized disclosure.

C. Unauthorized Use or Disclosure. The Grantee shall notify COMMERCE within five (5) working days of any unauthorized use or disclosure of any confidential information, and shall take necessary steps to mitigate the harmful effects of such use or disclosure.

2.11. CONFORMANCE

If any provision of this Agreement violates any statute or rule of law of the state of Washington, it is considered modified to conform to that statute or rule of law.

2.12. COPYRIGHT PROVISIONS

Unless otherwise provided, all Materials produced under this Agreement shall be considered "works for hire" as defined by the U.S. Copyright Act and shall be owned by COMMERCE. COMMERCE shall be considered the author of such Materials. In the event the Materials are not considered "works for hire" under the U.S. Copyright laws, the Grantee hereby irrevocably assigns all right, title, and interest in all Materials, including all intellectual property rights, moral rights, and rights of publicity to COMMERCE effective from the moment of creation of such Materials.

"Materials" means all items in any format and includes, but is not limited to, data, reports, documents, pamphlets, advertisements, books, magazines, surveys, studies, computer programs, films, tapes, and/or sound reproductions. "Ownership" includes the right to copyright, patent, register and the ability to transfer these rights.

For Materials that are delivered under the Agreement, but that incorporate pre-existing materials not produced under the Agreement, the Grantee hereby grants to COMMERCE a nonexclusive, royalty-free, irrevocable license (with rights to sublicense to others) in such Materials to translate, reproduce, distribute, prepare derivative works, publicly perform, and publicly display. The Grantee warrants and represents that the Grantee has all rights and permissions, including intellectual property rights, moral rights and rights of publicity, necessary to grant such a license to COMMERCE.

The Grantee shall exert all reasonable effort to advise COMMERCE, at the time of delivery of Materials furnished under this Agreement, of all known or potential invasions of privacy contained therein and of any portion of such document which was not produced in the performance of this Agreement. The Grantee shall provide COMMERCE with prompt written notice of each notice or claim of infringement received by the Grantee with respect to any Materials delivered under this Agreement. COMMERCE shall have the right to modify or remove any restrictive markings placed upon the Materials by the Grantee.

2.13. DISALLOWED COSTS

The Grantee is responsible for any audit exceptions or disallowed costs incurred by its own organization or that of its SubGrantees.

2.14. DISPUTES

Consistent with RCW 43.17.320-.340, the parties shall make every effort to resolve disputes arising out of or relating to this Agreement through discussion and negotiation. Should discussion and negotiation fail to resolve a dispute arising under this Agreement, the parties shall select a dispute resolution team to resolve the dispute. The team shall consist of a representative appointed by the director of each party and a third party mutually agreed upon by the director of each party. The team shall attempt, by majority vote, to resolve the dispute. If the dispute cannot be resolved in this fashion, either party may request assistance from the Governor pursuant to RCW 43.17.330.

2.15. DUPLICATE PAYMENT

The Grantee certifies that work to be performed under this Agreement does not duplicate any work to be charged against any other Agreement, subcontract, or other source.

2.16. ETHICS/CONFLICTS OF INTEREST

In performing under this Agreement, the Grantee shall assure compliance with the Ethics in Public Service Act (Chapter 42.52 RCW) and any other applicable state or federal law related to ethics or conflicts of interest.

2.17. GOVERNING LAW AND VENUE

This Agreement shall be construed and interpreted in accordance with the laws of the state of Washington, and the venue of any action brought hereunder shall be in the Superior Court for Thurston County.

2.18. INDEMNIFICATION

To the fullest extent permitted by law, the Grantee shall indemnify, defend, and hold harmless the state of Washington, COMMERCE, all other agencies of the state and all officers, agents and employees of the state, from and against all claims or damages for injuries to persons or property or death arising out of or incident to the Grantee's performance or failure to perform the Agreement. The Grantee's obligation to indemnify, defend, and hold harmless includes any claim by the Grantee's agents, employees, representatives, or any Subgrantee or its agents, employees, or representatives.

The Grantee's obligation to indemnify, defend, and hold harmless shall not be eliminated by any actual or alleged concurrent negligence of the State or its agents, agencies, employees and officers. Subcontracts shall include a comprehensive indemnification clause holding harmless the Grantee, COMMERCE, the state of Washington, its officers, employees and authorized agents.

The Grantee waives its immunity under Title 51 RCW to the extent it is required to indemnify, defend and hold harmless the State and its agencies, officers, agents or employees.

2.19. INDEPENDENT CAPACITY OF THE GRANTEE

The parties intend that an independent contractor relationship will be created by this Agreement. The Grantee and its employees or agents performing under this Agreement are not employees or agents of COMMERCE. The Grantee will not hold itself out as or claim to be an officer or employee of COMMERCE, nor will the Grantee make any claim of right, privilege or benefit which would accrue to such officer or employee under law. Conduct and control of the work will be solely with the Grantee.

2.20. INDUSTRIAL INSURANCE COVERAGE

The Grantee shall comply with all applicable provisions of Title 51 RCW, Industrial Insurance. If the Grantee fails to provide industrial insurance coverage or fails to pay premiums or penalties on behalf of its employees as may be required by law, COMMERCE may collect from the Grantee the full amount payable to the Industrial Insurance Accident Fund. COMMERCE may deduct the amount owed by the Grantee to the accident fund from the amount payable to the Grantee by COMMERCE under this Agreement, and transmit the deducted amount to the Department of Labor and Industries, (L&I) Division of Insurance Services. This provision does not waive any of L&I's rights to collect from the Grantee.

2.21. LAWS

The Grantee shall comply with all applicable laws, ordinances, codes, regulations, and policies of local, state, and federal governments, as now or hereafter amended, including, but not limited to:

United States Laws, Regulations and Circulars (Federal)

A. American Recovery and Reinvestment Act (Recovery Act) of 2009

B. Audits

Office of Management and Budget (OMB) Revised Circular A-133 "Audits of States, Local Governments, and Non-Profit Organizations."

C. Labor and Safety Standards

Convict Labor, 18 U.S.C. 751, 752, 4081, 4082. Drug-Free Workplace Act of 1988, 41 USC 701 et seq.Federal Fair Labor Standards Act, 29 U.S.C. 201 et seq., Work Hours and Safety Act of 1962, 40 U.S.C. 327-330 and Department of Labor Regulations, 29 CFR Part 5.

D. Laws against Discrimination

Age Discrimination Act of 1975, Public Law 94-135, 42 U.S.C. 6101-07, 45 CFR Part 90 Nondiscrimination in Federally Assisted Programs.

Americans with Disabilities Act of 1990, Public Law 101-336.

Equal Employment Opportunity, Executive Order 11246, as amended by Executive Order 11375 and supplemented in U.S. Department of Labor Regulations, 41 CFR Chapter 60.

Executive Order 11246, as amended by EO 11375, 11478, 12086 and 12102.

Handicapped Employees of Government Lenders, Rehabilitation Act of 1973, Section 503, 29 U.S.C. 793.

Handicapped Recipients of Federal Financial Assistance, Rehabilitation Act of 1973, Section 504, 29 U.S.C. 794.

Minority Business Enterprises, Executive Order 11625, 15 U.S.C. 631.

Minority Business Enterprise Development, Executive Order 12432, 48 FR 32551.

Nondiscrimination and Equal Opportunity, 24 CFR 5.105(a).

Nondiscrimination in benefits, Title VI of the Civil Rights Act of 1964, Public Law 88-352, 42 U.S.C. 2002d et seq, 24 CFR Part 1.

Nondiscrimination in employment, Title VII of the Civil Rights Act of 1964, Public Law 88-352.

Nondiscrimination in Federally Assisted Construction Contracts, Executive Order 11246, 42 U.S.C. 2000e, as amended by Executive Order 11375, 41 CFR Chapter 60.

Section 3, Housing and Urban Development Act of 1968, 12 USC 1701u (See 24 CFR 570.607(b)).

E. Office of Management and Budget Circulars

Notwithstanding the fact that LENDER is a private for profit entity, it must comply with the following federal requirements:

- Uniform Administrative requirements for Grants and Other Local Agreements with Institutions of Higher Education, Hospitals and Other NonProfit Organizations, OMB Circular 110;
- Cost Principles for Nonprofit Organizations, OMB Circular A-122; and
- Office of Management and Budget (OMB) Revised Circular A-133 "Audits of States, Local Governments, and Non-Profit Organizations.

Cost Principles for State, Local and Indian Tribal Governments, OMB Circular A 87, 2 CFR, Part 225.

Cost Principles for Nonprofit Organizations, OMB Circular A 122 (if the Grantee is a nonprofit organization).

Grants and Cooperative Agreements with State and Local Governments, OMB Circular A 102 (if the Grantee is a local government or federally recognized Indian tribal government).

F. Other

Anti-Kickback Act, 18 U.S.C. 874; 40 U.S.C. 276b, 276c; 41 U.S.C. 51-54.

Governmental Guidance for New Restrictions on Lobbying; Interim Final Guidance, Federal Register 1, Vol. 54, No. 243\Wednesday, December 20, 1989.

Hatch Political Activity Act, 5 U.S.C. 1501-8.

Internal Revenue Service Rules, August 31, 1990.

Lobbying and Disclosure, 42 USC 3537a and 3545 and 31 USC 1352 (Byrd Anti-Lobbying Amendment). 31 U.S.C. 1352 provides that Grantees who apply or bid for an award of $100,000 or more must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or other award covered by 31 U.S.C. 1352. Each tier must disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient.

Non-Supplanting Federal Funds.

Section 8 Housing Assistance Payments Program.

G. Privacy

Privacy Act of 1974, 5 U.S.C. 552a.

H. Washington State Laws and Regulations

1) Affirmative action, RCW 41.06.020 (11).

2) Boards of directors or officers of non-profit corporations – Liability - Limitations, RCW 4.24.264.

3) Disclosure-campaign finances-lobbying, Chapter 42.17 RCW.

4) Discrimination-human rights commission, Chapter 49.60 RCW.

5) Ethics in public service, Chapter 42.52 RCW.

6) Office of minority and women's business enterprises, Chapter 39.19 RCW and Chapter 326-02 WAC.

7) Open public meetings act, Chapter 42.30 RCW.

8) Public records act, Chapter 42.56 RCW.

9) State budgeting, accounting, and reporting system, Chapter 43.88 RCW.

2.22. LICENSING, ACCREDITATION AND REGISTRATION

The Grantee shall comply with all applicable local, state, and federal licensing, accreditation and registration requirements or standards necessary for the performance of this Agreement.

2.23. LIMITATION OF AUTHORITY

Only the Authorized Representative or Authorized Representative's designee by writing (designation to be made prior to action) shall have the express, implied, or apparent authority to alter, amend, modify, or waive any clause or condition of this Agreement.

2.24. NONCOMPLIANCE WITH NONDISCRIMINATION LAWS

During the performance of this Agreement, the Grantee shall comply with all federal, state, and local nondiscrimination laws, regulations and policies. In the event of the Grantee's non-compliance or refusal to comply with any nondiscrimination law, regulation or policy, this Agreement may be rescinded, canceled or terminated in whole or in part, and the Grantee may be declared ineligible for further Agreements with COMMERCE. The Grantee shall, however, be given a reasonable time in which to cure this noncompliance. Any dispute may be resolved in accordance with the "Disputes" procedure set forth herein.

2.25. POLITICAL ACTIVITIES

Political activity of Grantee employees and officers are limited by the State Campaign Finances and Lobbying provisions of Chapter 42.17 RCW and the Federal Hatch Act, 5 USC 1501 - 1508.
No funds may be used for working for or against ballot measures or for or against the candidacy of any person for public office.

2.26. PROCUREMENT STANDARDS FOR FEDERALLY FUNDED PROGRAMS

A Grantee which is a local government or Indian Tribal government must establish procurement policies and procedures in accordance with OMB Circulars A-102, Uniform Administrative Requirements for Grants in Aid for State and Local Governments, for all purchases funded by this Agreement.

A Grantee which is a nonprofit organization shall establish procurement policies in accordance with OMB Circular A-110, Uniform Administrative Requirements for Grants and Agreements with Nonprofit Agencies, for all purchases funded by this Agreement.

The Grantee's procurement system should include at least the following:

A. A code or standard of conduct that shall govern the performance of its officers, employees, or agents engaged in the awarding of contracts using federal funds.

B. Procedures that ensure all procurement transactions shall be conducted in a manner to provide, to the maximum extent practical, open and free competition.

C. Minimum procedural requirements, as follows:

1) Follow a procedure to assure the avoidance of purchasing unnecessary or duplicative items.

2) Solicitations shall be based upon a clear and accurate description of the technical requirements of the procured items.

3) Positive efforts shall be made to use small and minority-owned businesses.

4) The type of procuring instrument (fixed price, cost reimbursement) shall be determined by the Grantee, but must be appropriate for the particular procurement and for promoting the best interest of the program involved.

5) Contracts shall be made only with reasonable subgrantees who possess the potential ability to perform successfully under the terms and conditions of the proposed procurement.

6) Some form of price or cost analysis should be performed in connection with every procurement action.

7) Procurement records and files for purchases shall include all of the following:

a) Grantee selection or rejection.

b) The basis for the cost or price.

c) Justification for lack of competitive bids if offers are not obtained.

d) A system for Agreement administration to ensure Grantee conformance with terms, conditions and specifications of this Agreement, and to ensure adequate and timely follow-up of all purchases.

D. Grantee and Subgrantee must receive prior approval from COMMERCE for using funds from this Agreement to enter into a sole source Agreement or an Agreement where only one bid or proposal is received when value of this Agreement is expected to exceed $5,000.

