

**INTERGOVERNMENTAL AGREEMENT**

AGREEMENT NUMBER: SEP240013

This Intergovernmental Agreement ("Agreement") is entered into by and between the Illinois Environmental Protection Agency ("Illinois EPA" or "Agency") and Illinois Finance Authority ("IFA"), designated as the Illinois Climate Bank. Illinois EPA and IFA may also be individually referred to herein as "Party" and collectively as "Parties".

**1. PURPOSE AND AUTHORITY:**

- A. Under the federal Infrastructure Investment and Jobs Act ("IIJA") of 2021, U.S. Department of Energy ("U.S. DOE") has allocated \$15,963,220 to the Illinois EPA Office of Energy for purposes of establishing an Energy Efficiency Revolving Loan Fund Program ("EE RLF Program"). Infrastructure Investment and Jobs Act, Pub. L. No. 117-58, § 40502, 135 Stat. 1051 (2021). This Agreement is between Illinois EPA and IFA, designated as the Illinois Climate Bank (20 ILCS 3501/850-5), for administration of the EE RLF Program for purposes of providing loans and grants to conduct commercial and residential energy audits and energy efficiency upgrades and retrofits of building infrastructure. All loans and grants made pursuant to this Agreement shall comply with applicable laws governing the EE RLF Program including, but not limited to, 2 CFR Part 200, as amended by 2 CFR Part 910, and IIJA Section 40501 and 40502.
- B. Section 5 of the Intergovernmental Cooperation Act provides, in part, that "[a]ny one or more public agencies may contract with any one or more other public agencies to perform any governmental service, activity or undertaking or to combine, transfer, or exercise any powers, functions, privileges, or authority which any of the public agencies entering into the contract is authorized by law to perform." (5 ILCS 220/5). Illinois EPA and IFA are "public agencies" within the meaning of Section 2 of the Intergovernmental Cooperation Act. (5 ILCS 220/2).

2. **TERM:** This Agreement shall begin on November 1, 2023, or the date when the EE RLF Program grant is received by Illinois EPA from U.S. DOE, whichever comes later. This agreement shall terminate five years after the date when the EE RLF Program grant is received by Illinois EPA from U.S. DOE, unless sooner terminated or further extended as provided herein ("Term"). This Agreement may be terminated by either Party, with or without cause, upon thirty (30) days' prior written notice. IFA shall be paid for work completed, in accordance with this Agreement and delivered to the Illinois EPA, as well as any noncancelable obligations made prior to the date of termination if the Agreement is terminated by Illinois EPA without cause. The Agreement shall be deemed terminated for cause by Illinois EPA in the event that the IFA is in default or breach hereunder other than a breach or default occasioned by any of the events set forth in Section 10 hereof. Such noncancelable obligations must be: a) clearly documented as occurring prior to the date of termination notice; b) proven to be noncancelable; c) properly established in accordance with this Agreement; and d) of a nature that cannot be reasonably entered as a cancellable obligation.

3. **FUNDING:** In consideration of the services rendered under this Agreement, the Illinois EPA shall fund the IFA:

- A. **Expenses Allowed:** Personnel, Fringe Benefits, Travel, Equipment, Supplies, Contractual, Other Direct Costs, and Indirect Costs are all allowable budget categories for purposes of work completed under this Agreement. Not more than 10% (\$1,596,322) of the total amount allocated to the Illinois EPA may be used for administrative expenses. Illinois EPA will retain 1% of the administrative expenses or \$159,632. The IFA may invoice Illinois EPA for up to the remaining 9% of the administrative expenses, or \$1,436,690, over the course of the EE RLF Program. IIA and State Energy Program (“SEP”) regulations do not define the administrative expense categories. Any expenditure, allowed by the U.S. Office of Management and Budget cost principles or by the Illinois EPA, may be charged as administrative expense. However, certain expenses in this EE RLF Program that are excluded from other categories can only be administrative. The IFA must clearly define administrative expenses within the budget justification, consistent with generally accepted accounting principles.
- B. **Maximum Amount:** The total payments under this Agreement shall not exceed \$15,803,588 without a formal amendment and subject to the appropriation and funding contingencies herein. The Maximum Amount represents the amount of the Illinois allocation for the EE RLF Program from U.S. DOE (\$15,963,220) minus 1% administrative expenses retained by the Illinois EPA \$159,632). The Maximum Amount includes funding for both the EE RLF Program (90% of allocation, or \$14,366,898) and administration of the EE RLF Program by IFA (9% of allocation, or \$1,436,690). IFA is responsible for any expenses in excess of the Maximum Amount that are incurred in implementing the EE RLF Program.
- C. **Cost Match:** Cost match is not required.
- D. **Program Income:** If IFA earns program income during the Term of this Agreement as a result of this Agreement, the program income must be added to the funds committed to the EE RLF Program and used to advance eligible project objectives. Program income is gross income earned by IFA that is directly generated by a supported activity or earned as a result of the EE RLF Program. *See 2 CFR Part 200.1 and 2 CFR Part 200.307.* Administrative expenses provided for under Expenses Allowed, paragraph 3.A of this Agreement, are not program income. Program income includes but is not limited to:
- Incomes from fees for services performed;
  - The use or rental of real or personal property acquired with EE RLF Program funds;
  - The sale of commodities or items fabricated under the EE RLF Program;
  - License fees and royalties on patents and copyrights; and
  - Payments of principal and interest on loans made with EE RLF Program funds.

4. **PROGRAM SCOPE:**

- A. The IFA shall comply with all terms of this Agreement including all Attachments and Terms and Conditions that are incorporated herein.
- B. IFA shall not be responsible, at any time, for directing the work of any other contractor or subcontractor of Illinois EPA.
- C. IFA and all subcontractors and grantees identified by IFA will provide all services and the necessary personnel and equipment required to complete the Scope of Work.

- D. IFA will provide professional quality, financial expertise, technical accuracy, timely completion, and the coordination of all services furnished by IFA under this Agreement. Illinois EPA shall not be responsible for remediating any insufficiencies on the part of IFA.
- E. IFA must meet all U.S. DOE requirements and abide by all EE RLF Program rules issued in the Application Instructions and Administrative and Legal Requirements Document published on November 15, 2022, attached to and incorporated into this Agreement, and available at: [Energy Efficiency Revolving Loan Fund Capitalization Grant Program | Department of Energy.](#)<sup>1</sup>
- F. Nothing in this Agreement shall preclude Illinois EPA from prospectively imposing additional requirements necessary under existing law to protect human health or the environment, nor shall anything in this Agreement preclude Illinois EPA from prospectively imposing additional requirements in the event that new information is discovered or developed that indicates such requirements are necessary under existing law to protect human health or the environment.
- G. IFA will use a revolving funding model to identify and invest in energy efficiency audits, upgrades, and retrofits and will design loans and grants under the EE RLF Program to provide financial assistance to eligible recipients as described below.
  - i. **Eligible recipients of loans, grants, and technical assistance:** Any EE RLF Program recipient that is a business must conduct a majority of its business in Illinois, be in good standing with the Illinois Secretary of State and have successfully passed through the IFA application review and due diligence process. IFA's review and due diligence process must include the eligible recipient and mandatory requirements as outlined in this Agreement. IFA must make loan approval contingent on borrower supplying information responsive to mandatory program metrics (*see* Attachment G).

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<sup>1</sup> <https://www.energy.gov/scep/energy-efficiency-revolving-loan-fund-capitalization-grant-program>

Type of Assistance	Building Sector	Eligible Recipient(s)
Loans	Commercial (includes publicly and privately owned buildings) – see IJA Section 40502(e)(2)(A)(iv)	<ul style="list-style-type: none"> <li>• A business, nonprofit organization or a public building that satisfies both of the following:                             <ul style="list-style-type: none"> <li>○ Conducts a majority of its business in the state that provides the loans; and</li> <li>○ Owns or operates one or more commercial buildings or commercial space within a building that serves multiple functions, such as building for commercial and residential operations.</li> </ul> </li> <li>• See Mandatory Requirements.</li> </ul>
	Residential – see IJA Section 40502(e)(2)(B)(iv)	<ul style="list-style-type: none"> <li>• An individual who owns one of the following:                             <ul style="list-style-type: none"> <li>○ A single family home.</li> <li>○ A condominium or duplex.</li> <li>○ A manufactured housing unit.</li> </ul> </li> <li>• A business that owns or operates a multifamily housing facility.</li> </ul>
Grants and Technical Assistance	Commercial – see IJA Section 40502(e)(3)(B)(i)	<ul style="list-style-type: none"> <li>• A business that meets both criteria to receive loans (see above) and has fewer than 500 employees.</li> <li>• See Mandatory Requirements.</li> </ul>
	Residential – see IJA Section 40502(e)(3)(B)(ii)	<ul style="list-style-type: none"> <li>• A low-income individual (as defined in Section 3 of the Workforce Innovation and Opportunity Act (29 USC 3102) that owns a residential building.</li> </ul>

**ii.Mandatory Requirements:**

Timeframe for use of funds: IFA must make loans available (i.e., be prepared to start accepting and processing application) or issue grants within 180 days after the date on which Illinois EPA Office of Energy is awarded the funds by the U.S. DOE.