Prior approval requests shall include a copy of proposed contracts and any related procurement documents and justification for non-competitive procurement, if applicable.

2.27. PROHIBITION AGAINST PAYMENT OF BONUS OR COMMISSION

The funds provided under this Grant shall no be used in payment of any bonus or commission for the purpose of obtaining approval of the application for such funds or any other approval or concurrence under this Grant provided, however, that the reasonable fees or bona fide technical consultant,

managerial, or other such services, other than actual solicitation are not hereby prohibited if otherwise eligible as project costs.

2.28. PUBLICITY

The Grantee agrees not to publish or use any advertising or publicity materials in which the state of Washington or COMMERCE's name is mentioned, or language used from which the connection with the state of Washington's or COMMERCE's name may reasonably be inferred or implied, without the prior written consent of COMMERCE.

2.29. RECAPTURE

In the event that the Grantee fails to perform this Agreement in accordance with state laws, federal laws, and/or the provisions of this Agreement, COMMERCE reserves the right to recapture funds in an amount to compensate COMMERCE for the noncompliance in addition to any other remedies available at law or in equity.

2.30. RECORDS MAINTENANCE

The Grantee shall maintain all books, records, documents, data and other evidence relating to this Agreement and performance of the services described herein, including but not limited to accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Agreement. Grantee shall retain such records for a period of six years following the date of final payment. If any litigation, claim or audit is started before the expiration of the six (6) year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been finally resolved.

2.31. REGISTRATION WITH DEPARTMENT OF REVENUE

If required by law, the Grantee shall complete registration with the Washington State Department of Revenue.

2.32. RIGHT OF INSPECTION

At no additional cost all records relating to the Grantee's performance under this Agreement shall be subject at all reasonable times to inspection, review, and audit by COMMERCE, the Office of the State Auditor, and federal and state officials so authorized by law, in order to monitor and evaluate performance, compliance, and quality assurance under this Agreement. The Grantee shall provide access to its facilities for this purpose.

2.33. SAVINGS

In the event funding from state, federal, or other sources is withdrawn, reduced, or limited in any way after the effective date of this Agreement and prior to normal completion, COMMERCE may terminate the Agreement under the "Termination for Convenience" clause, without the ten calendar day notice requirement. In lieu of termination, the Agreement may be amended to reflect the new funding limitations and conditions.

2.34. SEVERABILITY

If any provision of this Agreement or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this Agreement that can be given effect without the invalid provision, if such remainder conforms to the requirements of law and the fundamental purpose of this Agreement and to this end the provisions of this Agreement are declared to be severable.

2.35. SUBCONTRACTING

The Grantee may only subcontract work contemplated under this Agreement if it obtains the prior written approval of COMMERCE.

If COMMERCE approves subcontracting, the Grantee shall maintain written procedures related to subcontracting, as well as copies of all subcontracts and records related to subcontracts. For cause, COMMERCE in writing may: (a) require the Grantee to amend its subcontracting procedures as they relate to this Agreement; (b) prohibit the Grantee from subcontracting with a particular person or entity; or (c) require the Grantee to rescind or amend a subcontract.

Every subcontract shall bind the Subgrantee to follow all applicable terms of this Agreement. The Grantee is responsible to COMMERCE if the Subgrantee fails to comply with any applicable term or condition of this Agreement. The grantee shall appropriately monitor the activities of the Subgrantee to assure fiscal conditions of this Agreement. In no event shall the existence of a subcontract operate to release or reduce the liability of the Grantee to COMMERCE for any breach in the performance of the Grantee's duties.

Every subcontract shall include a term that COMMERCE and the State of Washington are not liable for claims or damages arising from a Subgrantee's performance of the subcontract.

2.36. SURVIVAL

The terms, conditions, and warranties contained in this Agreement that by their sense and context are intended to survive the completion of the performance, cancellation or termination of this Agreement shall so survive.

2.37. TAXES

All payments accrued on account of payroll taxes, unemployment contributions, the Grantee's income or gross receipts, any other taxes, insurance or expenses for the Grantee or its staff shall be the sole responsibility of the Grantee

2.38. TERMINATION FOR CAUSE / SUSPENSION

In event COMMERCE determines that the Grantee failed to comply with any term or condition of this Agreement, COMMERCE may terminate the Agreement in whole or in part upon written notice to the Grantee. Such termination shall be deemed "for cause." Termination shall take effect on the date specified in the notice.

In the alternative, COMMERCE upon written notice may allow the Grantee a specific period of time in which to correct the non-compliance. During the corrective-action time period, COMMERCE may suspend further payment to the Grantee in whole or in part, or may restrict the Grantee's right to perform duties under this Agreement. Failure by the Grantee to take timely corrective action shall allow COMMERCE to terminate the Agreement upon written notice to the Grantee.

"Termination for Cause" shall be deemed a "Termination for Convenience" when COMMERCE determines that the Grantee did not fail to comply with the terms of the Agreement or when COMMERCE determines the failure was not caused by the Grantee's actions or negligence.

If the Agreement is terminated for cause, the Grantee shall be liable for damages as authorized by law, including, but not limited to, any cost difference between the original Agreement and the replacement Agreement, as well as all costs associated with entering into the replacement Agreement (i.e., competitive bidding, mailing, advertising, and staff time).

2.39. TERMINATION FOR CONVENIENCE

Except as otherwise provided in this Agreement, COMMERCE may, by ten (10) business days written notice, beginning on the second day after the mailing, terminate this Agreement, in whole or in part. If this Agreement is so terminated, COMMERCE shall be liable only for payment required under the terms of this Agreement for services rendered or goods delivered prior to the effective date of termination.

2.40. TERMINATION PROCEDURES

After receipt of a notice of termination, except as otherwise directed by COMMERCE, the Grantee shall:

A. Stop work under the Agreement on the date, and to the extent specified, in the notice;

B. Place no further orders or subcontracts for materials, services, or facilities related to the Agreement;

C. Assign to COMMERCE all of the rights, title, and interest of the Grantee under the orders and subcontracts so terminated, in which case COMMERCE has the right, at its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts. Any attempt by the Grantee to settle such claims must have the prior written approval of COMMERCE, and

D. Preserve and transfer any materials, Agreement deliverables and/or COMMERCE property in the Grantee's possession as directed by COMMERCE.

Upon termination of the Agreement, COMMERCE shall pay the Grantee for any service provided by the Grantee under the Agreement prior to the date of termination. COMMERCE may withhold any amount due as COMMERCE reasonably determines is necessary to protect COMMERCE against potential loss or liability resulting from the termination. COMMERCE shall pay any withheld amount to the Grantee if COMMERCE later determines that loss or liability will not occur.

The rights and remedies of COMMERCE under this section are in addition to any other rights and remedies provided under this Agreement or otherwise provided under law.

2.41. WAIVER

Waiver of any default or breach shall not be deemed to be a waiver of any subsequent default or breach. Any waiver shall not be construed to be a modification of the terms of this Agreement unless stated to be such in writing and signed by Authorized Representative of COMMERCE.

ATTACHMENT I:
SCOPE OF WORK

Agreement Number: **F11-52112-001**
Project Name: **Seattle Energy Loan Fund ("SELF")**

1. Project & EECE Lending Program Description

The City of Seattle proposes to use the EECE grant funds to establish a robust loan loss reserve fund for the Seattle Energy Loan Fund (SELF) to support a new EECE Lending Program. This loan loss reserve fund will allow the SELF to offer more loans, at lower rates, and thereby create more opportunities for Energy Efficiency Improvement Projects in homes and businesses in Seattle. Furthermore, by seeding the loan loss reserve with the EECE grant funds, this allows the SELF to provide continuity for the marketing and delivery of multiple energy efficient loan programs throughout the City, and creates a collaborative environment whereby lessons learned will be shared with participating partners.

The City of Seattle and its selected Lenders, ShoreBank Enterprise Cascadia (SBEC) and Grow America Fund, Inc. (GAF), will create three EECE Lending Programs: two that target commercial Borrowers and one that targets residential Borrowers.

SBEC's and GAF's lending goals are to foster entrepreneurship, to create jobs, and to invest in low income communities. This work makes growth capital available to healthy, expanding small businesses that invest and create jobs in their communities. Specifically SBEC and GAF accomplish these tasks by:

- working with and lending to small businesses and entrepreneurs that have or are developing the capacity and ability to succeed, to repay debt, and to create permanent private sector jobs based in the local community;
- structuring and tailoring financing that meets the needs of the small business, rather than the needs of bank shareholders or bank regulators;
- offering loans with the lowest possible rates of interest; and
- providing patient capital (i.e., capital with longer and more flexible repayment terms than available under conventional financing) and counseling that helps a small business Borrower and entrepreneur through difficult times.

A. Marketing and Public Outreach

COMMERCIAL LENDING PROGRAMS

Through the commercial lending programs, the City of Seattle and its Lenders will identify and finance grocery and restaurant businesses that are in need or energy efficiency improvements. The City of Seattle and the Lenders have already identified 60 interested grocery stores and small food markets that can realize immediate energy savings from replacement of lighting, HVAC, and refrigeration fixtures. Grocery stores are the biggest users of electricity per square foot of any business sector due to high demands for lighting and refrigeration. The Lenders have existing relationships with many of these store owners and have begun energy efficiency financing conversations with them. In addition, City of Seattle has partnered with Unified Grocers, the largest trade organization for Seattle-area independent grocery stores. Members of Unified Grocers have already been borrowing from these Lenders and are helping with referrals to more stores. ECOSS and Cascadia Consulting Group have also been identified as potential marketing and outreach partners for marketing the SELF effort further. Their assistance in

providing marketing and outreach assistance will be provided at no cost to the Borrowers. The City of Seattle will be responsible for payment of any costs incurred by these partners, and no such administrative costs will be paid from EECE grant funds.

SBEC anticipates targeting small markets and restaurants owned by immigrant and minority owners in low income neighborhoods. These business owners would benefit the most from access to financing for improvements to their businesses. SBEC's experience in this industry shows that many immigrant and minority business owners would benefit from outreach and education on energy efficiencies and savings. For instance, when a piece of equipment like a cooler breaks down, more often than not the business owner would opt to purchase a used/secondhand one that is probably less efficient, resulting in even higher utility costs (water and energy). While on-the-other-hand purchasing a new cooler, while more expensive upfront, could have a significant rebate, and, more importantly, a longer term savings in utility costs, which would increase the business's economic viability. Working with partners, SELF hopes to break that cycle through education, information, and access to financing.

The end result of this extensive outreach collaboration is a true "triple bottom line" mission. A low-income business (social equity) becomes more resilient by reducing energy and natural resource usage (environmental sustainability) and saves on utility payments and thereby increases business cash flow (economic opportunity) and may even become a role model in their community.

RESIDENTIAL LENDING PROGRAM

The residential lending program will build upon the City of Seattle's current energy audit pilot program. Presently, the City has over 900 households in the queue to receive an energy audit, the Energy Performance Score (EPS). The energy audit pilot program will provide an initial pool of potential customers. For every audit performed the Energy Auditor will notify the homeowner of the SELF loan program and offer to have an Energy Advocate contact them to receive more information. The Energy Advocate will serve as a single point of contact for the homeowners in helping to schedule Energy Audits, and assisting the homeowners in understanding the audit results and evaluating financing options. The City of Seattle will pay for the costs of the Energy Advocates.

B. Underwriting Procedures and Selection Process of Borrowers

The commercial lending plan envisioned is outlined below:

a. Applicant referred to SELF program by City of Seattle, ECOSS, or Cascadia Consulting Group.
b. Energy Advocate will assist business in arranging for energy efficiency audit.
c. After audit is completed, Energy Advocate will assist business in understanding the results of the audit and the availability of energy rebates offered by Seattle City Light.
d. Business will seek bids from a list of Energy Contractors approved by Seattle City Light.
e. After bids are received, Energy Advocate will assist business in understanding the total project costs, the availability of Seattle City Light rebates to cover a portion of the costs and the remaining costs that would need to be covered by financing.
f. Loan application is submitted.
g. Lender evaluates loan application under their underwriting criteria (see GAF and SBEC underwriting criteria below).
h. After loan application is approved, Lender disburses loan funds to business (Borrower).
i. Borrower uses loan proceeds to pay Energy Contractor for work.
j. After work is completed by Energy Contractor, Seattle City Light provides energy rebates to Borrower.

k. Loan is managed in the loan servicing system – Borrower will be encouraged to pay through an electronic payment system (known an ACH system).
l. Loan monitored by SBEC or GAF portfolio administration.
m. Loan paid off – loan portfolio closed.
n. If the Borrower defaults, SBEC or GAF will begin collection process.

The residential lending program steps are outlined below:

a. Homeowner contacts the City of Seattle to receive an energy audit.
b. Energy Advocate will assist homeowner in arranging for energy efficiency audit.
c. After audit is completed, Energy Advocate will assist homeowner in understanding the results of the audit and in selecting the level of energy efficiency improvements.
d. Homeowner will seek bids from a list of Energy Contractors approved by Seattle City Light.
e. After bids are received, Energy Advocate will assist homeowner in understanding the total project costs and the availability of financing to cover the cost.
f. Loan application is submitted.
g. Lender evaluates loan application under its underwriting criteria (see SBEC underwriting criteria below).
h. After loan application is approved, loan documents are signed and Energy Contractor commences work (unlike the commercial lending program, loan disbursement for residential program is conditioned on successful completion of work as verified by a second energy audit).
i. Work is completed and second audit is performed.
j. If work completed to satisfaction of auditor, notice is sent to SBEC.
k. SBEC pays the Energy Contractor. Until work is completed to satisfaction of auditor, loan funds are not disbursed and Energy Contractor is not paid. Residential Borrowers do not assume responsibility for the loan until loan funds are disbursed.
l. Loan is managed in the loan servicing system – Borrower will be encouraged to pay through an electronic payment system (known an ACH system).
m. Loan monitored by SBEC portfolio administration.
n. Loan paid off – loan portfolio closed.
o. If the Borrower defaults, SBEC will begin collection process.

UNDERWRITING CRITERIA FOR COMMERCIAL LOAN PROGRAM 1 (GAF)

GAF primarily is a *Cash Flow Lender*. The cash flow or credit test is the primary indicator of whether or not a company is "bankable," that is, whether or not the company can repay its loan out of "normal" business operations. GAF's fundamental credit approach which focuses on business cash flow aligns perfectly with SELF's program approach. In financial modeling and initial discussions with potential Borrowers, GAF has crafted rates and terms that **do not** require use of all energy savings to payback facility financing. While businesses may choose to use a larger share of energy savings as a repayment source and shorten loan terms, GAF's experience is that businesses also want added net cash flow for their own operations. This benefit allows GAF to help "fence sitters" who like the idea of energy savings but are hesitant to incur added debt to their businesses at this time. GAF's preferred credit test is very straightforward. GAF expects a Borrower's existing cash flow from operations (after certain adjustments like energy savings) to be adequate to repay the proposed debt service. Parenthetically, GAF's credit test can be stated as the following:

CASH-FLOW TEST:
The "Adjusted Existing Cash Flow" is determined by adding-in or subtracting-out certain items that are impacted by the proposed financing. It is determined as follows:
ADJUSTED EXISTING CASH FLOW:
Last year's EBT
+ Depreciation (from Income Statement)
+ Interest payments (from Income Statement)
+ Savings in Rent, Officer Compensation (if applicable), or "Other"
- Increased Occupancy Costs (occurring as a result of the project being financed)
- Increased Real Estate Taxes (occurring as a result of the project being financed)
- Other project related expenses (if any) or Capital Expenses to be paid out of cash flow
---
= **Adjusted Existing Cash Flow**

The cash flow or credit test, thus, is the primary indicator of whether or not the Borrower can repay its loan out of "normal" business operations with the adjustments due to energy savings. These savings are documentable and used in underwriting to the businesses' benefit.

GAF does, additionally, look at collateral. Within reason, the stronger the businesses' adjusted cash flow, the less concern there is regarding collateral. In all cases, however, collateral must be adequate to secure the obligation with a general security agreement, a perfected lien on all assets being financed, and the personal guarantees of all principals who own 20% or more of the stock or play a key role in management. The personal guarantees are essential in ensuring that the business is committed to the project and financing.

Additional underwriting considerations include:
• Business Financial Health – last 3 years of operations and projections; and
• Credit History of the Business and Owners/Principals.

UNDERWRITING CRITERIA FOR COMMERCIAL LOAN PROGRAM 2 (SBEC)
SBEC expects and accepts credit risks beyond the tolerance of regulated lenders. Management of these risks is the primary source of risk mitigation. All professional staff is expected to be actively involved in managing credit risk in ways that exceed the standards of regulated lenders. SBEC believes that the best source of maintaining loan quality is its human resources and will usually rely on the best judgment of these professionals in reviewing and making lending decisions. In addition to these risk factors, SBEC staff is expected to identify the risk of each transaction and identify appropriate mitigation on a case-by-case basis. SBEC not only rates risk for loans to businesses based upon a combination of cash flow, balance sheet, management and credit history, collateral/secondary source of repayment, industry/market/competitive advantage, financial statements and accounting systems; but also the impact social justice and environmental impacts of the loan. The loan decisions are based upon a balancing of all these factors.

UNDERWRITING CRITERIA FOR RESIDENTIAL LOAN PROGRAM (SBEC)

1. RISK MITIGATION. SBEC expects and accepts credit risks beyond the tolerance of regulated lenders. Management of these risks is the primary source of risk mitigation. All professional staff is expected to be actively involved in managing credit risk in ways that exceed the standards of regulated lenders. SBEC believes that the best resource for maintaining loan quality is its human resources and will usually rely on the best judgment of these professionals in reviewing and making lending decisions.

2. BORROWER ELIGIBILITY. The following will **not** be eligible Borrowers under the SELF program:
    a. Applicants that do not have the legal right to encumber the real property with a beneficial security interest (Deed of Trust) as collateral for the loan, unless the party who possesses such rights consents to the loan and the resulting security interest;
    b. Property owners that have not paid property taxes and/or other assessments levied on the property owner by any local or state taxing district for the period covering the previous two tax years.

    The following will be eligible Borrowers under the Residential Loan Program: Owner occupied *and* non-owner occupied.
3. ELIGIBLE PROPERTY. Four units or less.
4. SUBORDINATION. The loan may be secondary and inferior to an existing lien. 3rd position is acceptable if applicant receives credit approval.
5. LOAN TO VALUE. Designed to exceed 100% CLTV if applicant receives credit approval.

C. Anticipated Leverage of Additional Funding

The City of Seattle will launch the SELF with no less $6 million in capital, and continue working to expand the loan fund up to and beyond $10 million. Additionally, after an initial 3-5 year lending period, current financial models show the SELF as self-sustainable as loan repayments generate sufficient repayments to further continued lending.

Anticipated leverage for the commercial and residential lending programs is indicated in the budget attached to this Agreement as Attachment II.

D. Reducing Lender's Risk and Borrower's Costs

EECE grant funds result in lower risk to Lenders and lower costs to Borrowers:

- Reducing Lender Risk: EECE grant funds lower risk for both GAF and SBEC by providing them with loan loss reserves, thereby resulting in additional security beyond Borrower collateral.

- Lower Borrower Costs: Due to the reduced risk from loan loss reserves and Small Business Association guarantees, GAF is able to raise additional capital at below-market rates. This low cost of capital is then passed onto the Borrowers in the form of below-market interest rates. For SBEC's commercial and residential lending programs, lower risk from loan loss reserves allows SBEC to offer lower interest rates to Borrowers.

<u>COMMERCIAL LENDING PROGRAM</u>

Generally, lending efforts are geared to two types of Borrowers:

- <u>Lending for high-risk businesses</u>: The "high-risk" group of potential Borrowers includes businesses deemed less creditworthy by traditional lending standards, and also those that may represent "non-traditional" lending clients such as refugee and immigrant-owned businesses. While such clients may be able to access loan products from community-based lenders, the high rate of interest commensurate with the level of risk may discourage potential Borrowers. Due to the lack of financial resources, this category of Borrower would be unlikely to consider energy

efficiency investments, so the SELF would expand efficiency measures to Borrowers that would not otherwise consider the investment.

- Incentive lending for creditworthy businesses: Another class of business would qualify for a loan, but chooses not to, based on their assessment that it is not in their financial interest to invest in efficiency. When considering energy efficiency investments, oftentimes these types of Borrowers see the payback period as too long to risk current investments. This has become especially problematic given current economic uncertainties. Loan products developed with these resources will have more attractive terms than those currently available and would entice these "fence-sitters" to invest now in their businesses.

A. COMMERCIAL LOAN PROGRAM 1 (GAF)

The GAF current rates are estimated at 4.50% - 4.75% (WSJ Prime plus 1.25 -1.50%) on a quarterly adjustable basis. GAF's average loan size is approximately $260,000, with historical loans ranging in size from $16,000 to $2 million. Lending will begin immediately after authorization by the City of Seattle. GAF will utilize the EECE grant funds as quickly as possible, due to the fact that the American Recovery and Reinvestment Act authorized an increase in the loan guarantee to 90%, allowing for increased leverage. The increased guarantee is available until the authorized funds are expended, and then the guarantee will revert back to 75%.

Loan Amount:	$50,000-$2,000,000, average loan size of $300,000
Loan Interest Rate:	4.75% (Prime plus 1.5%) adjusting quarterly
Loan Terms:	Up to 10 years – Fixtures and Machinery and Equipment

B. COMMERCIAL LOAN PROGRAM 2 (SBEC)

SBEC will work with restaurants and grocery businesses that fall outside the Small Business Association's qualifications for lending and therefore may not be served by the GAF funds. It is within SBEC's mission to work with small businesses that need financing that traditional lenders are hesitant to provide. In this way SBEC and the SELF program will support additional Borrowers in distressed areas of Seattle.

Loan Amount:	$5,000 to $150,000
Loan Interest Rate:	6% -12%
Loan Terms:	3 - 5 years

While these terms are not as appealing as those in Commercial Loan Program 1, the goal of the loans for energy efficiency retrofits will be designed to offer positive to neutral net cash flow for the business inclusive of rebates, utility savings, and loan payments.

RESIDENTIAL LENDING PROGRAM

The residential loan program will provide loan amounts from $2,500 to $12,500 to pay for energy efficiency improvements in existing dwellings based on the suggestions of an EPS energy audit. The interest rate on the loans will adjust according to the Borrower's income.

Loan Amount:	$2,500-$12,500
Loan Interest Rate:	4% for Borrowers whose families are making 200-250% of the poverty level 7% for Borrowers to fund a basic energy efficient retrofit
Loan Terms:	20 years. This creates an opportunity to more closely match monthly payments to monthly energy cost savings.

E. Use of Funds and Risk Sharing Plan between Grantee and Lender(s)

GAF and SBEC will use EECE grant funds to capitalize loan loss reserves to mitigate potential non-performing loans. The loan loss reserve amount is based upon the risk rating established in the underwriting process. There may be instances when the average of loan loss reserve is increased because of a higher risk loan. The loan loss reserve functions to maintain the integrity of the portfolio and allows for more attractive packaging of loans for leverage opportunities.

The City of Seattle will enter into separate Grantee-Lender Agreements with GAF and SBEC. In these agreements, GAF and SBEC will commit to carry out the scope of work (as described in this Agreement and the attached budget).

Upon disbursement of the EECE funds to the City of Seattle, the City will disburse all funds to GAF and SBEC. GAF and SBEC will deposit the EECE funds in their respective loan loss reserve accounts. Unlike banks, GAF and SBEC are nonprofit lending institutions that raise capital from outside sources. Once the funds are deposited into the respective loan loss reserve accounts, GAF and SBEC will use those funds to leverage additional capital for energy efficiency lending.

To ensure compliance with this Agreement, the City of Seattle will include the following performance requirements in the Grantee-Lender Agreements:

1. GAF and SBEC will provide regular reports (as required by U.S. Department of Energy and this Agreement) to the City of Seattle, tracking the progress of potential energy efficiency investments in the project pipeline.
2. By December 31, 2011, the City will disburse all EECE grant funds to GAF and SBEC, and GAF and SBEC will deposit such EECE grant funds into their respective loan loss reserve accounts.
3. GAF and SBEC will disburse loans for commercial and residential energy efficiency projects pursuant to the budget included in Attachment II of this Agreement.

As loan funds from Energy Efficiency Improvement Projects are repaid by Borrowers, GAF and SBEC will both commit in the Grantee-Lender Agreements to reinvest any loan loss reserve funds tied to such loan funds into new Energy Efficiency Improvement Projects that would be eligible for funding under the scope of work described in the Grantee-Lender Agreements.

Funds will be withdrawn from the loan loss reserve accounts to cover any loan loss. For the purposes of this EECE Lending Program, a loan loss will be declared upon default by Borrower.

F. Preliminary Energy Audits

<u>COMMERCIAL LENDING PROGRAMS</u>

Once a grocery store or restaurant has been identified, the City of Seattle (with the support of outreach consultants) will act as the Energy Advocate for the commercial loan programs. The Energy Advocate

serves as a single point of contact for the business in helping to schedule an energy audit, and assisting the business in understanding the audit results and evaluating financing options. The City of Seattle will pay for the costs of the Energy Advocate. The costs of the audit will be covered by Seattle City Light.

RESIDENTIAL LENDING PROGRAMS
As mentioned above, the City of Seattle has over 900 households in the queue to receive an energy audit, the Energy Performance Score (EPS). The costs of energy audits will be covered by Seattle City Light.

G. Energy Contractor Selection and Monitoring

Borrowers will select an Energy Contractor from a list of contractors certified by Seattle City Light. Borrowers will only be allowed to seek bids from the list of Energy Contractors approved by Seattle City Light.

2. Performance Measures & Jobs Creation/Retainage

A. Loan Goals

Performance will be based upon 1) loans made, 2) low income owners, 3) low income area, 4) jobs created – in business and jobs to do the work, 5) projected energy savings. The following is a breakdown of the projected loan disbursement by the end of 2011, by the end of 2020, and the total amounts over a 10-year period:

SELF Programs	By end of 2011	By end of 2020	Totals
Commercial programs (GAF and SBEC)	$1,830,000 loans disbursed	1,400,000 loans disbursed	14,015,000 loans disbursed
Residential program (SBEC)	$262,500 loans disbursed	$262,500	2,625,000 loans disbursed
Totals	$2,092,500 loans disbursed	$1,662,500 loans disbursed	$16,640,000 loans disbursed

B. Energy Savings Goals

The following is a breakdown of the projected energy savings by the end of 2011, by the end of 2020, and the total energy savings over a 10-year period:

SELF Programs	By end of 2011	By end of 2020	Totals
Commercial program 1 (GAF)	2,208,895 kWh saved	17,523,899 kWh saved	97,485,891 kWh saved
Commercial program 2 (SBEC)	1,144,000 kWh saved	11,440,000 kWh saved	62,920,000 kWh saved
Residential program (SBEC)	660,000 kWh saved	660,000 kWh saved	6,600,000 kWh saved
Totals	4,013 MWh saved	29,624 MWh saved	167,006 MWh saved

C. Jobs Created/Retained (one job is calculated as one person working full-time for one year, or approx. 2080 hrs).

It is projected that the commercial and residential loan programs will result in the creation/retention of at least 73 jobs, based on the Department of Labor ratio of 1 FTE (i.e., FTE = 2080 hours of work) job per $90,000 expenditures.