Energy Audit, upgrade and retrofit requirements: For loans and grants provided through the EE RLF Program, mandatory and optional requirements for eligible activities are described in the table below:

Commercial Energy Audits	Required	<ul style="list-style-type: none"> <li>• Determine the overall consumption of energy of the facility of the eligible recipient.</li> <li>• Identify and recommend lifecycle cost-effective opportunities to reduce consumption of the facility of the eligible recipient.</li> <li>• Identify the period and level of peak energy demand for each building within the facility of the eligible recipient and the sources of energy consumption that are contributing the most to that period of peak energy demand.</li> <li>• Recommend controls and management systems to reduce or redistribute peak energy consumption.</li> <li>• Estimate the total energy and cost savings potential for the facility of the eligible recipient if all recommended upgrades and retrofits are implemented, using software approved by U.S. DOE – provided below in Software Requirements.</li> </ul>
	Optional	<ul style="list-style-type: none"> <li>• Recommend strategies to increase energy efficiency of the facility of the eligible recipient through use of electric systems or other high-efficiency systems utilizing fuels, including natural gas and hydrogen.</li> </ul>
Residential Energy Audits	Required	<ul style="list-style-type: none"> <li>• Use the same evaluation criteria as the Home Performance Assessment used in the Energy Star Program. <i>See</i> Software Requirements, below.</li> <li>• Identify and recommend lifecycle cost-effective opportunities to reduce the energy consumption of the facility of the eligible recipient.</li> <li>• Recommend controls and management systems to reduce or redistribute peak energy consumption.</li> <li>• Compare the energy consumption of the residential building of the eligible recipient to comparable residential buildings in the same geographic area.</li> <li>• Provide a Home Energy Score, or equivalent score for the residential building of the eligible recipient by using DOE’s Home Energy Score Tool or an equivalent scoring tool. <i>See</i> Software Requirements, below.</li> </ul>
	Optional	<ul style="list-style-type: none"> <li>• Recommend strategies to increase energy efficiency of the facility of the eligible recipient through use of electric systems or other high-efficiency systems utilizing fuels, including natural gas and hydrogen.</li> </ul>
Commercial and Residential Upgrades and Retrofits	Required	<ul style="list-style-type: none"> <li>• Recommended in the qualifying commercial energy audit or residential energy audit, as applicable, completed for the building or facility of the eligible recipient.</li> <li>• Satisfy at least 1 of the criteria in the Home Performance Assessment used in the Energy Star program (residential only).</li> <li>• Are life-cycle cost-effective.</li> <li>• Improve, with respect to the building or facility of the eligible recipient, at least one of the following: <ul style="list-style-type: none"> <li>○ The physical comfort of the building or facility occupants.</li> <li>○ The energy efficiency of the building or facility.</li> <li>○ The quality of the air in the building or facility.</li> </ul> </li> <li>• Lead to at least one of the following outcomes: <ul style="list-style-type: none"> <li>○ Reduce the energy intensity of the building or facility of the eligible recipient.</li> <li>○ Improve the control and management of energy usage of the building or facility to reduce demand during peak times.</li> </ul> </li> </ul>

If a loan or grant recipient chooses to do a combination of upgrade or retrofit projects, the projects must collectively satisfy the mandatory criteria set forth above and not individually. However, any upgrade or retrofit project must be recommended in the audit.

The IFA shall calculate life-cycle cost-effectiveness, per the aforementioned requirement, in a manner that best suits its loan program, market being served, and available data sources. At a minimum, life-cycle energy savings as well as the cost of energy efficiency measures must be included. The IFA may also use up to 25% of funding

provided for grants and technical assistance to pursue the same set of activities laid out in the table above; however, loan programs shall be prioritized.

Loan Term Requirements: Loans provided under the EE RLF must be fully amortized by the earlier of the following:

- The year in which the upgrades or retrofits carried out using the loan exceed their expected useful life. In the case of a loan being used to fund multiple upgrades or retrofits, the longest-lived upgrade or retrofit shall be used to calculate the year in which the upgrades or retrofits carried out using the loan exceed their expected useful life.
- 15 years after the upgrades or retrofits are installed.

Software Requirements:

Commercial energy audits financed through the EE RLF must estimate the total energy and cost savings potential for the facility of the eligible recipient if all recommended upgrades and retrofits are implemented, using software approved by U.S. DOE, including:

- Audit Template software for audits of commercial and multifamily buildings to accomplish ASHRAE Level II Audits - Audit Template | Department of Energy;<sup>2</sup> or
- Software that uses BuildingSync (e.g., a standard format for conveying data), which is used by multiple energy audit software tools - Building Data Tools | BuildingSync (energy.gov).<sup>3</sup>

Residential energy audits financed through the EE RLF Program must use the evaluation criteria as the Home Performance Assessment used in the Energy Star program and provide a Home Energy Score, or equivalent score, for the residential building of the eligible recipient by using U.S. DOE's Home Energy Score Tool,<sup>4</sup> or an equivalent scoring tool. IIIA Section 40502(e)(2)(B)(ii)

### iii. Expenditure Prohibitions, Limitations, and Allowances

Prohibitions:

- Funds may not be used on buildings outside of the State of Illinois.
- Pre-payment loan penalties are prohibited.
- States may not pool loan funds across multiple states.

Limitations:

- No more than 25% of the funding provided under the EE RLF Program may be used to provide grants or technical assistance to eligible entities for activities described in the Mandatory Requirements in Section 4.G.ii of this Agreement.
- No more than 10% of the funding may be used for administrative expenses as defined in Section 3.A of this Agreement.
- Funds may be used to supplement, and no funds may be used to supplant, weatherization activities under the Weatherization Assistance Program for Low-Income Persons.
- Commercial audits, upgrades, and retrofits financed through the EE RLF Program must satisfy the criteria set forth in IIIA and described in the Mandatory Requirements section of this Agreement to be eligible.
- National Environmental Policy Act ("NEPA"), 42 USC §4321 *et seq.*, and National Historic Preservation Act, 54 USC §306101 *et seq.*, Section 105 determinations must be documented for each project financed.

<sup>2</sup> <https://www.energy.gov/eere/buildings/audit-template>

<sup>3</sup> <https://buildingdata.energy.gov/#/building-sync>

<sup>4</sup> <https://www.energy.gov/eere/buildings/articles/home-energy-score>

- During the Term of this Agreement, repayments (both interest and capital) are program income which must be put back into the EE RLF Program for re-use. See 2 CFR 200.307(e).

Allowances:

- Co-lending is allowable with financial institutions, endowments, and philanthropic organizations. For loans with multiple parties (e.g., state RLF and private capital), private capital is not subject to federal requirements. EE RLF Program funds shall be maintained and accounted for separately.
- Loans or loan portfolios may be sold to the secondary market, but the responsibility for federal reporting and compliance remains with IFA and Illinois EPA.
- Loan loss reserves and other credit enhancements are allowable.
- Public buildings are eligible under the commercial definition.

**5. PAYMENTS:**

- A. IFA shall receive \$14,366,898 in lump sum for the EE RLF Program after two conditions are met:
- Illinois EPA receives the EE RLF Program grant from U.S. DOE for disbursement; and
  - IFA submits, and Illinois EPA approves, an invoice requesting the funds that includes:
    - A detailed description of the loan(s) or grant(s) IFA will offer within the 180 days after the date on which the EE RLF Program grant is received by Illinois EPA as mandated by U.S. DOE;
    - A detailed timeline, including all milestones listed in Attachment E, showing how the loan(s) or grant(s) will be made available within 180 days; and
    - An accounting of how the funding will be invested immediately upon receipt by IFA and until disbursed pursuant to the EE RLF Program.
- B. IFA shall submit invoices to Illinois EPA within thirty (30) days of the end of each quarter for funds covering EE RLF Program administrative expenses. The total amount of funds reimbursable to IFA for administration of the EE RLF Program is \$1,436,690. IFA shall itemize the hours spent on EE RLF Program work together with sufficient documentation to support its pay request. Illinois EPA agrees to pay the personnel rates set forth in attached Attachment F, not to exceed \$1,436,690, subject to the appropriation and funding contingencies herein. Invoices for supplies purchased, services performed, and expenses incurred through June 30 of any year must be submitted to the Illinois EPA no later than July 31 of that year. IFA shall submit invoices no more frequently than once per month. Invoices shall be submitted as follows:

Agency:	Illinois Environmental Protection Agency
Invoices accepted:	To: <a href="mailto:EPA.FiscalServ@Illinois.gov">EPA.FiscalServ@Illinois.gov</a> CC: <a href="mailto:EPA.Energy@illinois.gov">EPA.Energy@illinois.gov</a> Subj: Agreement No. SEP240013 EE RLF
Contract number:	SEP240013

- C. Failure by IFA to submit pay request(s) to Illinois EPA in a timely manner (i.e., as provided in paragraphs 5.A. and 5.B., above) will render the amounts billed an unallowable expense which Illinois EPA will not reimburse. In

the event IFA is unable, for good cause, to submit a timely pay request(s), IFA shall notify Illinois EPA in a timely manner of such inability and may request an extension of time to submit said pay request(s). Illinois EPA's approval of such request(s) for an extension of time to submit a pay request(s) shall not be unreasonably withheld.

- D. Illinois EPA shall send a voucher for payment of an approved request for payment to the Comptroller's Office no more than thirty (30) days after receipt of the request. Notwithstanding the foregoing, Illinois EPA shall not be responsible for any delays in the Comptroller making any payment or payments hereunder.
6. **CONFLICT OF INTEREST:** IFA agrees to comply with the provisions of the Illinois Procurement Code prohibiting conflict of interest (30 ILCS 500/50-13) and all those terms, conditions and provisions apply to this Agreement and are made a part of this Agreement the same as though they were incorporated and included herein.
7. **WORK PRODUCTS:** All documents and reports, including mandatory metric data included in Attachment G, delivered, or specified to be delivered by IFA to the Illinois EPA under this Agreement shall become and remain the joint property of the Illinois EPA and IFA; IFA may retain a copy in its records. Copies of raw data utilized in the preparation of these documents, reports, and other work products shall be made available to Illinois EPA upon request. IFA shall provide all personnel, materials, and equipment necessary to fulfill the purposes of this Agreement.
8. **MULTIPLE COUNTERPARTS:** This Agreement may be executed in one or more counterparts, all of which shall be one and the same Agreement, binding on all Parties hereto, notwithstanding that all Parties are not signatories to the same counterpart.
9. **LAWS OF ILLINOIS:** If IFA subcontracts or grants any Scope of Work hereunder, it shall comply with the applicable provisions, if any, of the Illinois Procurement Code (30 ILCS 500/1-1, *et seq.*) and the Architectural, Engineering and Land Surveying Qualifications Based Selection Act (30 ILCS 535/1, *et. Seq.*). All purchases of equipment, supplies, goods, and other materials by IFA hereunder shall be made in accordance with any applicable provisions of the Illinois Procurement Code. If IFA grants any Scope of Work hereunder, it shall comply with all applicable provisions of the Grant Accountability and Transparency Act (30 ILCS 708/1, *et. Seq.*) along with all other applicable state and federal laws.
10. **AVAILABILITY OF APPROPRIATION; SUFFICIENCY OF FUNDS:** Notwithstanding any provision herein to the contrary, this Agreement and the Parties' obligations hereunder are contingent upon and subject to the availability of sufficient funds and availability of State and Federal appropriation(s). The Illinois EPA may terminate or suspend this Agreement, in whole or in part, without penalty or further payment being required, if: (i) sufficient funds for this Agreement have not been appropriated or otherwise made available to the Illinois EPA by the State or the federal



funding source; (ii) the Governor reserves funds; (iii) the Governor or the Illinois EPA determines that funds will not or may not be available for payment; or (iv) Illinois EPA determines that there are otherwise insufficient funds available. Illinois EPA shall provide notice, in writing to IFA, of any such funding and/or appropriation failure and its election to terminate or suspend this Agreement as soon as practicable. Any suspension or termination pursuant to this Section will be effective upon the date of the written notice unless otherwise indicated.