3. Project Timeline

Seattle Energy Loan Fund Milestones												
Milestones	Q3 10	Q4 10	Q1 11	Q2 11	Q3 11	Q4 11	Q1 12	Q2 12	Q3 12	Q4 12	Q1 13	Q2 13
Negotiations with Lenders	X											
SELF Launch	X											
Make Loans to Borrowers	X	X	X	X	X	X	X	X	X	X	X	X
Fundraising	X	X	X	X	X	X	X	X	X	X	X	X

ATTACHMENT II:
ESTIMATED BUDGET

Agreement Number: **F11-52112-001**
Project Name: **Seattle Energy Loan Fund ("SELF")**

The following is a breakdown of the EECE grant funds that the City of Seattle will disburse to its commercial and residential lending programs:

SELF Programs	Amount of EECE Grant Funds	Method of Disbursement
Commercial Lending Program 1 (GAF)	$500,000	Disbursed by City of Seattle into Lender's loan loss reserve account immediately following execution of Grantee-Lender Agreement
Commercial Lending Program 2 (SBEC)	$237,500	Disbursed by City of Seattle into Lender's loan loss reserve account immediately following execution of Grantee-Lender Agreement
Residential Lending Program (SBEC)	$262,500	Disbursed by City of Seattle into Lender's loan loss reserve account immediately following execution of Grantee-Lender Agreement
Totals	$1,000,000	

ATTACHMENT III:
ADDITIONAL PROVISIONS UNDER THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009

Public Law 111-5

1. American Recovery and Reinvestment Act of 2009 Reporting Requirements; Section 1512(c) of the Recovery Act

Grantee acknowledges and agrees that the American Recovery and Reinvestment Act of 2009, hereinafter "Recovery Act" places great emphasis on accountability and transparency in the use of taxpayer dollars. Among other things, it creates a new Recovery Accountability and Transparency Board and a new website -- Recovery.gov -- to provide information to the public, including access to detailed information on grants and contracts made with Recovery Act funds.

COMMERCE, as a recipient of Recovery Act funds, must comply with the Recovery Act's extensive reporting requirements, including quarterly financial and programmatic reporting due within 10 calendar days after the end of each calendar quarter. COMMERCE will require periodic reports from its sub-recipients in order to fulfill its reporting obligations. Grantees receiving Recovery Act funds may expect that a standard form(s) and/or reporting mechanism will be made available at a future date.

Grantee agrees to provide to COMMERCE all reports, documentation, or other information, as may be required by COMMERCE to meet reporting obligations under the Recovery Act. Grantee's receipt of funds is contingent on Grantee meeting the reporting requirement of Section 1512.

Additional instructions and guidance regarding the required reporting will be provided as they become available. For planning purposes, however, Grantees receiving Recovery Act funds should be aware that Recovery Act section 1512(c) provides:

Recipient Reports- Not later than 10 days after the end of each calendar quarter, each recipient that received recovery funds from a Federal agency shall submit a report to that agency that contains—

(1) The total amount of recovery funds received from that agency;

(2) The amount of recovery funds received that were expended or obligated to projects or activities; and

(3) A detailed list of all projects or activities for which recovery funds were expended or obligated, including:

(a) The name of the project or activity;

(b) A description of the project or activity;

(c) An evaluation of the completion status of the project or activity;

(d) An estimate of the number of jobs created and the number of jobs retained by the project or activity; and

(e) For infrastructure investments made by State and local governments, the purpose, total cost, and rationale of the agency for funding the infrastructure investment with funds made available under this Act, and name of the person to contact at the agency if there are concerns with the infrastructure investment.

(4) Detailed information on any subcontracts or subgrants awarded by the recipient to include the data elements required to comply with the Federal Funding Accountability and Transparency Act of 2006 (Public Law 109-282), allowing aggregate reporting on awards below $25,000 or to individuals, as prescribed by the Director of the Office of Management and Budget.

2. **Section 1512 of the Recovery Act: Registration with Central Lender Registration (CCR)**

Recipients of funds under the Recovery Act shall register with the Central Lender Registration (CCR) database at www.ccr.gov. This ensures consistent reporting of data about each entity and thereby makes data more useful to the public. In order to register in CCR, a valid Data Universal Numbering System (DUNS) Number is required and should be inserted in Box # 13 of the Face Sheet of this Agreement.

3. **Section 1602 of the Recovery Act: Preference for Quick-Start Activities (if applicable)**

Section 1602 of the Recovery Act provides:

In using funds made available in this Act for infrastructure investment, recipients shall give preference to activities that can be started and completed expeditiously, including a goal of using at least 50 percent of the funds for activities that can be initiated not later than 120 days after the date of the enactment of this Act. Recipients shall also use grant funds in a manner that maximizes job creation and economic benefit.

3. **Section 1604 of the Recovery Act: Limit on Funds**

Section 1604 of the Recovery Act provides:

None of the funds appropriated or otherwise made available in this Act 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.

4. **Required Use of American Iron, Steel, and Manufactured Goods—Section 1605 of the Recovery Act**

Section 1605 of the Recovery Act provides:

Use of American Iron, Steel, and Manufactured Goods.

(a) None of the funds appropriated or otherwise made available by this Act may be used for a project for the construction, alteration, maintenance, or repair of a **public building** or **public work** unless all of the iron, steel, and manufactured goods used in the project are produced in the United States.

(b) Subsection (a) shall not apply in any case or category of cases in which the head of the Federal department or agency involved finds that:

(1) applying subsection (a) would be inconsistent with the public interest;
(2) iron, steel, and the relevant manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or
(3) inclusion of iron, steel, and manufactured goods produced in the United States will increase the cost of the overall project by more than 25 percent.

(c) If the head of a Federal department or agency determines that it is necessary to waive the application of subsection (a) based on a finding under subsection (b), the head of the department or agency shall publish in the Federal Register a detailed written justification as to why the provision is being waived.

(d) This section shall be applied in a manner consistent with United States obligations under international agreements.

Grantee shall comply with Section 1605 of the Recovery Act unless compliance has been waived by the Federal Agency providing the funds and when compliance with the Recovery Act does not conflict with an international trade agreement.

Grantee shall provide COMMERCE with information and applicable supporting data as may be required by COMMERCE, to support any request for waiver of compliance with Section 1605 of the Recovery Act.

Contracts for the procurement of goods and services in the amount of $528,000 or more and for constructions services in the amount of $7,443,000 or more are covered by an international trade agreement and are therefore not subject to Section 1605.

If this Agreement involves an award of Recovery Act funds for construction, alteration, maintenance of a public building or public work that does not involve iron, steel, and/or manufactured goods covered under international trade agreements, the following provision applies:

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

"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) Domestic preference.

(1) This award term and condition implements Section 1605 of the Recovery Act of 2009 by requiring that all iron, steel, and manufactured goods used in the project are produced in the United States except as provided in paragraph (b)(3) and (b)(4) of this term and condition.

(2) This requirement does not apply to the material excepted by Federal Government.

(3) The award official may add other iron, steel, and/or manufactured goods to the list in paragraph (b)(2) of this term and condition if the Federal Government determines that:

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

(1)(i) Any recipient request to use foreign iron, steel, and/or manufactured goods in accordance with paragraph (b)(3) of this term and condition 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)(3) of this term and condition.

(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 term and condition.

(iii) The cost of iron, steel, and/or manufactured goods material 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 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 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 is noncompliant with section 1605 of the American Recovery and Reinvestment Act.

(d) Data. To permit evaluation of requests under paragraph (b) of this term and condition based on unreasonable cost, the Recipient 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)*
Item 1:			
Foreign steel, iron, or manufactured good	_____	_____	_____
Domestic steel, iron, or manufactured good			
Item 2:			
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.]

5. **Wage Rate Requirements under Section 1606 of the Recovery Act – Davis-Bacon Act**

All laborers and mechanics employed by grantees and subgrantees 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 (Davis-Bacon Act). With respect to the labor standards specified in this section, the Secretary of Labor shall have the authority and functions set forth in Reorganization Plan numbered 14 of 1950 (64 Stat. 1267, 5 U.S.C. App.) and section 3145 of title 40 United States Code. See U.S. Department of Labor, Wage and Hour Division website at http://www.dol.gov/esa/whd/contracts/dbra.htm . Wage determinations can be found at http://www.wdol.gov.

The Grantee shall include this provision and require this provision to be contained in all subcontracts for work performed under this Agreement.

The work performed by this Agreement may also be subject to the State's prevailing wage laws, Chapter 39.12 RCW. The Grantee is advised to consult with the Washington State Department of Labor and Industries to determine the prevailing wages that must be paid.

6. **Non-supplanting of State and Local Funds**

Grantees must use federal funds to supplement existing State and local funds for program activities and must not replace (supplant) State or local funds that they have appropriated or allocated for the same purpose. Potential supplanting will be the subject of monitoring and audit. Violations may result in a range of penalties, including suspension of current and future funds under this program, suspension or debarment from federal grants, recoupment of monies provided under a grant, and civil and/or criminal penalties. For additional guidance regarding supplanting, refer to the information provided at http://www.ojp.usdoj.gov/recovery/supplantingguidance.htm.

7. **Protection of Whistleblowers**

Prohibition on Reprisals: An employee of any non-Federal employer receiving covered funds under the Recovery Act 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 mismanagement of an agency agreement, contract or grant relating to covered funds;
- Gross waste of covered funds;
- Substantial and specific danger to public health or safety related to the implementation or use of covered funds;
- Abuse of authority related to the implementation or use of covered funds; or
- Violation of law, rule, or regulation related to an agency agreement (including the competition for or negotiation of a contract) or grant, awarded or issued relating to covered funds.

Any employer receiving covered funds shall post notice of the rights and remedies provided under this section. The recommended written notice is attached as "Know Your Rights under the Recovery Act." The

Grantee shall require this provision in contracts with all contractors, subcontractors, engineers, vendors, and any other entity for work or services listed in Attachment I: Scope of Work.

Any employer receiving ARRA funds shall post notice of the rights and remedies provided under this section.

8. Listing Recovery Act Jobs with the Washington State Employment Security Department

This Agreement is funded with federal stimulus funds (under the Recovery Act), which has strict reporting requirements for funds spent and jobs created or retained (see Attachment IV, attached and incorporated into this Agreement as additional instructions). All job openings created by the Grantee for this project must be listed with the WorkSource system (an affiliate of the Employment Security Department) before hiring; all hiring decisions also must be reported to WorkSource. In addition, all Subgrantees hired by the Grantee also must be required to list jobs and report hiring results to WorkSource. Existing Grantee or Subgrantee employees who are retained using funds from this project also must be reported to WorkSource.

WorkSource will pre-screen and refer qualified job candidates for the Grantee's or Subgrantee's consideration. The Grantee and Subgrantee also have the discretion to use other, additional recruitment systems and retain the right to make all hiring decisions.

To begin the listing and reporting process, contact the Employment Security Department ARRA Business Unit at 877-453-5906 (toll-free), 360-438-4849, or ARRA@esd.wa.gov.

ATTACHMENT IV:
INSTRUCTIONS ON HOW TO LIST RECOVERY ACT JOBS WITH THE EMPLOYMENT SECURITY DEPARTMENT WORKSOURCE SYSTEM

How to list ARRA jobs with the Employment Security (ESD) WorkSource system

To help with the increased transparency and accountability that are required under the American Recovery & Reinvestment Act (ARRA), ESD's ARRA Business Unit will be the central point of contact for state agencies and their contractors for listing and tracking ARRA-funded jobs.

Step 1: State agencies notify ESD about ARRA-funded contracts
Within 2 days after awarding an ARRA-funded contract, state agencies should provide the following information to Employment Security's ARRA Business Unit:

- Name, phone number and address of contractor
- Title or short description of the contract

Report this information to ESD's ARRA Business Unit at ARRA@esd.wa.gov, 877-453-5906 (toll-free) or 360-438-4849. (Employment Security will use the information to verify that contractors comply with the requirement stated in Step 2.)

Step 2: List ARRA-funded jobs with ESD's WorkSource system
State agencies, contractors and sub-contractors should contact the ARRA Business Unit to begin the process of listing their ARRA-funded jobs with the WorkSource system. The ARRA Business Unit may be reached at 877-453-5906 (toll-free), 360-438-4849 or ARRA@esd.wa.gov.

> **Here's what we'll do with the information:** The ARRA Business Unit will relay the information to a business outreach lead at a WorkSource office in the employer's community. The business outreach lead will contact the employer to obtain the information necessary to list the job/s (create a "job order"), and to discuss the employer's recruitment needs and the services available through WorkSource.
>
> The WorkSource business outreach lead will search the agency's database for qualified applicants (based on job-skill requirements), screen potential applicants, and refer selected candidates to the employer for consideration. (Employers retain the right to use other or additional recruitment systems, and they make all hiring decisions.)

Step 3: Report hiring information
After completing the hiring process, the employer should contact the WorkSource business outreach lead to "close" the job order and provide the following information:

- Job title
- Number of people hired
- Starting wage and hours

This information will be used in reports and status updates to the governor, the federal government and the public.

WorkSource

Frequently asked questions for ARRA employers

Q1. What services can I get when I list jobs with WorkSource?

A. WorkSource staff screens and refers job seekers based on how well their skills meet your job requirements. The screening is done broadly or narrowly, depending on how many people you want to interview.

WorkSource also can help you with free job advertising, pay-rate information, tax credits and information on employment laws and regulations. We're committed to helping your business succeed.

Q2. What screening and assessment of skills does WorkSource conduct?

A. We conduct a variety of screening and assessment. Contact your local WorkSource center to ask what assessment services are provided.

Q3. If the position requires a certain skill level, can WorkSource test applicants for math and reading levels or typing speed?

A. WorkSource staff will pre-screen applicants based on the qualifications that you need. Ask your WorkSource staff person about their ability to assess certain skills required for the position.

Q4. Can we conduct interviews at WorkSource?

A. You can use space at WorkSource for mass application sessions, one-on-one interviews, or even group orientations. Contact your local WorkSource to check availability.

Q5. What is the anticipated hiring time?

A. We recommend you plan ahead (7-10 days), although you may hire when you choose. The job will be listed for you right away.

Q6. What if WorkSource doesn't have job seekers with the skills and abilities that match our needs?

A. WorkSource staff will look first for qualified local applicants. If no one is available, then the search is expanded to include other areas to see if applicants are willing to commute or relocate. During this recession, there is an unprecedented pool of qualified applicants. Our matching system has the unique capabilities to match skilled job seekers with available jobs.

Q7. Is WorkSource able to coordinate job fairs or hiring events?

A. Yes, WorkSource often coordinates large job fairs and targeted hiring events. Your local WorkSource staff can arrange the details such as date, availability of space, and the amount of time they need to help coordinate your hiring event.

Q8. Do I have to list jobs and report hiring information to WorkSource?

A. Yes. Even if you hire someone who already works for you in a different position, report the hire for contract requirements.

Q9. Can I list my job opening with other sources like temp agencies or run a classified ad in the newspaper at the same time?

A. You may recruit as broadly as you like. Just remember that a requirement of your contract is to post contract-funded job openings with your WorkSource business representative and report all hiring information.

Q10. What information is being tracked by WorkSource?

A. WorkSource tracks information about jobs listed, job candidates referred and the job openings filled.

Q11. Who is the information being provided to?

A. Participation and performance information is provided by the Employment Security Department to the U.S. Department of Labor. It also is being reported to the Governor, who is required by the federal Office of Management and Budget to report about jobs preserved and created during the recession.

Q12. How long after placing the job order with WorkSource will it take before I can interview applicants?

A. It could happen the same day if there are interested, qualified job seekers who apply right away. Typically, it may take a few days.

Q13. What if I already have a job candidate (or a list of candidates), why do I have to list my jobs with WorkSource?

You can hire anyone you want, but you need to report it to us. Listing your stimulus-funded jobs with WorkSource enables us to track how many jobs are created and filled. We will relay the information to the governor and the federal government, who are documenting the effects of the stimulus funding.

ATTACHMENT V:
CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

U.S. DEPARTMENT OF ENERGY

The prospective participant certifies to the best of its knowledge and belief that it and the 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 preceding 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 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.

I understand that a false statement on this certification may be ground for rejection of this proposal or termination of the award. In addition, under 18 USC Sec. 1001, a false statement may result in a fine of up to $10,000 or imprisonment for up to 5 years, or both.

Print Name Date

☐ I am unable to certify to the above statements. My explanation is attached.

ATTACHMENT VI:
PROGRAMMATIC AGREEMENT BETWEEN THE UNITED STATES DEPARTMENT OF ENERGY, THE WASHINGTON STATE DEPARTMENT OF COMMERCE AND THE WASHINGTON STATE HISTORIC PRESERVATION OFFICE REGARDING EECBG, SEP AND WAP UNDERTAKINGS

This attachment includes the following:

1. Letter dated May 24, 2010, from Tony Usibelli, Director, Washington State Energy Office, Department of Commerce.
2. The Programmatic Agreement between the United States Department of Energy, the Washington State Department of Commerce and the Washington State Historic Preservation Office Regarding EECBG, SEP and WAP Undertakings, dated February 5, 2010.

STATE OF WASHINGTON
DEPARTMENT OF COMMERCE

906 Columbia St SW • PO Box 43173• Olympia, Washington 98504-3173 • (360) 725-3122

DATE: May 24, 2010

TO: EECBG, SEP, & Sub-Award Recipients with projects in unspecified locations/buildings

FROM: Tony Usibelli, Director, Washington State Energy Office

We are providing you with a copy of the Programmatic Agreement between Washington State Department of Commerce, the Department of Archaeology & Historic Preservation and the Department of Energy Northwest. This agreement was developed to more efficiently and effectively fulfill the requirements of Section 106 of the National historic Preservation Act, 16 U.S.C. 470f (NAHP) and its implementing regulations at 36 CFR part 800.

One of Commerce's roles and responsibilities under this agreement is to ensure that the provisions of the Programmatic Agreement apply to sub-awards for the DOE grants we administer. However, some sub-awards, such as yours, will be funding activities not specifically identified by location or will expend federal funds many years into the future. Examples include proposed weatherization for low-income households within a given community or establishing a revolving loan to provide energy efficiency upgrades for commercial and residential buildings.

In these cases this responsibility rests with you as a sub-recipient to ensure Section 106 compliance. Appendix A and Appendix B, Category 1 of the Programmatic Agreement identify undertakings and procedures with no potential to cause effects on historic properties. Appendix B, Category 2 identifies standards that if practiced and reviewed by a Qualified Professional (as set forth in 36 CFR, Part 61, appendix A) will avoid adverse effects on historic properties. Finally Attachment A identifies standard mitigation measures for activities that would cause adverse effect(s). Please call your Program Manager for work that falls under Appendix B, Category 2 or Attachment A.

You may wish to incorporate all or portions of this agreement into contracts of these kind of work/activities that are funded by Energy Efficiency Conservation Block Grant (EECBG) and State Energy Planning (SEP). Likewise you may wish to pre-determine specific activities that will be funded for eligible historic (50+ years old) properties. If you have questions

STATE OF WASHINGTON
DEPARTMENT OF COMMERCE
906 Columbia St SW • PO Box 43173• Olympia, Washington 98504-3173 • (360) 725-3122

or would like to discuss options further, please contact the Commerce Program Manager for your sub-award.

PROGRAMMATIC AGREEMENT
BETWEEN
THE UNITED STATES DEPARTMENT OF ENERGY, THE WASHINGTON STATE DEPARTMENT OF COMMERCE AND THE WASHINGTON STATE HISTORIC PRESERVATION OFFICE REGARDING EECBG, SEP AND WAP UNDERTAKINGS
February 5, 2010

WHEREAS, the United States Department of Energy (DOE) administers the following financial assistance programs: ***the Energy Efficiency and Conservation Block Grant Program*** under the Energy Independence and Securities Act of 2007 (EECBG); ***the State Energy Plan*** under the Energy Policy and Conservation Act of 1975 and the State Energy Efficiency Programs Improvement Act of 1990 (SEP); and ***the Weatherization Assistance Program*** (WAP) for Low-Income Persons under Title IV of the Energy Conservation and Production Act, the Energy Policy Act of 2005, the Energy Independence and Security Act of 2007, and the American Recovery and Reinvestment Act of 2009 (ARRA); collectively referred to as the "Programs";

WHEREAS, the unprecedented levels of funding available to the Programs, due in large measure to ARRA, has created a large volume of projects requiring expedited historic preservation reviews to ensure the timely obligation of funds, that create new jobs, and improve local and state economies;

WHEREAS, the Washington State Historic Preservation Officer (SHPO) and Director of the Washington Department of Archeology and Historic Preservation (DAHP)is experiencing unprecedented numbers of requests for historic preservation review of undertakings funded by all Federal Agencies, including undertakings funded by the Programs;

WHEREAS, the Washington Department of Commerce (Recipient) is receiving financial assistance from DOE to carry out the Programs;

WHEREAS, the projects funded by the Programs are undertakings subject to review under Section 106 of the National Historic Preservation Act, 16 U.S.C 470f (NHPA) and its implementing regulations at 36 CFR part 800 and include rehabilitation, energy efficiency retrofits, renewables, and weatherization (undertakings);

WHEREAS, DOE has determined that these undertakings may adversely affect properties that are listed in or eligible for listing in the National Register of Historic Places (National Register) and subject to the requirements of the National Historic Preservation Act (NHPA);

WHEREAS, in accordance with 36 CFR 800.14(b)(4), the Advisory Council on Historic Preservation (the ACHP) has designated this Agreement as a Prototype Programmatic Agreement (PA), which does not require the participation or signature of the ACHP;

WHEREAS, DOE, the ACHP, and the National Conference of State Historic Preservation Officers (NCSHPO) have determined that the requirements of Section 106 can be more effectively and efficiently fulfilled if a programmatic approach is used to stipulate roles and responsibilities, exempt undertakings from Section 106 review, establish tribal protocols, facilitate identification and evaluation of historic properties, establish treatment and mitigation measures, and streamline the resolution of adverse effects;

WHEREAS, by memorandum dated August 28, 2009 (attached as Appendix C), DOE delegated certain tasks necessary for compliance with Section 106 of the NHPA to grantees and sub-grantees of funding from the Programs (Recipients);

WHEREAS, according to the August 28, 2009 memorandum, the Recipients are authorized, to initiate Section 106 compliance in accordance with 36 CFR 800.2 (c)(4);

WHEREAS, the undertakings covered under this PA are not located on Tribal lands and are primarily smaller scale activities and routine projects, without the potential for adversely affecting historic properties, rather than complex undertakings with a greater potential to adversely affect historic properties, which would require completion of the typical Section 106 review process;

WHEREAS, DOE and the ACHP were guided by the principles set forth in the ACHP's Affordable Housing Policy statement, adopted on November 9, 2006, in negotiating this Programmatic Agreement upon which this PA is based;

NOW, THEREFORE, DOE, the Washington Department of Commerce and the Washington SHPO agree that the Programs shall be administered in accordance with the following stipulations to satisfy DOE's Section 106 responsibilities for all individual undertakings of the Programs:

STIPULATIONS

DOE, the Recipient, and the SHPO shall ensure that the following stipulations are carried out:

I. Roles and Responsibilities
   A. DOE shall be responsible for providing oversight of the PA, executing PAs with SHPOs, participating in the resolution of disputes between the SHPO and the Recipient, and providing technical assistance and guidance as needed. DOE shall be responsible for government-to-government consultation with Indian tribes, unless the Indian tribe agrees to the delegation of this responsibility to a Recipient.
   B. The Recipient shall be responsible for consulting with consulting parties and conducting Section 106 reviews in a timely manner, preparing documentation for the SHPO and DOE, and maintaining records on undertakings. Undertakings that involve properties greater than 45 years old and are not listed on either Appendices A or B shall be submitted to the SHPO for review in accordance with this agreement.
   C. Recipient shall ensure that the provisions of this PA apply to its sub-awards.

D. The Recipient is encouraged to use qualified professionals in conducting their Section 106 requirements.
E. The SHPO shall be responsible for reviewing project documentation and participation in consultation as set forth in this PA.
F. The ACHP shall be responsible for providing technical guidance, participating in dispute resolutions if appropriate, and monitoring the effectiveness of this PA.

II. Tribal Review

A. Execution of this PA presumes that DOE will conduct its government-to-government responsibilities with federal recognized Indian tribes or its Section 106 consultation requirements with Native Hawaiian Organizations (NHO) consistent with Federal laws and regulations. The Recipient shall not substitute for DOE in matters related to potential effects on historic properties of cultural and religious significance to Indian tribes, except with the concurrence of the Indian tribe or NHO.
B. DOE acknowledges that Indian tribes possess special expertise in assessing the National Register eligibility of properties with tribal religious and cultural significance, and requires the Recipient to consult with them, as appropriate, in identifying historic properties listed in or eligible for listing in the Area of Potential Effect (APE) of program areas.
C. If the Recipient notifies DOE that an undertaking may result in an adverse effect on cultural resources with tribal religious and cultural significance, DOE shall notify Indian tribes of individual undertakings that may result in an adverse effect on cultural resources with tribal religious and cultural significance and invite them to participate in consultations. Indian tribes and the Recipient may develop a bi-party agreement that outlines their review procedures for undertakings covered in a PA. Such agreements will be submitted to DOE for review and approval, and a copy sent to the ACHP for its records.

III. State Interagency Agreements

The Recipient may review an undertaking in accordance with the terms of an interagency agreement, in lieu of the other terms of this PA, if:

A. The interagency agreement was executed by the Recipient and the SHPO on or before February 5, 2010, and will be executed no later than February 19, 2010;
B. The Recipient and SHPO both agree through execution of this PA that the interagency agreement applies to the undertaking and provides a historic preservation review process that is similar to that provided by the other terms of this PA; and
C. DOE does not object to the use of the interagency agreement to fulfill the requirements of Section 106 of the NHPA for the undertakings.

IV. Exemptions from Section 106 review

A. The Recipient shall not submit to the SHPO undertakings listed in Appendices A or B as they do not have the potential to cause effects on historic properties even when historic properties may be present. The Recipient and the SHPO may agree to modify Appendix A and/or Appendix B, with advance notification of such modifications to the ACHP and DOE. Recipient will maintain file records with verification that undertakings were determined to be exemptions for a period of three (3) years from

project completion and make them available for review if requested by DOE or the ACHP.