11. **AUDIT/RETENTION OF RECORDS:** IFA shall maintain books and records relating to the performance of the Scope of Work necessary to support amounts charged to the Illinois EPA pursuant to this Agreement using accounting procedures and practices that conform to generally accepted accounting principles.

Illinois EPA Office of Energy's record retention period established with the State Records Commission is six (6) years after closure of any grant award. Therefore, IFA must retain its records for six (6) years after the end of the Term of this Agreement. If any litigation, claim, negotiation, audit, cost recovery, or other action involving the records has been started before the expiration of the applicable retention period, the records must be retained until completion of the action and resolution of all issues which arise from it, or until the end of the applicable retention period, whichever is later.

Books and records required to be maintained under this Section shall be available for review or audit by representatives of: the Illinois EPA, the Auditor General, the Executive Inspector General, the Chief Procurement Officer, State of Illinois internal auditors or other governmental entities with monitoring authority (including agencies, departments, and instrumentalities of the federal government if federal funds are used and/or otherwise provided under federal law or any Agreement between Illinois EPA and a federal agency, department, or instrumentality providing funding for the Scope of Work), upon reasonable notice and during normal business hours. IFA shall cooperate fully with any such audit and with any investigation conducted by any of these entities. Failure to maintain books and records required by this Section shall establish a presumption in favor of the Illinois EPA for the recovery of any funds paid by the Illinois EPA under the Agreement for which adequate books and records are not available to support the purported disbursement.

12. **MODIFICATIONS AND SURVIVAL:** Amendments, modifications and waivers must be in writing and signed by authorized representatives of the Parties. Any provision of this Agreement officially declared void, unenforceable, or against public policy, shall be ignored and the remaining provisions shall be interpreted, as far as possible, to give effect to the Parties' intent. All provisions that by their nature would be expected to survive, including reporting and recordkeeping obligations, shall survive termination or expiration of the Agreement.

13. **FREEDOM OF INFORMATION ACT:** This Agreement and all related public records maintained by, provided to, or required to be provided to the Illinois EPA or IFA are subject to the Illinois Freedom of Information Act ("FOIA")

(5 ILCS 140) notwithstanding any provision to the contrary that may be found in this Agreement. Upon request, each Party shall make available to the other Party all documents in its possession that are necessary to comply with requests made under FOIA.

14. **ASSIGNMENT:** No Party may assign or delegate, in whole or part, the rights or obligations created by this Agreement without the prior written consent of the other Party. Any such assignment or delegation without the other Party's consent shall be null and void.
15. **ENTIRE AGREEMENT AND ATTACHMENTS:** This Agreement, including all attachments, constitutes the entirety of the Agreement between the Parties and supersedes any other agreement or communication, whether written or oral, that may have been made by either Party.

- ATTACHMENT A: STANDARD CERTIFICATIONS FOR INTERGOVERNMENTAL AGREEMENTS
- ATTACHMENT B: TAXPAYER IDENTIFICATION PAGE
- ATTACHMENT C: PROPOSAL REQUESTING CONTINUED FUNDING
- ATTACHMENT D: SCOPE OF WORK
- ATTACHMENT E: MILESTONES AND DELIVERABLES
- ATTACHMENT F: BUDGET BREAKDOWN
- ATTACHMENT G: REPORTING REQUIREMENTS
- ATTACHMENT H: SPECIAL TERMS AND CONDITIONS

17. **CONFIDENTIAL INFORMATION** Each Party shall treat the confidential information of the other Party with the same degree of care and protection it affords to its own confidential information unless a different standard is set forth in this Agreement. Notwithstanding the forgoing, the Parties shall comply with applicable law relative to the inspection, copying and disclosure of records, including but not limited to the Freedom of Information Act (5 ILCS 140/1 *et seq.*) (applicable to both Parties) and Section 7 of the Environmental Protection Act (415 ILCS 5/7) (applicable to Illinois EPA).

18. **SEVERABILITY CLAUSE:** If any provision of this Agreement is found to be invalid, such invalidity shall not affect the validity of the remaining portions of this Agreement.

19. **ABILITY TO CONTRACT:** Each Party represents to the other that it has the legal authority to enter into this Agreement. With respect to the subject matter of the Agreement, each Party shall duly authorize and execute any

additional agreements, documents, instruments, amendments, and certification reasonably necessary and appropriate to maintain compliance with any applicable law.

20. **ATTESTATION:** The below signatories represent that they are duly authorized to execute this Agreement on behalf of their respective bodies.

21. **NOTICE AND REPRESENTATIVES:** All notices required to be given hereunder shall be sent by e-mail or certified mail to the other Party as provided below. Either Party may from time to time designate by written notice substitute addresses (including e-mail addresses) and/or persons to whom such notices shall be sent. Unless otherwise provided herein, all notices shall be effective upon receipt:

To IFA:  
Illinois Finance Authority  
160 N. LaSalle St., Suite S-1000  
Chicago, IL 60601  
Christopher Meister  
[cmeister@il-fa.com](mailto:cmeister@il-fa.com)

To Illinois EPA:  
Illinois Environmental Protection Agency  
Associate Director's Office – Office of Energy  
1021 North Grand Ave. East  
P.O. Box 19276  
[EPA.Energy@Illinois.gov](mailto:EPA.Energy@Illinois.gov)

23. **DISPUTES:** In the event of a dispute between the Parties concerning the Scope of Work to be performed, interpretation of results, next steps, or any other aspects of the work conducted under this Agreement, the General Counsel of the IFA, and Manager of the Illinois EPA Office of Energy, will attempt to resolve such disputes promptly. If disputes cannot be resolved at this level within ten (10) business days, the problem will be referred to the IFA Executive Director and the Illinois EPA Director within fifteen (15) business days.

24. **NO AGENCY OR OTHER RELATIONSHIP:** Nothing contained in this Agreement shall be construed to create, either expressly or by implication, the relationship of agency between IFA and Illinois EPA. Illinois EPA (including its employees, officers, representatives, agents, and contractors) is not authorized to represent or act on behalf of IFA in any matter relating to the subject matter of this Agreement, and IFA (including its members, employees, officers, representatives, agents, and contractors) is not authorized to represent or act on behalf of Illinois EPA in any matter relating to the subject matter of this Agreement. Nothing contained in this Agreement nor any act of the Parties shall be deemed or construed by any of the Parties hereto or by any third parties to create any relationship of third party beneficiary, principal, agent, limited or general partnership, joint venture, or any association or relationship involving any of the Parties.

25. **NO THIRD-PARTY BENEFICIARIES:** This Agreement shall be binding on the Parties and shall inure to the benefit of the Parties. This Agreement shall not run to the benefit of, or be enforceable by, any person other than a Party.


26. **COMPLIANCE WITH APPLICABLE LAWS:** The Parties shall at all times observe and comply with all applicable federal, State, and local laws, regulations and codes which may in any manner affect the performance of this Agreement.
27. **GOVERNING LAW AND VENUE:** This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois. Any and all claims and disputes arising out of this Agreement or the Scope of Work against the State of Illinois, Illinois EPA, IFA, or any of their respective officials, officers, members, employees, or authorized representatives must be filed exclusively with and shall be adjudicated in the Illinois Court of Claims and shall be governed by the Court of Claims Act (705 ILCS 505/1 *et seq.*). The Parties shall not enter into binding arbitration to resolve any dispute arising out of this Agreement. Neither Party waives sovereign immunity by entering into this Agreement.
28. **ELIGIBILITY TO RECEIVE FUNDS:** IFA represents, warrants, and certifies that IFA, Illinois Climate Bank, its officials, officers, employees, and authorized representatives, and, to its knowledge based solely on certifications therefrom, any and all of its contractors and subcontractors, borrowers and grantees pursuant to this Agreement:
- A. Are not presently or proposed to be debarred or suspended, declared ineligible, or voluntarily excluded from federal, state, municipal, or other governmental (“public”) transactions and/or otherwise prohibited from receiving federal, state and/or other public funds;
  - B. Have not within a three year period preceding this Agreement been convicted of or had a civil judgment rendered against them for (i) fraud or commission of a criminal offense in connection with obtaining, attempting to obtain, or performing a public transaction or contract under a public transaction, (ii) violation of federal or State antitrust laws, (iii) embezzlement, theft, bribery, bid rigging, forgery, falsification or destruction of records, making false statements or receiving stolen property, or (iv) a felony;
  - C. Are not presently indicted for or otherwise criminally or civilly charged by a public entity with commission of any of the offenses enumerated above;
  - D. Have not within the preceding three years had a public transaction terminated for cause of default;
  - E. Shall use EE RLF Program funds only for eligible activities and in strict compliance with the requirements of the EE RLF Program and applicable federal and State of Illinois laws and regulations;
  - F. Is not now, and has not in the past, been subject to any penalties resulting from noncompliance with the Environmental Protection Act (415 ILCS 5); and
  - G. Shall document how EE RLF Program funds are used in accordance with the terms and conditions of this Agreement.
29. **CONTRACTING AND SUBCONTRACTING:** IFA agrees that all contracts and subcontracts to perform EE RLF Program Work under this Agreement are entered into subject to the following conditions and limitations:


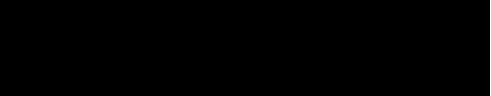
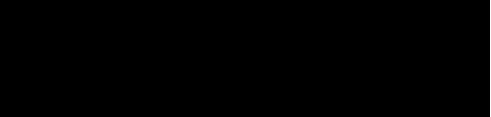
- A. IFA will comply with the Illinois Procurement Code in contracting and will comply with all applicable federal and State procurement laws and regulations;
- B. IFA assumes responsibility for the administration and management of the EE RLF Program pursuant to the terms of this Agreement. IFA assumes responsibility for the settlement and satisfaction of all contractual and administrative issues arising out of such contracts and subcontracts under the EE RLF Program. This responsibility includes, but is not limited to, procurement or selection of contractors, award of contracts, pretest of award, claims, disputes and other procurement matters;
- C. IFA agrees that any such contract or subcontract will provide the Illinois EPA, the Illinois Auditor General, the Illinois and US Inspector Generals, the Illinois and US Comptroller, the Illinois Attorney General, and federal government, their respective officials, authorized representatives and agents with access to any books, documents, papers, and records, including computer-generated documents, of any contractor or subcontractor that are related to the EE RLF Program and the expenditure of EE RLF Program funds for the purpose of making an audit;
- D. IFA agrees to comply with all applicable federal and State laws prohibiting civil rights violations, including but not limited to the Illinois Human Rights Act (775 ILCS 5), Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, Title IX, 40 CFR Parts 5 and 7, and all civil rights obligations set forth in the attached U.S. DOE Special Terms and Conditions, and will require the same compliance from all contractors and subcontractors of every tier performing EE RLF Program work. IFA and its contractors and subcontractors of every tier shall not discriminate against any person because of their race, color, religion, national origin, ancestry, age, sex, marital status, order of protection status, disability, military status, sexual orientation, pregnancy, or unfavorable discharge from military service or other protected status;
- E. IFA shall comply with the Illinois Finance Authority Act (20 ILCS 3501/850-15), the Business Enterprise for Minorities, Women, and Persons with Disabilities Act (30 ILCS 575/1) to the extent applicable, and 2 CFR 200.317 through 200.327 in fulfillment of such contracts and subcontracts for services and supplies under this Agreement;
- F. In awarding such contracts and subcontracts, IFA will consider whether such contracts and subcontracts are being awarded to persons and organizations that:
  - i. Have adequate financial resources, experience, organization, technical qualifications and resources, and facilities for performance of the contract or subcontract, and possess the ability to successfully perform the EE RLF Program work subject of the contract or subcontract;
  - ii. Have staffing sufficient to comply with the completion schedule for the EE RLF Program work;
  - iii. Have a demonstrated record of compliance with previous grants or contracts with federal, State, or local governments; and

- iv. Have an established financial management system and audit procedure.
  - G. IFA agrees that all procurement transactions under this Agreement will be conducted in a manner that complies with applicable standards imposed under federal and State law relating to this Agreement, including but not limited to prohibiting the use of statutorily or administratively imposed State or local geographical preferences in the evaluation of bids or proposals (except where such geographical preferences are designed to achieve compliance with the Justice 40 Initiative and result in increased investment in Equity Investment Eligible communities);
  - H. IFA shall maintain written standards of conduct that address the conflicts of interest provisions set forth in 2 CFR 200.318, including but not limited to the selection, award and administration of contracts and organizational conflicts of interest;
  - I. Any person, contractor, or other entity that develops or drafts, or assists in the developing or drafting of any specifications, requirements, statement of the work, qualifications, invitations for bids, requests for proposals (RFP), requests for qualifications (RFQ), or other bid or procurement document(s) must be excluded from competing for such procurement(s);
  - J. All consulting services for which IFA is requesting reimbursement hereunder must be procured in accordance with 2 CFR 200.317 through 200.327;
  - K. Management fees or similar charges in excess of direct costs are not allowable; and
  - L. IFA must comply with the Federal Funding Accountability and Transparency Act ("FFATA"), including but not limited to the "Reporting Subawards and Executive Compensation" requirements therein.
30. **TITLE AND HEADINGS:** Titles and headings to Sections herein are inserted for reference only and are not intended to be a part of, or affect the meaning or interpretation of, this Agreement.
31. **GENERAL PROVISIONS:**
- A. If a Party waives a breach of any provision of this Agreement by the other Party, that waiver shall not operate or be construed as a waiver of any subsequent breach by said Party or prevent the non-breaching Party from enforcing such provision.
  - B. The Parties acknowledge that this Agreement was freely negotiated by each of the Parties hereto, each of whom was represented by separate counsel; accordingly, this Agreement shall be construed according to the fair meaning of its terms, and not against any Party.

[SIGNATURE PAGE TO FOLLOW]

**ILLINOIS ENVIRONMENTAL PROTECTION AGENCY  
INTERGOVERNMENTAL AGREEMENT**

Name: Illinois Finance Authority	Address: 160 N. LaSalle St., Suite S-1000, Chicago, IL 60601
Signature: 	Phone: 312-651-1300
Printed Name: Christopher B. Meister	Fax: 312-651-1350
Title: Executive Director	Email: cmeister@il-fa.com
Date: 11/29/2023	

Agency: Illinois Environmental Protection Agency	
Street Address: 1021 N Grand Avenue E	
City, State ZIP: Springfield, IL 62702	
Director Signature: 	Date: 12/4/23
Printed Name: John J. Kim	
Director	
Legal Signature: 	Date: 12/5/23
Legal Printed Name: Charles Gunnarson	
Chief Legal Counsel	
Fiscal Signature: 	Date: 12/4/23
Fiscal's Printed Name: Jacob Poeschel	
Fiscal's Title: Chief Fiscal Officer	

**ATTACHMENT A**

**STANDARD CERTIFICATIONS FOR INTERGOVERNMENTAL AGREEMENTS**

IFA acknowledges and agrees that compliance with this Agreement for the term of the Agreement and any renewals is a material requirement and condition of this Agreement. By executing this Agreement, IFA certifies compliance with this Agreement and is under a continuing obligation to remain in compliance and report any non-compliance.

If this Agreement extends over multiple fiscal years including the initial term and all renewals, IFA shall confirm compliance with this Agreement in the manner and format determined by the State by the date specified by the State and in no event later than July 1 of each year that this Agreement remains in effect.

If the Parties determine that any certification in this Agreement is not applicable, it may be stricken without affecting other portions of this Agreement.

1. As part of each certification, IFA acknowledges and agrees that should IFA provide false information, or fail to be or remain in compliance with the Standard Certification requirements, one or more of the following sanctions will apply:
  - the Agreement may be void by operation of law,
  - the State may void the Agreement, and
  - the IFA or its agents may be subject to one or more of the following: suspension, debarment, denial of payment, civil fine, or criminal penalty.

Identifying a sanction or failing to identify a sanction in relation to any of the specific certifications does not waive imposition of other sanctions or preclude application of sanctions not specifically identified.

2. IFA certifies it and its employees will comply with applicable provisions of the U.S. Civil Rights Act, Section 504 of the Federal Rehabilitation Act, the Americans with Disabilities Act (42 U.S.C. § 12101 *et seq.*) and applicable rules in performance under this contract.
3. IFA certifies it will provide a drug free workplace pursuant to the Drug Free Workplace Act. (30 ILCS 580)
4. IFA certifies that it is not participating or shall not participate in an international boycott in violation of the U.S. Export Administration Act of 1979 or the applicable regulations of the U.S. Department of Commerce. This applies to contracts that exceed \$10,000 (30 ILCS 582).
5. IFA certifies it complies with the Illinois Department of Human Rights Act and rules applicable to public contracts, including equal employment opportunity, refraining from unlawful discrimination, and having written sexual harassment policies (775 ILCS 5/2-105).
6. IFA certifies it does not pay dues to or reimburse or subsidize payments by its employees for any dues or fees to any “discriminatory club” (775 ILCS 25/2).
7. IFA warrants and certifies that it and, to the best of its knowledge, its subcontractors have and will comply with Executive Order No. 1 (2007). The Order generally prohibits contractors from hiring the then-serving Governor’s family members to lobby procurement activities of the State, or any other unit of government in Illinois including local governments if that procurement may result in a contract valued at over \$25,000. This prohibition also applies to hiring for that same purpose any former State employee who had procurement authority at any time during the one-year period preceding the procurement lobbying activity.
8. IFA certifies that information technology, including electronic information, software, systems and equipment, developed or provided under this contract will comply with the applicable requirements of the Illinois Technology Accessibility Act Standards.<sup>5</sup> 30 ILCS 587.

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<sup>5</sup> <https://www.dhs.state.il.us/iitaa>



**ATTACHMENT B**

**TAXPAYER IDENTIFICATION NUMBER**

I certify that:

The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and I am a U.S. person (including a U.S. resident alien).

- If you are an individual, enter your name and SSN as it appears on your Social Security Card.
- If you are a sole proprietor, enter the owner’s name on the name line followed by the name of the business and the owner’s SSN or EIN.
- If you are a single-member LLC that is disregarded as an entity separate from its owner, enter the owner’s name on the name line and the D/B/A on the business name line and enter the owner’s SSN or EIN.
- If the LLC is a corporation or partnership, enter the entity’s business name and EIN and for corporations, attach IRS acceptance letter (CP261 or CP277).
- For all other entities, enter the name of the entity as used to apply for the entity’s EIN and the EIN.

Name: Click here to enter text.

Business Name: Click here to enter text.

Taxpayer Identification Number:

Social Security Number: Click here to enter text.

Or

Employer Identification Number: Click here to enter text.

Legal Status (check one):

- |  |  |
|--|--|
| <input type="checkbox"/> Individual  | <input type="checkbox"/> Governmental  |
| <input type="checkbox"/> Sole Proprietor   | <input type="checkbox"/> Nonresident alien   |
| <input type="checkbox"/> Partnership   | <input type="checkbox"/> Estate or trust   |
| <input type="checkbox"/> Legal Services Corporation  | <input type="checkbox"/> Pharmacy (Non-Corp.)  |
| <input type="checkbox"/> Tax-exempt  | <input type="checkbox"/> Pharmacy/Funeral Home/Cemetery (Corp.)                              |
| <input type="checkbox"/> Corporation providing or billing<br>medical and/or health care services     | <input type="checkbox"/> Limited Liability Company<br>(select applicable tax classification) |
| <input type="checkbox"/> Corporation NOT providing or billing<br>medical and/or health care services | <input type="checkbox"/> C = corporation   |
|  | <input type="checkbox"/> P = partnership   |

Signature of Authorized Representative: \_\_\_\_\_

Date: Click here to enter a date.

**ATTACHMENT C**  
**PROPOSAL REQUESTING CONTINUED FUNDING**

Continued funding is not permitted under this Agreement.