B. If a property has been determined to be ineligible for inclusion in the National Register within the last five (5) years from the date the Recipient made its application for DOE financial assistance, then no further review is required under this PA.

C. Recipients of any of the Programs may utilize either Appendix A or Appendix B in identifying exempt undertakings, regardless of whether the Exhibit on which the undertaking relates to another federally funded program.

V. Review Procedures for Non-exempt Undertakings

A. ***For undertakings not exempted under Stipulation III or IV, if the Recipient has an executed Section 106 Agreement per 36 CFR part 800 for Community Development Block Grants (CDBG) with the SHPO*** that 1) is still in effect; 2) covers the same undertakings as the DOE grant programs; and 3) is up to date with reporting to the SHPO, **no separate Section 106 review is needed.**

B. Otherwise, the Recipient shall review the undertaking in accordance with Stipulations VI through X below, or consistent with SHPO approved historic preservation protocols. The Recipient and/or sub-grantees may make use of the DAHP EZ 1, EZ 2, and EZ 3 form series to aid in fulfilling its Identification, Evaluation, and Treatment consultation requirements as described in Stipulations VI and VII.

VI. Identification and Evaluation

A. The Recipient shall establish the Area of Potential Effect (APE) for all program undertakings defined in the DOE grant agreement for the State.

B. The Recipient shall complete the identification and evaluation of historic properties utilizing existing information including the National Register, state surveys, and county and local surveys. In addition, the Recipient and SHPO may use or develop protocols with 36 CFR Section 800.4 for the review of consensus determinations of eligibility.

C. The Recipient shall consult with Indian tribes or NHOs to determine if there are historic properties of religious or cultural significance that were not previously identified or considered in surveys or related Section 106 reviews, as appropriate.

D. Archaeology surveys are required only for new ground disturbing project undertakings and shall be limited in scope subject to the concurrence of Indian tribes or NHOs that may attach religious or cultural significance to historic properties in the project area. Project undertakings requiring more than minimal ground disturbance shall be forwarded to the SHPO and THPOs or Indian tribes or NHOs concurrently for review.

E. In order to avoid potential delays, prior to initiating undertakings the SHPO may review the Recipient's scopes of work for above ground surveys and archaeology surveys that are deemed necessary to administer the Recipient's Programs and to implement the terms of this PA.

F. The Recipient shall refer disputes regarding determinations of eligibility to DOE for review and referral to the Keeper of the National Register in accordance with 800.4(c)(2).

VII. Treatment of Historic Properties

A. When the Recipient and the SHPO concur that an undertaking is designed and planned in accordance with the Secretary of the Interior's *Standards for the Treatment of Historic Properties* (36 CFR Part 68, July 12, 1995 *Federal Register*) (Standards), that undertaking will not be subject to further Section 106 review.

B. The Recipient and SHPO will make best efforts to expedite reviews through a finding of "No Adverse Effect with conditions" when the Recipient and the SHPO concur that plans and specifications or scopes of work can be modified to ensure adherence to the Standards. If the undertaking cannot meet the Standards or would otherwise result in an adverse effect to historic properties, the Recipient will proceed in accordance with Stipulation VIII.

VIII. Resolution of Adverse Effects

A. The Recipient shall consult with the SHPO, and Indian tribes or NHOs as appropriate, to resolve adverse effects. The Recipient will notify DOE of the pending consultation, and DOE will participate through its designated representative.

B. The Recipient may use standard stipulations included in Attachment A of this PA, or as negotiated as part of this PA between the SHPO and the Recipient, or if the project warrants, use of an alternate PA due to the complexity of the project activity.

C. Consultation shall be coordinated to be concluded in 45-days or less to avoid the loss of funding. In the event the consultation extends beyond this period, DOE shall formally invite the ACHP to participate in consultation. The ACHP will consult with DOE regarding the issues and the opportunity to negotiate a Memorandum of Agreement (MOA). The purpose of this MOA is to avoid, minimize, or mitigate the adverse effect of the project on historic properties. Within seven (7) days after notification, the ACHP will enter consultation and provide its recommendation for either concluding the Section 106 review through an MOA or Chairman's comment from the ACHP to the Secretary of DOE within 21 days.

D. In the case of an ACHP Chairman comment, DOE may proceed once DOE provides its response to the ACHP.

IX. Emergency Situation Undertakings

A. When an emergency undertaking is required for historic properties associated with the undertakings, the Recipient shall allow the SHPO five (5) business days to respond, if feasible. Emergencies exist when there is a need to eliminate an imminent threat to health and safety of residents as identified by local or County building inspectors, fire department officials, or other local or County officials.

1. The Recipient shall forward documentation to the SHPO for review immediately upon notification that an emergency exists. Documentation should include a) nature of the emergency; b) the address of the historic property involved; c) photographs showing the current condition of the building; and d) the time-frame allowed by local officials to respond to, or correct, the emergency situation.
2. The Recipient shall consider mitigation measures recommended by the SHPO and implement them, if feasible.

X. Public and Consulting Party Involvement

A. The Recipient shall maintain a list of undertakings and shall make the documentation available to the public. The Recipient shall notify the SHPO if its notified of other consulting parties or public interest in any undertakings covered under the terms of the PA.

B. The Recipient, independently or at the recommendation of the SHPO, may invite interested persons to participate as consulting parties in the consultation process for adverse effects in accordance with Stipulations VI, VII, and VIII.

XI. Administrative Coordination

A. The Recipient, in consultation with the SHPO, may develop procedures allowing for the use of local reviews conducted by Certified Local Governments (CLG) when such procedures avoid the duplication of efforts.

B. The Recipient, in consultation with the SHPO, may determine that an undertaking has already been reviewed under an existing Section 106 effect determination or agreement document, then no further Section 106 review under this PA is required.

C. The SHPO shall provide comments to the Recipient within thirty (30) days, unless otherwise agreed upon by the SHPO and the Recipient, for reviews required under the terms of this PA with the exception of emergency undertakings. In the event that the SHPO fails to comment within the established period, the Recipient can assume the SHPO has concurred, and proceed.

D. The Recipient shall advise sub-grantees in writing of the provisions in Section 110 (k) of the Act and will advise the sub-grantees that Section 106 reviews may be compromised when project undertakings are initiated prematurely.

E. The SHPO and the Recipient shall make every effort to expedite Section 106 reviews for a period of less than the 30-day review when consistent with the terms of the DOE grant agreements and the Recipient intends to utilize the services of qualified professionals.

F. For projects that will require either an Environmental Assessment or an Environmental Impact Statement under the National Environmental Policy Act (NEPA), nothing contained in this PA shall prevent or limit the Recipient and DOE from utilizing the procedures set forth in 36 CFR 800.8 to coordinate and conduct the historic preservation review in conjunction with the NEPA review.

XII. Discoveries

If historic properties are discovered or unanticipated effects on historic properties located within a project's APE after the undertaking has been initiated, the Recipient will implement the following procedures.

A. The Recipient shall immediately cease all operations for the portion of the undertaking with the potential to affect historic property.

B. The subgrantee shall advise the Recipient of the National Register eligibility of the historic property and the potential of the undertaking to impact its qualifying characteristics and an explanation of whether the SHPO or Indian tribes and NHOs concur with proposed avoidance, treatment plan or mitigation plan;

C. The Recipient or DOE shall notify Indian tribes or NHOs of any discoveries that have the potential to adversely affect sites or buildings of religious or cultural significance

to them. After reviewing such discoveries, the Indian tribes or NHOs can request further consultation on the project by notifying DOE, ACHP, and the SHPO in writing.

D. The Recipient or subgrantee shall implement the avoidance, treatment or mitigation plan and advise the Recipient and DOE, if appropriate, of the satisfactory completion of the approved work. Once the approved work is complete the subgrantee may resume the activities that were halted to address the discovery situation.

XII Dispute Resolution

A. Should the SHPO object within the time frames outlined in this PA to any project undertakings, the Recipient shall consult further with the SHPO to attempt to remove the basis for the SHPO's objection. In the event that the SHPO's objection is not withdrawn, then the Recipient shall refer the matter to DOE. The Recipient shall forward all documentation relevant to DOE, who will notify and consult with the ACHP.

B. The ACHP will provide its recommendations, if any, within 21days following receipt of relevant documentation. DOE will take into account the ACHP's recommendations or formal comments in reaching a final decision regarding the dispute.

XIII. Reporting and Monitoring

A. DOE, the ACHP, and the SHPO may monitor any undertakings carried out pursuant to this PA. The ACHP may review undertakings, if requested by DOE. DOE shall be entitled to address and make determinations on overall policy or administrative issues related to the implementation of these Programs.

B. The Recipient shall adhere to DOE's established protocols for ARRA reporting program undertakings.

C. DOE will submit annual reports to ACHP and NCSHPO commencing October 15, 2010 summarizing the Programs' undertakings, to include data on number of undertakings, the number of exempt undertakings, and reviews conducted under this PA.

XIV. Amendments

DOE, the SHPO, or the Recipient may request that this PA be amended, whereupon DOE and the SHPO, and the ACHP, if involved, will consult to consider such an amendment. Any such amendments shall be developed and executed among DOE, the Recipient, and the SHPO in the same manner as the original PA, and pertain only to this State PA.

XV. Duration of Agreement

This PA will be valid for three (3) years from the date of execution, as verified with DOE filing the PA with the ACHP.

XVI. Termination of Agreement

DOE, the SHPO, or the Recipient may terminate the PA, provided that the party proposing termination notifies the other signatories and the ACHP in writing explaining the reasons for termination and affording the other signatories at least thirty (30) days to consult and seek alternatives to termination.

Signatories:

Tony Usibelli 4/19/2010

WASHINGTON DEPARTMENT OF COMMERCE Date

Tony Usibelli, Director, Washington State Energy Office

Dan McConnon 4/21/10

WASHINGTON DEPARTMENT OF COMMERCE Date

Dan McConnon, Assistant Director, Community Services and Housing Division

4/21/10

WASHINGTON STATE HISTORIC PRESERVATION OFFICER Date

Clare Broido Donnan 5/6/10

UNITED STATES DEPARTMENT OF ENERGY Date

OFFICE OF ENERGY EFFICIENCY AND RENEWABLE ENERGY

OFFICE OF WEATHERIZATION AND INTERGOVERNMENTAL PROGRAMS

APPENDIX A—WAP AND SEP OR EECBP PROJECTS THAT ARE USING WAP PROCEDURES UNDERTAKINGS EXEMPT FROM SECTION 106 REVIEW

All undertakings will be done in accordance with applicable local building codes or the International Building Code, where applicable. In accordance with 36 CFR 800.3(a)(1), the following undertakings have been determined to have no potential to cause effects on historic properties:

A. Exterior Work

1) Air sealing of the building shell, including caulking, weather-stripping, and other air infiltration control measures on windows and doors, and installing thresholds in a manner that does not harm or obscure historic windows or trim.
2) Thermal insulation, such as non-toxic fiberglass and foil wrapped, in walls, floors, ceilings, attics, and foundations in a manner that does not harm or damage historic fabric.
3) Blown in wall insulation where no holes are drilled through exterior siding.
4) Removable film on windows (if the film is transparent), solar screens, or window louvers, in a manner that does not harm or obscure historic windows or trim.
5) Reflective roof coating in a manner that closely resembles the historic materials and form, or with materials that restore the original feature based on historic evidence, and in a manner that does not alter the roofline, or where not on a primary roof elevation or visible from the public right-of-way.
6) Storm windows or doors, and wood screen doors in a manner that does not harm or obscure historic windows or trim.
7) In-kind replacement or repair of primary windows, doors and door frames that closely resemble existing substrate and framing
8) Repair of minor roof and wall leaks prior to insulating attics or walls, provided repairs closely resemble existing surface composite

B. Interior Work

Special Note: Undertakings to interior spaces where the work will not be visible from the public right of way; no structural alterations are made; no demolition of walls, ceilings or floors occurs; no drop ceilings are added; or no walls are leveled with furring or moved, should be automatically excluded from **SHPO** review. This work includes:

1) Energy efficiency work within the building shell:

a. Thermal insulation in walls, floors, ceilings, attics, crawl spaces, ducts and foundations
b. Blown in wall insulation where no decorative plaster is damaged.
c. Plumbing work, including installation of water heaters
d. Electrical work, including improving lamp efficiency
e. Sealing air leaks using weather stripping, door sweeps, and caulk and sealing major air leaks associated with bypasses, ducts, air conditioning units, etc.

f. Repair or replace water heaters
g. Adding adjustable speed drives such as fans on air handling units, cooling tower fans, and pumps
h. Install insulation on water heater tanks and water heating pipes
i. Install solar water heating systems, provided the structure is not visible from the public right of way
j. Install waste heat recovery devices, including desuperheater water heaters, condensing heat exchangers, heat pump and water heating heat recovery systems, and other energy recovery equipment
k. Repair or replace electric motors and motor controls like variable speed drives
l. Incorporate other lighting technologies such as dimmable ballasts, day lighting controls, and occupant controlled dimming

2) ***Work on heating and cooling systems:***

a. Clean, tune, repair or replace heating systems, including furnaces, oilers, heat pumps, vented space heaters, and wood stoves
b. Clean, tune repair or replace cooling systems, including central air conditioners, window air conditioners, heat pumps, and evaporative coolers
c. Install insulation on ducts and heating pipes
d. Conduct other efficiency improvements on heating and cooling systems, including replacing standing pilot lights with electronic ignition devices and installing vent dampers
e. Modify duct and pipe systems so heating and cooling systems operate efficiently and effectively, including adding return ducts, replace diffusers and registers, replace air filters, install thermostatic radiator controls on steam and hot water heating systems
f. Install programmable thermostats, outdoor reset controls, UL listed energy management systems or building automation systems and other HVAC control systems

3) ***Energy efficiency work affecting the electric base load of the property:***

a. Convert incandescent lighting to more energy efficient lighting, such as, fluorescent, LED, etc.
b. Add reflectors, LED exit signs, efficient HID fixtures, and occupancy (motion) sensors
c. Replace refrigerators and other appliances

4) ***Health and safety measures:***

a. Installing fire, smoke or carbon dioxide detectors / alarms
b. Repair or replace vent systems on fossil-fuel-fired heating systems and water heaters to ensure that combustion gasses exhaust safely to outside

c. Install mechanical ventilation, in a manner not visible from the public right of way, to ensure adequate indoor air quality if house is air-sealed to building airflow standard.

APPENDIX B – SEP AND EECBG UNDETRRTAKINGS EXEMPT FROM SECTION 106 REVIEW

A. Category 1 - No Consultation Required

In addition to the undertakings provided in ***Exhibit A (WAP Undertakings exempt from Section 106 Review)***, DOE and the SHPO have concluded that the following undertakings do not have the potential to cause effects on historic properties per 36 CFR § 800.3(a)(1):

1. General efficiency measures not affecting the exterior of the building:

a. Energy audits and feasibility studies
b. Weatherization of mobile homes and trailers
c. Caulking and weather-stripping around doors and windows in a manner that does not harm or obscure historic windows or trim.
d. Water conservation measures – like low flow faucets, toilets, shower heads, urinals – and distribution device controls
e. Repairing or replacing in kind existing driveways, parking areas, and walkways with materials of similar appearance
f. Excavating to gain access to existing underground utilities to repair or replace them, provided that the work is performed consistent with previous conditions
g. Ventilating crawl spaces
h. Replacement of existing HVAC equipment including pumps, motors, boilers, chillers, cooling towers, air handling units, package units, condensers, compressors, heat exchangers that do not require a change to existing ducting, plumbing, electrical, controls or a new location, or if ducting, plumbing, electrical and controls are on the rear of the structure or not visible from any public right of way.
i. 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 and carbon monoxide detectors (wired or non-wired)
j. New installation of non-hard wired devices including photo-controls, occupancy sensors, carbon dioxide, thermostats, humidity, light meters and other building control sensors, provided the work conforms with applicable state and local permitting requirements
k. Adding variable speed drive motors
l. Insulation of water heater tanks and pipes
m. Furnace or hot water tank replacement that does not require a visible new supply or venting

2. ***Insulation measures not affecting the exterior of the building:***

   a. Thermal insulation installation in walls, floors and ceilings (excluding spray foam insulation and insulation installed through holes drilled in siding)
   b. Duct sealing, insulation, repair or replacement in unoccupied areas
   c. Attic insulation with proper ventilation; if under an effective R8 - add additional R-19 up to R-38 (fiberglass bat only)
   d. Band joist insulation - R-11 to R19 as applicable
   e. Water heater tank and pipe insulation

3. ***Electric base load measures not affecting the exterior of the building:***

   a. Appliance replacement (upgrade to EnergyStar appliances)
   b. Compact fluorescent light bulbs
   c. Energy efficient light fixtures, including ballasts (Replacement)
   d. LED light fixtures and exit signs (Replacement)
   e. Upgrade exterior lighting (replacement with metal halide bulbs, LEDs, or others) along with ballasts, sensors and energy storage devices not visible from any public right of way.

B. Category 2 - No Consultation Required when SOI Standards are Adhered to and Verified by Qualified Staff, if Applicable

The following undertakings may have effects on historic properties as defined in 36 CFR Part 800.5. However, if the activity or undertakings meet the Secretary of the Interior's *Standards for the Treatment of Historic Properties* (36 CFR Part 68, July 12, 1995 *Federal Register*) (Standards) specified below then, DOE and the SHPO agree that the undertakings will have no adverse effect upon historic properties and DOE/Recipients shall not be required to further consult with the SHPO if reviews are conducted by Qualified Professionals, as defined in the *Secretary of Interior's Professional Qualifications Standards* set forth in 36 CFR Part 61, Appendix A.

Based on the above, the following work will not meet the Criteria of Adverse Effect when it adheres to the recommended approaches in the Standards and does not involve following significant spaces: entrances, entry halls, lobbies, areas for public gathering and circulation. Alternatively, if the following undertakings occur in a significant space, work will have not adverse effect on historic properties as long as it does not damage historic materials or finishes and new wiring, piping, and ductwork are concealed. All building undertakings under this section will be done in accordance with the Standards, or conditions and modifications proposed by the SHPO.

1. ***Efficiency and repair measures:***

   a. Painting over previously painted exterior surfaces, provided destructive surface preparation treatments are not used (such as water-blasting, sandblasting and chemical removal)
   b. Installation or replacement of downspout extensions, provided that the color of the extensions is historically appropriate for the period and style of the property
   c. Repairing or upgrading electrical or plumbing systems and installing mechanical equipment, in a manner that does not permanently change the appearance of the interior or exterior of the building
   d. Installation of new HVAC equipment (such as pumps, motors, boilers, chillers, cooling towers, air handling units, package units, condensers, compressors, or heat exchangers) in a manner that does not permanently change the appearance of the building.
   e. Integrated shingle-style or thin film solar systems on the rear roof of the structure, behind the parapet or not visible from the public right of way.
   f. Solar systems (including photovoltaic and solar thermal) not visible from the public right of way and if ground-mounted can be installed without ground disturbance and if roof-mounted will not require new building reinforcement.
   g. Wind system additions to existing wind power facilities that will not require ground disturbance and if building mounted will not require building reinforcement.
   h. Lead-based paint abatement in accordance with the Standards and Preservation Brief #37
   i. Building cleaning in accordance with the Standards and Preservation Briefs #1, #6, and #10
   j. Repairing masonry, including re-pointing and rebuilding chimneys in accordance with the Standards and Preservation Brief # 2
   k. New lighting controls including photo-sensors and shading elements if not visible from the public right of way
   l. New metering devices in a manner that does not permanently change the appearance of the interior or exterior of the building, or if the addition is on the exterior of the structure and is not visible from the public right of way
   m. New water efficient fixtures and fittings in a manner that does not permanently change the appearance of the interior or exterior of the building

2. ***Installation or repair of roofing, siding, and ventilation:***

   a. White Roofs, Cool Roofs, Green Roofs, Sod or Grass Roofs not visible from the public right-of-way
   b. Rainwater catches and/or gray water systems not viewable from the public right of way
   c. Repair or replacement of existing exterior siding provided that new siding matches the existing siding in dimension, profile and texture

d. Flat or shallow pitch roof replacement (shallow pitch is defined as a pitch with a rise-to-run ratio equal to or less than 3" to 12") with no part of the surface of the roof visible from the ground
e. Roof repair or replacement with materials that closely resemble the historic materials and form, or with replacement materials that are close to the original in color, texture, composition and form to restore the original feature based on historic evidence, and in a manner that does not alter the roofline
f. Installing vents (such as continuous ridge vents covered with ridge shingles or boards, roof vents, bath and kitchen vents, soffit and frieze board vents or combustion appliance flues) if not located on a primary roof elevation or not visible from the public right-of-way
g. Installing foundation vents, if painted or finished to match the existing foundation material.

3. ***Windows and doors:***

a. Installing storm windows, storm doors or wood screen doors in a manner that does not harm or obscure historic windows, doors or trim
b. Installing insulated exterior replacement doors where the door openings are not altered and are not visible from the public right-of-way
c. Window or glazing treatments that do not change the appearance of the interior or exterior of the building, or if the addition is on the exterior of the structure

ATTACHMENT A: STANDARD MITIGATION MEASURES FOR ADVERSE EFFECTS

The Recipient and the SHPO may develop and execute an Agreement that includes one or more of the following Standard Mitigation Measures, as may be modified to a particular activity, with the concurrence of both parties, for undertakings determined to have an adverse effect on listed or eligible historic resources. The ACHP will not be a party to these Agreements. However, the Recipient must submit a copy of each signed Agreement to the SHPO, and the ACHP within 30 days after it is signed by the Recipient and the SHPO.

1. Blanket/Programmatic Mitigation

The Recipient, in consultation with the SHPO and other local historic preservation agencies or non-profit organizations, may agree to implement a blanket or programmatic mitigation measure. If all parties are amenable to this approach, other standard mitigation measures as identified below are encouraged, but not required, to be completed in fulfillment of the Agreement. Examples of blanket/programmatic measures that may undertaken include, but are not limited to: completion of a survey of historic properties; preparation of a National Register of Historic Places nomination of an eligible property or district; preparation of a historic context or preservation planning document; undertaking preservation/rehabilitation of a National Register listed or eligible property; conveyance of a lump-sum donation to a qualified historic preservation agency or organization for undertaking historic preservation activities. As with all mitigation measures in this document, the activity shall be carried out by professionals meeting the National Park Service Professional Qualifications as defined in 36 CFR Part 61. Any mitigation funds will come from the grantee's funds.

2. Recordation

The Recipient shall ensure that the historic property is recorded prior to its alteration in accordance with methods or standards established in consultation with the SHPO. The SHPO shall identify appropriate archive locations for the deposit of recordation materials and the Recipient shall be responsible for submitting required documentation to identified archive locations. The Recipient and the SHPO may mutually agree to waive the recordation requirement in situations where the integrity of the building has been compromised or other representative samples of similar historic resources have been previously recorded.

3. Architectural Salvage

The Recipient, in consultation with the SHPO, shall identify significant architectural features that

can be salvaged and appropriate parties to receive the salvaged features. The Recipient shall ensure that any architectural features identified for salvage are salvaged prior to initiation of undertakings and properly stored and curated. When feasible, and determined appropriate in consultation with SHPO, salvaged architectural features shall be reused in other preservation projects.

4. Rehabilitation

The Recipient shall ensure that the treatment of historic properties which the SHPO has determined do not meet the *Standard,* or SHPO approved design guidelines, are carried out in accordance with treatments agreed upon by the Recipient and the SHPO and are incorporated in the final plans and specifications. The final plans and specifications shall be approved by the SHPO prior to initiating the undertaking.

5. New Construction

The Recipient shall ensure that the design of new buildings, or additions, which the SHPO has determined do not meet the *Standards,* or SHPO approved design guidelines, are carried out in accordance plans and specifications reviewed and approved by the SHPO prior to finalization and initiation of the undertaking.

Exhibit C---August 28, 2009 Delegation Memorandum
(next page)

Department of Energy
Washington, DC 20585

August 28, 2009

MEMORANDUM

TO: State Historic Preservation Officers
Tribal Historic Preservation Officers

FROM: Catherine R. Zoi
Assistant Secretary
Energy Efficiency and Renewable Energy

SUBJECT: Memorandum from EERE Regarding Delegation of Authority for Section 106 Review of Undertakings, Assisted by the U. S. Department of Energy, Office of Energy Efficiency and Renewable Energy

The Department of Energy (DOE), through the Office of Energy Efficiency and Renewable Energy (EERE), provides financial assistance to states, U.S. territories, units of local government, and Indian Tribes through the Energy Efficiency and Conservation Block Grant (EECBG) Program, Weatherization Assistance Program (Weatherization), and State Energy Program (SEP). Attached hereto is a one-page summary of the three programs. Additional program information is available at the following links: http://www.eecbg.energy.gov/; http://apps1.eere.energy.gov/wip/weatherization.cfm; http://apps1.eere.energy.gov/state_energy_program/.

Through this memorandum, DOE intends to formalize the role of the States and DOE's award recipients (Applicants) to assist DOE in carrying out its Section 106 compliance responsibilities. In order to streamline DOE's compliance with Section 106 and its implementing regulations, "Protection of Historic Properties" (36 CFR Part 800), EERE is authorizing its Applicants under the EECBG, Weatherization, and SEP programs to initiate consultation pursuant to 36 CFR § 800.2(c) (4). Effective immediately, EERE Applicants and their authorized representatives may consult with the State Historic Preservation Officers (SHPOs) and Tribal Historic Preservation Officers (THPOs) to initiate the review process established under 36 CFR Part 800 and to carry out some of its steps. Specifically, EERE Applicants are authorized to gather information to identify and evaluate historic properties, and to work with consulting parties to assess effects. EERE retains responsibility to document its findings and determinations in order to appropriately conclude Section 106 review.

EERE also remains responsible for initiating government-to-government consultation with federally recognized Indian Tribes. EERE's responsibility to consult on a government-to-government basis with Indian Tribes as sovereign nations is established through specific authorities and is explicitly recognized in 36 CFR Part 800. Accordingly, EERE may not delegate this responsibility to a non-federal party without

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ATTACHMENT VII:
UNITED STATES DEPARTMENT OF ENERGY NEPA GUIDANCE, NEPA TEMPLATE FOR CATEGORICAL EXEMPTIONS, AND ENVIRONMENTAL CHECKLIST

This attachment includes the following:

1. Letter dated May 27, 2010, from United States Department of Energy, regarding NEPA conditions pertaining to the SEP programs.
2. NEPA template for categorical exemptions.
3. Environmental Checklist, which shall be used for Energy Efficiency Improvement Projects that do not qualify under the NEPA template for categorical exemptions.