**ATTACHMENT D****SCOPE OF WORK****Programmatic Objective:**

The EE RLF Program, funded by U.S. DOE, authorizes Illinois EPA to capitalize loans and grants for energy audits and energy efficiency upgrades and retrofits of building infrastructure. (20 ILCS 3501/850-5). Projects awarded under the EE RLF Program, in whole or in part, will be funded with appropriated funds by the Infrastructure Investment and Jobs Act (IIJA) Section 40502, and subject to applicable federal terms and conditions as provided in Attachment H. (Public Law 117-58). The EE RLF Program is a Justice40-covered program.<sup>6</sup>

This Agreement is between Illinois EPA and IFA, designated as the Illinois Climate Bank, for administration of the EE RLF Program. The IFA shall use EE RLF Program funding to establish a sustainable energy efficiency revolving loan fund, particularly focused on Equity Investment Eligible Communities [20 ILCS 3501/801-10(oo)] and federally designated Disadvantaged Communities (as defined by the White House CEQ's Climate and Economic Justice Screening Tool) consistent with the Biden Administration's Justice 40 Initiative.

**Description of Supplies and Services:**

IFA is a body politic and corporate created by State statute and is authorized to issue tax-exempt and taxable bonds to make loans. The IFA was designated as the Illinois Climate Bank under the 2021 Climate & Equitable Jobs Act (CEJA), and works to accelerate Illinois's climate, equity, and energy goals. 20 ILCS 3501/850-5. The Illinois Climate Bank's purpose is to ensure the equitable distribution of and access to clean energy benefits and accelerate private capital investment in clean energy projects that reflect the geographic, racial, ethnic, gender, and income-level diversity of the State. 20 ILCS 3501/850-15.

The IFA must conduct statewide stakeholder engagement and outreach to inform design of the EE RLF Program to best meet the primary objectives of the EE RLF Program as reflected by Illinois residents. Stakeholder engagement must include community-based organizations, business groups, municipalities, utilities, financial institutions, BIPOC energy efficiency contractors, BIPOC renewable energy developers, labor organizations, units of local government, environmental organizations, and consumer advocates. Stakeholder engagement opportunities must be designed to allow meaningful access and participation by residents of disadvantaged communities and equity investment eligible persons and households and equity eligible contractors in all parts of Illinois. The Illinois EPA recognizes that the IFA has already conducted such stakeholder engagement for initial program design prior to the effective date of this Agreement and such will be counted as part of the Scope of Work hereunder.

Within the 180 days after the date on which the grant is received by Illinois EPA, IFA shall make available a Bridge Loan for the Inflation Reduction Act (IRA) Direct Pay Provision. This Bridge Loan will be paired with building energy audits and retrofit projects as required by the EE RLF Program. The Bridge Loan will allow commercial building owners to prove eligibility for the direct pay and gain access to IRA Direct Pay funding. In implementation of the Bridge Loan, the IFA will use a leverage model, co-investing the federal funds with private capital, or guaranteeing the private investment in projects with a loan loss reserve comprised of the federal funds, to mobilize private capital.

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<sup>6</sup> <https://www.energy.gov/diversity/justice40-initiative>

The Bridge Loan will be designed within the following criteria:

<b>Eligibility</b>	Nonprofits and Public Entities eligible for the Direct Pay provisions of the Inflation Reduction Act
<b>EE RLF Category</b>	Commercial/Public Building
<b>Loan Maximum</b>	\$1,000,000
<b>Loan Minimum</b>	\$50,000
<b>Term</b>	Up to 24 months
<b>Repayment Schedule</b>	No monthly payments. Full payment due upon receipt of Direct Pay payments from U.S. Treasury
<b>Fees</b>	Upfront origination fee of no more than 2% of loan
<b>Interest Rate</b>	Below market, low interest rate
<b>Underwriting Criteria</b>	<ul style="list-style-type: none"> <li>• Loan to Value (LTV) of 30%-40%</li> <li>• Certified to receive federal funds</li> <li>• Project meets utility-specific interconnection requirements</li> <li>• Eligible costs consistent with U.S. Treasury requirements</li> <li>• Evidence of submission of Direct Pay application to U.S. Treasury</li> </ul>
<b>Other Requirements</b>	<ul style="list-style-type: none"> <li>• Projects must be paired with a completed standardized energy audit pursuant to U.S. DOE EE RLF Program guidance and Item 4(G) of this Agreement.</li> <li>• Borrowers must agree to all EE RLF Program reporting requirements on metrics pursuant to EE RLF Program rules and this Agreement.</li> </ul>

The IFA will initially focus time and capacity on development of the Bridge Loan, subject to further expansion as provided below. For every loan issued under the Bridge Loan and any other loan program developed under the EE RLF Program, IFA must prioritize projects that are located in or will benefit state-designated Equity Investment Eligible Communities or federally designated Disadvantaged Communities across all parts of Illinois.

Where possible, IFA shall issue loans for projects that fall within the Historic Preservation bounded categories, see Term 7 in the attached Special Terms & Conditions. If a project falls outside a bounded category, IFA will work with Illinois EPA to develop and submit appropriate NEPA documentation to U.S. DOE for approval.

**Partnerships, Loan Terms, and Conditions:**

The primary objectives of the EE RLF Program are described below. The IFA must develop partnerships, loan terms, and conditions that reflect these objectives to the extent practicable.

1. **Maximize Loan Volume and Leverage Private Capital:** IFA will implement a leverage model, where the federal funds are co-invested with private capital, or guaranteed with a loan loss reserve, to mobilize private capital from a network of lenders. The IFA will leverage the EE RLF to raise private capital and conduct direct lending for new loan products to meet the needs of eligible recipients. The IFA will leverage its relationships with lending institutions authorized to conduct business in Illinois, including community development financial institutions, to support early-stage loan origination and servicing activities.

The IFA will coordinate delivery of new financial products with utility-provided energy efficiency and renewable incentives and develop financial products to more effectively reach disadvantaged communities currently subject to funding gaps.

2. **Accelerate and Maximize Energy Savings:** Funds are to be distributed to projects that will maximize cost-savings and pollution-reducing benefits to building owners and occupiers. Aggregable data as part of the EE RLF Program assessments will be required to meet the reporting requirements required by U.S. DOE.
3. **Create Good-Paying Jobs and Support Justice40 Initiative:** IFA will leverage federal funds, state-funded or mandated programs, and the new EE RLF to effectively invest in energy efficient building audits and retrofits with priority given to Equity Investment Eligible Communities (20 ILCS 730/5-5), and to support a market for small and emerging

contractors. The IFA will design the EE RLF to leverage new and emerging workforce development and contractor incubator programs established by the State of Illinois.

Before expanding the EE RLF Program with new loan or grant offerings, IFA must develop a table and brief description, modeled on the Bridge Loan table in Attachment D above, of the new offerings. The table and description must include, at a minimum: eligibility, EE RLF category, loan or grant maximum, loan or grant minimum, term, repayment schedule, fees, interest rate, and underwriting criteria. IFA must share the table and brief description with Illinois EPA and work with Illinois EPA to ensure the content is in compliance with U.S. DOE regulations and for consistency with EE RLF Program objectives before making the offering available to eligible recipients (as defined in paragraph 4.G.i, above). Illinois EPA will have 14 days upon receipt of the table and brief description from IFA to review and approve or to request additional time for review and approval. If Illinois EPA takes no such action within 14 days, IFA may deem the new offering acceptable under this Agreement. Upon agreement of the parties, written or deemed, that a new loan or grant offering is in compliance with U.S. DOE regulations and consistent with EE RLF Program objectives the table must be incorporated into this Agreement as an amendment under paragraph 12, above.

IFA will endeavor to keep interest rates and fees associated with all EE RLF loans as low as practicable and balanced with underwriting criteria to reach Equity Investment Eligible Communities to the greatest extent possible. Interest rates must be below market and be reviewed periodically, but not less frequently than annually, and if appropriate adjusted for new loans.

The IFA has sole responsibility for underwriting decisions and legal compliance with respect to all EE RLF Program loans it makes. The IFA agrees that for each EE RLF Program loan it makes, it will investigate and evaluate the creditworthiness of the applicant.

Financial Capability terms and conditions for EE RLF Program loans must be designed to maintain a program debt service ratio of 1:1 or better in order to optimize leveraging private capital for the benefit of the EE RLF Program.

When leveraging EE RLF loans with existing programs, IFA may supplement, but not supplant, Weatherization Assistance Program (WAP) benefits, and support households in obtaining WAP benefits as applicable.

Authority to issue grants under this Agreement does not extend to third-party financial institutions. Illinois EPA and IFA are the only entities authorized to issue EE RLF Program grants.

**Application Development and Publication:** Application materials must be designed with consideration for the above program objectives. Application documents should be consolidated to the extent possible and made accessible via multiple means (e.g., internet, physical documents upon request, etc.). All loan criteria, terms, underwriting and application documents must be accessible on a website published by IFA with clear reference to IFA, Illinois EPA, State of Illinois and U.S. DOE in order to ensure Illinois residents associate the EE RLF Program with the federal and state governments. Loans developed under the EE RLF Program must be sufficiently distinguished from other IFA and Illinois Climate Bank programs on the website in order to help Illinois residents understand potential eligibility and avoid confusion.

**ATTACHMENT E**

**MILESTONES AND DELIVERABLES**

The anticipated milestones are itemized below and subject to change during the Term of the Agreement.

IFA must notify Illinois EPA by email at [epa.energy@illinois.gov](mailto:epa.energy@illinois.gov) when any events occur that have a significant impact upon EE RLF Program activities and the milestones below as soon as the event becomes known.

Milestones	Target Date
Receipt of grant by Illinois EPA from U.S. DOE	
<b>First 180 days after receipt by Illinois EPA of U.S. DOE grant:</b>	Measured in days from date of receipt of U.S. DOE grant
Public Notice of Stakeholder Engagement, Outreach and Marketing Plan Publication of EE RLF Program Informational Materials	within 45 days
First Stakeholder Engagement Opportunity Held	within 75 days
Initial Bridge Loan Strategy Published Workforce Development Strategy Published	within 100 days
Bridge Loan Lending Partner Identified Bridge Loan Originator Partners Identified Bridge Loan Servicer Partners Identified	within 140 days
Bridge Loan Underwriting finalized Loan Terms & Conditions finalized	within 150 days
Test Launch of Bridge Loan Application Portal Metric Tracking Procedures Shared with Illinois EPA	within 170 days
Bridge Loan product made available: <ul style="list-style-type: none"> <li>• Full Bridge Loan Application Packet published</li> <li>• IFA, Illinois Climate Bank webpage dedicated to EE RLF Bridge Loan published</li> <li>• Customer Support for Potential Borrowers Established and Accessible</li> </ul>	within 180 days

<b>Following Availability of First Loan:</b>	
Issuance of First Loan	Ongoing
Receipt of First Loan Payment	Ongoing
Additional loan product(s) developed and made available	Ongoing
Review and Adjust Interest Rate(s)	Not less frequently than annually
IFA Illinois Climate Bank EE RLF webpage updated	Ongoing
Prepare and submit EE RLF Two-Year Report to Illinois EPA, see Attachment G, below.	23 months after Illinois EPA receipt of U.S. DOE grant
EE RLF Program Closeout	Upon U.S. DOE termination of EE RLF Program grant

**ATTACHMENT F**

**BUDGET BREAKDOWN**

<b>Budget Category</b>	<b>FY24</b>	<b>FY25</b>	<b>FY26</b>	<b>FY27</b>	<b>FY28</b>	<b>Total Per Category</b>
<b>Personnel</b>	\$43,855.50	\$45,171.17	\$46,526.30	\$47,922.09	\$49,359.75	\$232,834.81
<b>Fringe Benefits</b>	\$10,963.88	\$11,292.79	\$11,631.57	\$11,980.52	\$12,339.94	\$58,208.70
<b>Travel</b>						
<b>Equipment</b>						
<b>Supplies</b>						
<b>Contractual</b>	\$1,015,038.00					1,015,038.00
<b>Other Direct Costs</b>						
<b>Indirect Costs</b>	\$106,985.74	\$5,646.40	\$5,815.79	\$5,990.26	\$6,169.97	\$130,608.15
<b>Total Per Year</b>	\$1,176,843.11	\$62,110.35	\$63,973.66	\$65,892.87	\$67,869.66	
<b>Grand Total</b>						<b>\$1,436,689.66</b>

**Administrative Expense Categories include: personnel, fringe benefits, travel, equipment, supplies, other direct costs, and indirect costs.**

**Personnel:** All positions to be supported by title and the amounts of time (e.g., % of time) to be expended on the EE RLF, the base pay rate, and the total direct personnel compensation. Personnel must be direct costs to the project and not duplicative of personnel costs included in the indirect pool that is the basis of any indirect rate applied for this project.

**Fringe Benefits:** If fringe cost rates are approved by a federal agency, identify the agency and date of latest rate agreement and include a copy of the rate agreement. If fringe cost rates are not approved by a federal agency, explain how total fringe benefits costs were calculated. Calculations should identify all rates used along with the base they were applied to (and how the base was derived), and a total for each (along with the grant total). If there is an established computation methodology approved for state-wide use, provide a copy.

**Travel:** Provide the purpose of travel. Identify the number of trips, and the destination/location, if known. Provide the basis for the travel estimate such as past trips, current quotations, federal or state travel regulations, etc. All listed travel must be necessary or beneficial to the performance of the EE RLF. No foreign travel is approved, and out-of-state travel requires pre-approval.

**Equipment:** Equipment is defined as an item with an acquisition cost greater than \$5,000 and a useful life expectancy of more than one year. List all proposed equipment and briefly justify its need as it applies to the objectives of this Agreement. Provide a basis of cost such as vendor quotes, catalog prices, prior invoices, etc. If it is new equipment that will retain a useful life upon completion of the project, provide a rationale for the estimate value shown. Also, indicate whether the equipment is being used for other projects or is 100% dedicated to this project.

**Supplies:** Supplies are defined as items with an acquisition cost of \$5,000 or less or a useful life expectancy of less than one year. Supplies are generally consumed during the project performance. List all proposed supplies and the estimated cost and briefly justify the need for the supplies as they apply to the objectives of this Agreement. Supply items must be direct costs to the project and not duplicative of supply costs included in the indirect pool that is the basis of any indirect rate applied for this project. Provide a basis of cost for each item listed. Examples include vendor quotes, prior purchases of similar or like items, published price list, etc.



**Contractual:** All subrecipients, vendors, contractors, consultants, grantees and their estimated costs should be identified. Use TBD if the entity is unknown. Provide a brief description of the work to be performed or the service to be provided. Include the basis of cost for each item listed (competitive, historical, quote, catalog, etc.).

**Other Direct Costs:** Other direct costs are direct cost items required for the project that do not fit clearly into other categories. These direct costs must not be included in the indirect costs (if indirect costs are proposed for this project). Provide a description, cost, and justification or need for each direct cost item. Provide a basis of cost for each item.

**Indirect Costs:** If the indirect cost rate has been approved by a federal agency or agency other than U.S. DOE. See 2 CFR 200.414 Indirect (F&A) costs for more information. Identify the agency and the date of the latest rate agreement and submit a copy of the agreement with the application. If the indirect cost rate has not been approved by a federal agency, provide the basis for computation of rates including the types of benefits to be provided, the rate(s) used and the cost basis for each rate. The rate/amount allowable does not invalidate the budget category limits.

**ATTACHMENT G**

**REPORTING REQUIREMENTS**

<b>Quarter</b>	<b>Reporting Period</b>	<b>Due Date</b>
1	July – September	October 20
2	October – December	January 20
3	January – March	April 20
4	April – June	July 20
Cumulative – Annually	July – June	August 20
Two Year U.S. DOE Program Report	First two years of Term of this Agreement	23 months after the EE RLF Program grant is received by Illinois EPA
Final, Closeout	Entire Term of this Agreement	45 days following the end of the Term of this Agreement or closeout of EE RLF Program by U.S. DOE, whichever is later

All reports required under this Agreement must be submitted to [epa.energy@illinois.gov](mailto:epa.energy@illinois.gov).

The State Energy Program (“SEP”) is updating performance metrics and data collection processes, including new metrics (e.g., funding and technical assistance to disadvantaged communities). This Agreement is subject to any new metrics issued by SEP. For the EE RLF Program, U.S. DOE anticipates updates to the statutorily required Two Year Report as well as a new grant Closeout Report to capture required metrics over the entire period performance.

**Quarterly Reporting:**

Upon IFA creating a loan that triggers the applicability of a metric area, that metric area becomes mandatory.

Quarterly narrative performance reports shall include, but are not limited to, providing the following information to the Illinois EPA Office of Energy for each investment made under the EE RLF Program for purposes of metric tracking and reporting to U.S. DOE:

**General (mandatory)**

- For each loan issued:
  - Entity Name
  - Building Address(es)
  - Counties
  - Investment Amount
  - Targeted Sector(s)

**Metric Area 3: Energy Audits (mandatory)**

- 3a. Energy audits, by sector
  - Number of investment grade audits (IGAs) performed
  - Number of non-investment grade audits (IGAs) performed
  - Square footage of buildings/facilities audited
  - Auditor’s projection of energy savings (kWh, therms, MMBTU, gallons of fuel, gallons of water)
  - Average Daily Flow (MGD) of WWTF audited
  - Number of projects started based on audits

Metric Area 4: Retrofits (mandatory)

- 4a. Buildings retrofitted, by sector
  - Number of buildings retrofitted
  - Square footage of buildings retrofitted
  - Estimated project savings (kWh, therms, gallons of fuel, gallons of water, dollars)
- 4b. Building automation systems (BAS) installed, by sector
  - Number of energy management systems installed
  - Square footage of buildings with systems installed
- 4c. Street lights retrofitted
  - Number of energy efficient streetlights installed
  - Estimated project savings (kWh)
- 4d. Water conservation retrofits made, by sector
  - Number of water conservation retrofits completed
  - Number of water management systems installed
- 4e. Wastewater treatment facilities retrofitted
  - Reduction in energy intensity (MMBTU/MG, MMBTU/kg BOD removed)
- 4f. Manufacturing re-tooling, process improvements
  - Number of facilities with manufacturing space repurposed for clean energy products
  - Square footage of manufacturing space repurposed for clean energy products
  - Number of manufacturing lines retrofitted
- 4g. Energy, water saved, by sector
  - Reduction in electricity consumption (MWh/year)
  - Reduction in water consumption (gallons/day)
  - Reduction in fuel oil consumption (gallons/year)
  - Reduction in natural gas consumption (MMcf/year)
  - Dollars saved

Metric Area 7: Financial Instruments (if applicable) \*

- 7a. Financial incentives provided, by sector and incentive type
  - Monetary value of financial incentives provided
  - Total value of investments incentivized
- 7b. Existing or new financial programs utilized/created, by sector and program type
  - Number of customers newly utilizing program
  - Private dollars leveraged
  - Total dollars invested as a result of financial mechanism
  - Project energy, cost savings
  - Number of financial programs developed or updated
- 7d. Energy savings performance contracts, by sector
  - Number of contracts signed
  - Dollar value of contracts signed
  - Projected savings (kWh/year)

- 7e. Energy investment partnerships/green banks
  - Number of projects funded
  - Total monetary value of projects funded

\*Metric Area 7: Financial instruments. Metric 7c Loans and grants by sector should not be included in an activity as a metric as this metric is pre-populated into the Quarterly Performance Report (QPR) for all EE RLF Program awards.

Metric Area 8: Renewable Energy Market Development (if applicable)

- 8c. Ground source geothermal systems installed
  - Number of ground source geothermal systems installed
  - Total capacity of ground source geothermal systems installed (tons)
- 8e. Solar photovoltaic (PV) electric systems installed
  - Number of solar PV electric systems installed
  - Total capacity of solar PV electric systems installed (kW)
- 8g. Renewable thermal systems installed
  - Number of solar thermal systems installed
  - Total capacity of solar thermal systems installed (square feet)
  - Number of other renewable thermal systems installed
  - Total capacity of other renewable thermal systems installed (Btu/hr)
- 8h. Other renewable electric systems installed
  - Number of other renewable systems installed
  - Total capacity of other renewable systems installed (kW)

Metric Area 10: Training and Education/Technical Assistance (if applicable)

- 10a. Education and outreach conducted
  - Number of contacts reached via webinars, site visits, fact sheets, or other
  - Number workshops, training, and education sessions held
  - Number of people attending workshops, training, and education sessions
- 10b. Technical assistance provided
  - Number of participants
- 10c. Workforce development
  - Number of people trained
  - Number of professional certifications achieved
  - Jobs retained (Full Time Equivalent)
  - Jobs created (Full Time Equivalent)

Metric Area 11: Other (administrative or energy storage systems, if applicable)

- 11d. Energy storage systems
  - Number of battery storage systems installed
  - Total capacity of battery systems installed (kW)
  - Number of thermal storage systems installed
  - Total capacity of thermal storage systems (KBtu/hr)
- 11e. Combined heat and power (CHP)
  - Number of CHP screenings completed
  - Number of feasibility studies completed
  - Number of CHP Systems installed (technology and/or fuel type)
  - Capacity of CHP systems installed (MW)
  - Thermal output of CHP systems installed

Upon IFA creating a loan that triggers the applicability of a metric area, that metric area becomes mandatory.