NATIONAL ENERGY TECHNOLOGY LABORATORY

Albany, OR • Morgantown, WV • Pittsburgh, PA

U.S. DEPARTMENT OF ENERGY

May 27, 2010

Washington Department of Commerce
Attn: Ms. Cory Plantenberg
906 Columbia Street SW
P O Box 43173
Olympia, WA 98504-3173

SUBJECT: National Environmental Policy Act (NEPA) Conditions for Award No. DE-EE0000139

Dear Ms Plantenberg:

In accordance with the Special Terms and Conditions Article entitled "NATIONAL ENVIRONMENTAL POLICY ACT (NEPA)," approval is hereby granted for the State of Washington to perform the following previously prohibited project activities under the subject award:

- Energy Efficiency Credit Enhancement Program – activities related to the Washington Credit Enhancement project;
- Energy Efficiency and Renewable Energy Loans and Grants Program – activities related to the Clarke Public Utilities project; and
- Energy Efficiency and Renewable Energy Loans and Grants Program – activities related to work performed with Harold LeMay Enterprises, Inc.

As a result of this authorization, please provide any updates to your Annual Plan, if necessary, to the DOE Project Officer identified in Block 15 of the Assistance Agreement Cover Page, within ten (10) days of receipt of this letter. These updates will be incorporated through an amendment to the agreement. In addition, please continue to work with the Project Officer to address NEPA on the remaining conditioned activities.

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

Should you have any questions or concerns regarding this approval, please contact the Contract Specialist, Sue Miltenberger (304) 285-4083.

Sincerely,

Jeffrey S. Kooser
Contracting Officer
Acquisitions and Assistance Division

cc T. Fuller, GFO
Award No. DE-EE0000139

3610 Collins Ferry Road, P.O. Box 880, Morgantown, WV 26507

TEMPLATE

By signing below, State of Washington provides assurance that the attached projects to award sub-grants under DE-EE0000849, as detailed in the EECBG Activity Worksheet entitled Competitive sub-grants to cities & counties fall within the categories in Part I below and, moreover, are consistent with the limitations prescribed therein. To assist DOE in satisfying its NEPA obligations, Commerce provides the attached spreadsheet describing the scope of work for each project and a GO EF1 environmental questionnaire that for all projects that fall within the bounded categories. Individual GO-EF1 environmental checklists for each of these projects are on file with the Department of Commerce, along with other documentation necessary to demonstrate compliance with Part II requirements and conditions below.

Part I – Bounded Categories

1. Conducting residential and commercial building energy audits, which Projects include hiring technical consultants for such work.

2. Establishment of financial incentive programs for energy efficiency improvements.

3. Provision of grants to nonprofit organizations and governmental agencies for the purpose of performing energy efficiency retrofits, provided that:

   - Projects Are Limited To: installation of insulation; installation of efficient lighting; heating, venting, and air conditioning (HVAC) and high-efficiency shower/faucet upgrades; weather sealing; the purchase and installation of ENERGY STAR appliances; installation of solar powered appliances with improved efficiency; and replacement of windows and doors.

4. Development and implementation of energy efficiency and conservation programs for buildings and facilities within the jurisdiction of the entity, provided that:

   - Projects Are Limited To: design and operation of the programs; identifying the most effective methods for achieving the maximum participation and efficiency rates; public education, measurement and verification protocols; and identification of energy efficient technologies.

5. Development and implementation of programs to conserve energy used in transportation, provided that:

   - Projects Are Limited To: use of flex time by employers; use of satellite work centers; development and promotion of zoning guidelines or requirements which promote energy efficient development; and synchronization of traffic signals.

6. Development and implementation of building codes and inspection services, and associated training and enforcement of such codes in order to support code compliance and promote building energy efficiency.

7. Projects to increase participation and efficiency rates for material conservation programs.

8. Replacement of traffic signals and street lighting with energy efficient technologies.

9. Development, implementation, and installation on or in any government building of onsite renewable energy technology that generates electricity from renewable resources, provided that:

   - Projects Are Limited To:

     - Solar Electricity/Photovoltaic - appropriately-sized system or unit on existing rooftops and parking shade structures; or a 60 KW system or smaller unit installed on the ground within the boundaries of an existing facility.
     - Wind Turbine - 20 KW or smaller.
     - Solar Thermal - system must be 20 KW or smaller.
     - Solar Thermal Hot Water - such as appropriately sized for small buildings.
     - Ground Source Heat Pump - 5.5-ton capacity or smaller, horizontal/vertical, ground, closed-loop system.
     - Combined Heat and Power System - boilers sized appropriately for the buildings in which they are located.
     - Biomass Thermal - 3 MMBTUs per hour or smaller system with appropriate Best Available Control Technologies (BACT) installed and operated.

Part II - Integral Element Requirements and Other Conditions

State of Washington shall award sub-grants only for Projects that would not:

(1) Threaten a violation of applicable statutory, regulatory, or permit requirements for environment, safety, and health, including requirements of DOE and/or Executive Orders;

(2) Require siting and construction or major expansion of waste storage, disposal, recovery, or treatment facilities (including incinerators);

(3) Disturb hazardous substances, pollutants, contaminants, or CERCLA-excluded petroleum and natural gas products that preexist in the environment such that there would be uncontrolled or unpermitted releases; or

(4) Adversely affect environmentally sensitive resources. Environmentally sensitive resources include, but are not limited to:

(i) Property (e.g., sites, buildings, structures, objects) of historic, archeological, or architectural significance designated by Federal, state, or local governments or property eligible for listing on the National Register of Historic Places;

(ii) Federally-listed threatened or endangered species or their habitat (including critical habitat), Federally- proposed or candidate species or their habitat, or state-listed endangered or threatened species or their habitat;

(iii) Wetlands regulated under the Clean Water Act (33 U.S.C. 1344) and floodplains;

(iv) Areas having a special designation such as Federally- and state-designated wilderness areas, national parks, national natural landmarks, wild and scenic rivers, state and Federal wildlife refuges, and marine sanctuaries;

(v) Prime agricultural lands;

(vi) Special sources of water (such as sole-source aquifers, wellhead protection areas, and other water sources that are vital in a region); and

(vii) Tundra, coral reefs, or rain forests.

Waste Stream Conditions

Washington State shall obtain a waste management plan addressing waste generated by a proposed Project prior to awarding a sub-grant for that Project. This waste management plan will describe the Sub-recipient's plan to dispose of any sanitary or hazardous waste (e.g., construction and demolition debris, old light bulbs, lead paint, lead ballasts, piping, roofing material, discarded equipment, debris, and asbestos) generated as a result of the proposed Project. shall make the waste management plan and related documentation available to DOE on DOE's request (for example, during a post-award audit). Washington State shall ensure through specific contract terms that the Sub-recipient complies with all Federal, state and local regulations for waste disposal.

NHPA Conditions

Prior to awarding a sub-grant for a Project, Washington State and the Sub-recipient shall comply with Section 106 of the National Historic Preservation Act (NHPA). If applicable, the Sub-recipient must contact the State Historic Preservation Officer (SHPO), and the Tribal Historic Preservation Officer (THPO). Washington State shall retain sufficient documentation, from the Sub-recipient or other sources, to demonstrate that the Sub-recipient has received required approval(s) from the SHPO or THPO for the Project. Washington State shall deem compliance with Section 106 of the NHPA

complete only after it has this documentation. Washington State shall make this documentation available to DOE on DOE's request (for example, during a post-award audit).

Cumulative Impacts, Connected Actions and Extraordinary Circumstances

DOE's CXs are not absolute. CXs do not apply to Projects that involve "extraordinary circumstances," connected actions, or cumulative impacts that may have significant environmental impacts. *See* 10 C.F.R. § 1021.410(b). If DOE grants a CX based on descriptions in the State's RFP for EECBG grants, DOE will base its decision on the lack of such "extraordinary circumstances" and significant impacts. Washington State shall review section 1021.410 and must immediately contact DOE if it identifies a Project that may involve "extraordinary circumstances," cumulative impacts or connected actions that could have significant environmental impacts. Typically, DOE will either subject the sub-grant for the Project to NEPA review or the State will elect not to proceed with awarding the sub-grant.

Part III

On the basis of Washington State's assurances in this Project Activity Worksheet, DOE intends to apply one or more CXs to the State's sub-grants for all Projects described in the State's RFP. However, because DOE has only recently started employing this approach to categorically excluding sub-grants, there may be unforeseen circumstances that make it inappropriate to apply a CX to a Project(s) that meets all the Part I and Part II requirements. DOE does not waive its discretion to decline to apply a CX for EECBG sub-grants.

By signing below, Washington State acknowledges the preceding paragraph, agrees to all conditions in Parts I, II and III, and provides its assurance that all statements in the Project Activity Worksheet and attachments are accurate to the best of its knowledge.

Tony Usibelli

Authorized Signatory Washington State

GO-EF1
(2/06/02)

U.S. DEPARTMENT OF ENERGY
GOLDEN FIELD OFFICE

ENVIRONMENTAL CHECKLIST
(To Be Completed by Potential Recipient)

The Department of Energy (DOE) is required by the National Environmental Policy Act (NEPA) of 1969 as amended (42 U.S.C. 4332(2), 40 CFR parts 1500-1508) and DOE implementing regulations (10 CFR 1021) to consider the environmental effects resulting from federal actions, including providing financial assistance. Please provide the following information to facilitate DOE's environmental review. DOE needs to evaluate the requested information as part of your award negotiation.

Instructions and Handbook: Terms that appear in blue have more detailed information available to assist you in completing the form. Save the form to your local directory. Leave your internet browser open and open the form in Word from the local directory. Click on the blue term and it will automatically open the handbook at the appropriate place. Click on the back button to return to your form. Or, you may click here to open the handbook.

PART I: General Information

Project Title: _____

Solicitation Number: DE-EE0000139

1. Please describe the intended use of DOE funding in your proposed project. For example, would the funding be applied to the entire project or only support a phase of the project? Describe the activity as specifically as possible, i.e. planning, feasibility study, design, data analysis, education or outreach activities, construction, capital purchase and/or equipment installation or modification. This checklist is for the 40 projects that I have determined fall within the parameters of the template. By signing the attached template, Commerce's agrees to the bounds of the attached template.

2. Does any part of your project require review and/or permitting by any other federal, state, regional, local, environmental, or regulatory agency? ☐ Yes ☐ No
   If yes, please provide a list of required reviews and permits in the appropriate item number in Part II.

3. Has any review (e.g., SEPA, NEPA documentation, permits, agency consultations) been completed? ☐ Yes ☐ No
   If yes, is a finding or report available and how can a copy be obtained?

4. Is the proposed project part of a larger scope of work? ☐ Yes ☐ No If yes, please describe.

   Do you anticipate requesting additional federal funding for subsequent phases of this project? ☐ Yes ☐ No
   If yes, please describe.

5. Does the scope of your project **only** involve one or more of the following:
   - ☐ Information gathering such as literature surveys, inventories, audits,
   - ☐ Data analysis including computer modeling,
   - ☐ Document preparation such as design, feasibility studies, analytical energy supply and demand studies, or
   - ☐ Information dissemination, including document mailings, publication, distribution, training, conferences, and informational programs.

   If the scope of your project is **limited to** the block(s) checked above, please skip to Part III, otherwise, continue to Part II.

PART II: Environmental Considerations

Table A. Please indicate if any of the following conditions or special areas is present, required, or could be affected by your project:

Item No.	Description	Yes/No	Specific nature or type of activity or condition. If a consultation, approval, or permit applies, please describe.
1	Clearing or Excavation (indicate if greater than 1 acre)		
2	Dredge and/or Fill. Specify the number of acres involved.		
3	New or Modified Federal/State Permits And/or Requests for Exemptions		
4	Pre-Existing Contamination		
5	Asbestos		
6	Criteria Pollutants		
7	Non-Attainment Areas		
8	Class I Air Quality Control Region		
9	Navigable Air Space		
10	Areas with Special Designation (e.g., National Forests, Parks, Trails)		
11	Prime, Unique or Important Farmland		
12	Archeological/Cultural Resources		
13	Threatened/Endangered Species and/or Critical Habitat		
14	Other Protected Species (Wild Burros, Migratory Birds)		
15	Floodplains		
16	Special Sources of Groundwater (e.g., Sole Source Aquifer)		
17	Underground Extraction/Injection (non-hazardous substances)		
18	Wetlands		
19	Coastal Zones		
20	Public Issues or Concerns		
21	Noise		
22	Depletion of a Non-Renewable Resource		
23	Aesthetics		

Table B. Would your project use, disturb, or produce any chemicals or biological substances? (i.e., pesticides, industrial process, fuels, lubricants, bacteria) If not, skip to Section C.

Please indicate if any of the materials or processes listed below applies.

Item No.	Description	Yes/No	Quantity	Permit required? Type?	Specific type, use, or condition
1	Polychlorinated Biphenyls (PCBs)				
2	Import, Manufacture, or Processing of Toxic Substances				
3	Chemical Storage, Use, and Disposal				
4	Pesticide Use				
5	Hazardous, Toxic, or Criteria Pollutant Air Emissions				
6	Liquid Effluent				
7	Underground Extraction/Injection (hazardous substances)				
8	Hazardous Waste				
9	Underground Storage Tanks				
10	Biological Materials. Indicate if genetically altered materials are involved.				

Table C. Would your project require or produce any radiological materials? If not, skip to Part III.
Please indicate if any of the materials listed below applies.

Item No.	Description	Yes/No	Quantity	Permit required? Type?	Specific nature of use
1	Radioactive Mixed Waste				
2	Radioactive Waste				
3	Radiation Exposures				

Part III: Contact Information

Please provide the name of the preparer of this form and a contact person who can answer questions or provide additional information.

Preparer _____ Telephone Number _____ E-mail Address _____

Contact _____ Telephone Number _____ E-mail Address _____

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