**Quarterly Reporting Metrics:**

- Number of stakeholder engagement and outreach events held
- Number of stakeholders contacted as a result of each event
- Number of comments received/questions asked as a result of each event
- Number of commenters at each event
- Loan products available (new and existing)
- Updated loan interest rate(s)
- Number of Loans issued by type (total and Equity Investment Eligible)
- Number of Loans repaid by type (total and Equity Investment Eligible)
- Number of Loans defaulted by type (total and Equity Investment Eligible)
- Funds and programs leveraged
- Updated, approximate leverage ratio of EE RLF Program
- Total EE RLF Program value
- Cumulative EE RLF Program potential energy savings identified by financed audits (total and Equity Investment Eligible)
- Cumulative EE RLF Program energy savings from completed, financed projects (total and Equity Investment Eligible)
- Jobs created (total and Equity Investment Eligible)

**Annual Reporting:**

By August 20 of each year throughout the Term of the Agreement, IFA must submit cumulative annual reporting to Illinois EPA.

**Two Year U.S. DOE Program Report:**

No later than 23 months after the EE RLF Program grant is received by Illinois EPA, IFA must supply Illinois EPA with the following EE RLF Program information, which Illinois EPA is required to submit to U.S. DOE not later than two years after receiving the EE RLF Program grant:

- The number of recipients to which IFA and its subcontractors and grantees have distributed:
  - EE RLF Program loans for:
    - Commercial energy audits;
    - Residential energy audits; and
    - Energy upgrades and retrofits.

- Grants pursuant to the EE RLF Program.
- The average capital cost of upgrades and retrofits across all commercial energy audits and residential energy audits that were conducted in Illinois using loans provided by IFA pursuant to the EE RLF Program and this Agreement.

**Closeout Reporting:**

The federal character of this money will not remain in perpetuity. At the end of the EE RLF Program award to Illinois, a closeout agreement will be negotiated between U.S. DOE and Illinois EPA that will contain minimum terms for the continued use of the EE RLF Program funds. IFA must supply Illinois EPA with all information requested by U.S. DOE at the time of closeout.

**ATTACHMENT H**  
**SPECIAL TERMS & CONDITIONS**

1. Loan Documents. Before expanding the EE RLF Program with new loan or grant offerings, IFA must consult with Illinois EPA to ensure the new offering is in compliance with U.S. DOE regulations and for consistency with EE RLF Program objectives pursuant to Attachment D of this Agreement. Documents and all other materials developed as a result of the EE RLF Program become the joint property of the Illinois EPA and IFA.
2. Deposit and Handling of Funds. All EE RLF Program funds shall be used in furtherance of the EE RLF Program consistent with this Agreement and the U.S. DOE EE RLF Program and for no other purpose. All funds not loaned out by IFA must be invested in a way that earns interest income or attracts private capital to benefit the EE RLF Program.
3. Default, Recovery of Funds. IFA must define what constitutes a loan default along with potential remedies for loan default under the Bridge Loan and all subsequent loans created under the EE RLF Program. IFA must pursue recovery of funds after default to the extent legally possible and consistent with EE RLF Program objectives (*see* Attachment D Scope of Work). IFA must notify Illinois EPA of all instances of default in quarterly reporting along with a description of how the default was remedied or resolved including the amount unrecovered or forgiven. No borrower who has defaulted on a loan under the EE RLF Program may be considered for a loan under the EE RLF Program after the default.
4. IFA must provide separate accounting for EE RLF Program funds and all other state or federal funds leveraged or comingled with EE RLF Program funds.
5. All federal funds used to establish and perpetuate the EE RLF Program—inclusive of interest earned, program income generated, and fees collected—are program income, subject to the terms of this Agreement, will be re-invested in the EE RLF Program, and must be used for EE RLF-eligible purposes as directed by U.S. DOE at the end of the grant.
6. IFA and all third party contractors and subcontractors agree to comply with applicable federal cross-cutting requirements including, but not limited to Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”); Copeland “Anti-Kickback” Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”); MBE/WBE requirements found at 40 CFR 33.44(b); OSHA worker Health & Safety Standards at 29 CFR 1910.120; the Uniform Relocation Act; National Historic Preservation Act; Endangered Species Act; Executive Order 11246, Equal Employment Opportunity, and implementing regulations at 41 CFR Part 60-4; the Anti-Kickback Act (40 USC § 276c); and Section 504 of the Rehabilitation Act of 1973, and implemented by Executive Orders 119 and 11250.
7. The following are incorporated into this Agreement by reference:
  - a. Administrative and Legal Requirements Document and Application Instructions for the EE RLF Capitalization Grant Program (attached below);
  - b. U.S. DOE financial assistance regulations at 2 CFR Part 200 as amended by 2 CFR Part 910;
  - c. National Policy Assurances to be incorporated as Award Terms:  
<http://www.nsf.gov/awards/managing/rtc.jsp>
  - d. Build America, Buy America Act (BABA), Title IX of Division G of the Infrastructure Investment and Jobs Act, Pub. L. No. 117-58; and
  - e. U.S. DOE SEP Terms & Conditions, including any amendments (attached below).

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## Subpart A. General Provisions

### **Term 1. Legal Authority and Effect**

A DOE financial assistance award is valid only if it is in writing and is signed, either in writing or electronically, by a DOE Contracting Officer.

The Recipient may accept or reject the Award. A request to draw down DOE funds or acknowledgement of award documents by the Recipient's authorized representative through electronic systems used by DOE, specifically FedConnect, constitutes the Recipient's acceptance of the terms and conditions of this Award. Acknowledgement via FedConnect by the Recipient's authorized representative constitutes the Recipient's electronic signature.

### **Term 2. Flow Down Requirement**

The Recipient agrees to apply the terms and conditions of this Award, as applicable, including the Intellectual Property Provisions, to all subrecipients (and subcontractors, as appropriate), as required by 2 CFR 200.101, and to require their strict compliance therewith. Further, the Recipient must apply the Award terms as required by 2 CFR 200.327 to all subrecipients (and subcontractors, as appropriate), and to require their strict compliance therewith.

### **Term 3. Compliance with Federal, State, and Municipal Law**

The Recipient is required to comply with applicable Federal, state, and local laws and regulations for all work performed under this Award. The Recipient is required to obtain all necessary Federal, state, and local permits, authorizations, and approvals for all work performed under this Award.

### **Term 4. Inconsistency with Federal Law**

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

### **Term 5. Federal Stewardship**

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

### **Term 6. Federal Involvement**

#### **A. Review Meetings**

The Recipient, including but not limited to, the principal investigator (or, if applicable, co-principal investigators), is required to participate in periodic review meetings with EERE. Review meetings enable EERE to assess the work performed under this Award and determine whether the Recipient has timely achieved the technical milestones and deliverables stated in Attachment 1 to this Award.

EERE shall determine the frequency of review meetings and select the day, time, and location of each review meeting and shall do so in a reasonable and good faith manner. EERE will provide the Recipient with reasonable notice of the review meetings.

For each review meeting, the Recipient is required to provide a comprehensive overview of the project, including:

- The Recipient's technical progress compared to the Milestone Summary Table stated in Attachment

1 to this Award.

- The Recipient’s actual expenditures compared to the approved budget in Attachment 3 to this Award.
- Other subject matter specified by the DOE Technology Manager/Project Officer.

**B. Project Meetings**

The Recipient is required to notify EERE in advance of scheduled tests and internal project meetings that would entail discussion of topics that could result in major changes to the baseline project technical scope/approach, cost, or schedule. Upon request by EERE, the Recipient is required to provide EERE with reasonable access (by telephone, webinar, or otherwise) to the tests and project meetings. The Recipient is not expected to delay any work under this Award for the purpose of government insight.

**C. Site Visits**

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

**D. EERE Access**

The Recipient must provide any information, documents, site access, or other assistance requested by EERE for the purpose of its Federal stewardship or substantial involvement.

**Term 7. NEPA Requirements**

**A. Authorization**

DOE must comply with the National Environmental Policy Act (NEPA) prior to authorizing the use of Federal funds.

For Recipients with a DOE executed Historic Preservation Programmatic Agreement (PA), EERE has determined that the “Bounded Categories” listed in the State Energy Program NEPA Determination (Attachment 6) are categorically excluded and require no further NEPA review, when the Recipient demonstrates the activities are compliant with the restrictions of the “Bounded Categories” and the NEPA logs are available to DOE upon request as well as submitted quarterly, per the Federal Assistance Reporting Checklist. The Recipient is thereby authorized to use Federal funds for the “Bounded Categories” listed in the SEP Program Year 2022 Formula Grants Administrative and Legal Requirements Document (SEP ALRD 2022) NEPA Determination for activities funded by the SEP ALRD 2022, Petroleum Violation Escrow funds, ARRA Financing Programs and/or funds repurposed from ARRA Financing Programs, as applicable, subject to the Recipient’s compliance with paragraphs B. “Conditions” and C. “Future Modifications,” and the restrictions listed in Attachment 6.

**B. Conditions**

Activities/projects not listed under "Bounded Categories" are subject to additional NEPA review and approval by DOE whether the intention is to use SEP formula, Petroleum Violation Escrow funds, ARRA Financing Programs and/or funds repurposed from ARRA Financing Programs, as applicable for a project. For activities/projects

requiring additional NEPA review, Recipients must complete the environmental questionnaire(<https://www.eere-pmc.energy.gov/NEPA.aspx>) and receive notification from DOE that the NEPA review has been completed and approved by the Contracting Officer prior to initiating the project or activities.

1. This NEPA Determination only applies to activities funded by the SEP Program Year 2022 Formula Grants Administrative and Legal Requirements Document, Petroleum Violation Escrow funds, ARRA Financing Programs and/or funds repurposed from ARRA Financing Programs, as applicable.
2. All activities must be documented (e.g., a NEPA log) to ensure compliance with the restrictions of the Bounded Categories. The documentation must be available for DOE review upon request. The Bounded Categories are:
  - a. Administrative activities associated with management of the designated State Energy Office and management of EE RLF to encourage energy efficiency and renewable energy.
  - b. Development and implementation of outreach strategies for EE RLF effort to encourage energy efficiency and renewable energy including facility energy audits.
  - c. Development and implementation of programs and strategies to encourage energy efficiency and renewable energy such as policy development and stakeholder engagement.
  - d. Residential and commercial energy analysis and monitoring, including energy use assessments involving building monitoring equipment and smart thermostats.
  - e. Installation of commercially available retrofit/upgrade measures to improve air quality, energy, and/or water efficiency in existing buildings or facilities of the eligible recipient, based on energy audit recommendations, provided that projects adhere to the requirements of the respective state's DOE executed Historic Preservation PA, are appropriately sized, and are limited to:
    - i. Insulation applied to building structures, ducts, hot water heater tanks, and heating pipes.
    - ii. Air sealing applied to building structures and/or ducts.
    - iii. Programmable and smart thermostats.
    - iv. Installation of energy efficient lighting.
    - v. Upgrading, retrofitting, tuning, repairing, and/or replacing of existing heating, ventilation, and air conditioning (HVAC) equipment.
    - vi. Repairing and/or replacing water heating system equipment.
    - vii. Energy or water monitoring and control systems.
    - viii. Retrofitting, repairing, and/or replacing of windows and doors, including installation of energy efficient storm windows and energy-saving window attachments.
    - ix. Retrofitting or replacing of energy efficient pumps and motors for uses such as wastewater treatment plants, where it would not alter the capacity, use, mission, or operation of an existing facility.
    - x. Installation of Combined Heat and Power System—systems sized appropriately for the buildings in which they are located, not to exceed peak electrical production at 300kW).
  - f. Development, implementation, and installation of onsite renewable energy/energy efficiency technology from renewable resources, provided that activities adhere to the requirements of the respective state's DOE executed Historic Preservation PA, are installed in or on an existing structure or within the boundaries of a facility (defined as an already disturbed area due to regular ground maintenance), do not require structural reinforcement, no trees are removed, are appropriately sized, and are limited to:
    - i. Solar Electricity/Photovoltaic—not to exceed 60 kW.
    - ii. Installing and/or repairing solar thermal systems, including solar thermal hot water systems that are 200,000 BTU/hour or smaller in size.
  - g. Installing, repairing, or optimizing use of energy storage systems, including electrochemical and thermal storage systems, provided that projects adhere to the requirements of the respective state's DOE executed Historic Preservation PA are

installed in or on an existing structure or within the boundaries of a facility (defined as an already disturbed area due to regular ground maintenance), do not require structural reinforcement, no trees are removed, and are appropriately sized not to exceed 400kWh.

3. Activities not listed under "Bounded Categories" including ground disturbing activities outside the boundaries of a facility (defined as an already disturbed area due to regular ground maintenance), structural improvements to facilities, and tree removal, are subject to additional NEPA review and approval by DOE. For activities requiring additional NEPA review, Recipients must complete the environmental questionnaire found at <https://www.eere-pmc.energy.gov/NEPA.aspx> and receive notification from DOE that the NEPA review has been completed and approved by the Contracting Officer prior to initiating the project or activities.
4. This authorization does not include activities where the following elements exist: extraordinary circumstances; cumulative impacts or connected actions that may lead to significant effects on the human environment; or any inconsistency with the "integral elements" (as contained in 10 CFR Part 1021, Appendix B) as they relate to a particular project.
5. The Recipient must identify and promptly notify DOE of extraordinary circumstances, cumulative impacts or connected actions that may lead to significant effects on the human environment, or any inconsistency with the "integral elements" (as contained in 10 CFR Part 1021, Appendix B) as they relate to project activities.
6. Recipients must have a DOE executed Historic Preservation Programmatic Agreement and adhere to the terms and restrictions of its DOE executed Historic Preservation Programmatic Agreement. DOE executed historic preservation programmatic agreements are available on the Weatherization and Intergovernmental Programs website: <https://www.energy.gov/eere/wipo/historic-preservation-executed-programmatic-agreements>.
7. Most activities listed under "Bounded Categories" are more restrictive than the Categorical Exclusion. The restrictions listed in the "Bounded Categories" must be followed.
8. Recipients are responsible for completing the online NEPA and Historic preservation training at <http://www.energy.gov/node/4816816> and contacting NEPA with any questions [GONEPA@ee.doe.gov](mailto:GONEPA@ee.doe.gov).
9. This authorization excludes any activities that are otherwise subject to a restriction set forth elsewhere in the Award.

**C. Modifications and Activities not covered by the PY2022 Formula Award NEPA Determination or the ARRA NEPA Template or Determination**

If the Recipient intends to undertake activities or projects that do not fall within the Formula Award NEPA determination or the ARRA NEPA template/NEPA determination, as identified in the Recipient's NEPA determination or as otherwise applicable, those activities and projects are subject to additional NEPA review by DOE and are not authorized for Federal funding unless and until the Contracting Officer provides written authorization on those additions or modifications. Should the Recipient elect to undertake activities or projects prior to written authorization from the Contracting Officer, the Recipient does so at risk of not receiving Federal funding for those activities and projects, and such costs may not be recognized as allowable cost match.

**Term 8. Historic Preservation**

**A. Authorization**

DOE must comply with the requirements of Section 106 of the National Historic Preservation Act (NHPA) prior to

authorizing the use of Federal funds. Section 106 applies to historic properties that are listed in or eligible for listing in the National Register of Historic Places. Recipients with a DOE-executed Programmatic Agreement (PA) must comply with the requirements identified in paragraph B. Conditions below.

**B. Conditions**

**Recipients with a DOE executed PA for Historic Preservation:**

(AL, AK, AS, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MP, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY, and VI.)

Recipients with a DOE executed historic preservation Programmatic Agreement (PA) must adhere to all the Stipulations of their PA. All DOE executed PAs are available on the Weatherization and Intergovernmental Programs website: <https://www.energy.gov/eere/wipo/historic-preservation-executed-programmatic-agreements>.

In addition to the Stipulations in their PAs, Recipients must notify EERE via [GONEPA@ee.doe.gov](mailto:GONEPA@ee.doe.gov) whenever:

- Either the Recipient or the State Historic Preservation Office (SHPO)/Tribal Historic Preservation Office (THPO) believes that the Criteria of Adverse Effect pursuant to 36 CFR § 800.5, apply to the proposal under consideration by EERE;
- There is a disagreement between an Applicant, or its authorized representative, and the SHPO/THPO about the scope of the area of potential effects, identification and evaluation of historic properties and/or the assessment of effects;
- There is an objection from a consulting party or the public regarding their involvement in the review process established by 36 CFR Part 800, Section 106 findings and determinations, or implementation of agreed upon measures; or
- There is the potential for a foreclosure situation or anticipatory demolition as defined under 36 CFR §800.9 (b) and 36 CFR § 800.9 (c).

**Term 9. Performance of Work in United States**

**A. Requirement**

All work performed under this Award must be performed in the United States unless the Contracting Officer provides a waiver. This requirement does not apply to the purchase of supplies and equipment; however, the Recipient should make every effort to purchase supplies and equipment within the United States. The Recipient must flow down this requirement to its subrecipients.

**B. Failure to Comply**

If the Recipient fails to comply with the Performance of Work in the United States requirement, the Contracting Officer may deny reimbursement for the work conducted outside the United States and such costs may not be recognized as allowable Recipient cost share regardless if the work is performed by the Recipient, subrecipients, vendors or other project partners.

**C. Waiver for Work Outside the U.S.**

All work performed under this Award must be performed in the United States. However, the Contracting Officer may approve the Recipient to perform a portion of the work outside the United States under limited circumstances. The Recipient must obtain a waiver from the Contracting Officer prior to conducting any

work outside the U.S. To request a waiver, the Recipient must submit a written waiver request to the Contracting Officer, which includes the following information:

- The rationale for performing the work outside the U.S.;
- A description of the work proposed to be performed outside the U.S.;
- Proposed budget of work to be performed; and
- The countries in which the work is proposed to be performed.

For the rationale, the Recipient must demonstrate to the satisfaction of the Contracting Officer that the performance of work outside the United States would further the purposes of the FOA or Program that the Award was selected under and is in the economic interests of the United States. The Contracting Officer may require additional information before considering such request.

### **Term 10. Foreign National Access**

The Recipient may be required to provide information to DOE in order to satisfy requirements for foreign nationals' access to DOE sites, information, technologies, equipment, programs or personnel. A foreign national is defined as any person who is not a U.S. citizen by birth or naturalization. If the Recipient (including any of its subrecipients, contractors or vendors) anticipates involving foreign nationals in the performance of its award, the Recipient may be required to provide DOE with specific information about each foreign national to ensure compliance with the requirements for access approval. National laboratory personnel already cleared for site access may be excluded.

### **Term 11. Notice Regarding the Purchase of American-Made Equipment and Products – Sense of Congress**

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

### **Term 12. Reporting Requirements**

#### **A. Requirements**

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

#### **B. Dissemination of Scientific and Technical Information**

Scientific and Technical Information (STI) generated under this Award will be submitted to DOE via the Office of Scientific and Technical Information's Energy Link ([E-Link](#)) system. STI submitted under this Award will be disseminated via DOE's [OSTI.gov](#) website subject to approved access limitations. Citations for journal articles produced under the Award will appear on the [DOE PAGES](#) website.

#### **C. Restrictions**

Scientific and Technical Information submitted to E-Link must not contain any Protected Personal Identifiable Information (PII), limited rights data (proprietary data), classified information, information subject to export control classification, or other information not subject to release.

**Term 13. Lobbying**

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

**Term 14. Publications**

The Recipient is required to include the following acknowledgement in publications arising out of, or relating to, work performed under this Award, whether copyrighted or not:

- *Acknowledgment:* “This material is based upon work supported by the U.S. Department of Energy’s Office of Energy Efficiency and Renewable Energy (EERE) under the State Energy Program Award Number DE-\_\_\_\_\_.”
- *Full Legal Disclaimer:* “This report was prepared as an account of work sponsored by an agency of the United States Government. Neither the United States Government nor any agency thereof, nor any of their employees, makes any warranty, express or implied, or assumes any legal liability or responsibility for the accuracy, completeness, or usefulness of any information, apparatus, product, or process disclosed, or represents that its use would not infringe privately owned rights. Reference herein to any specific commercial product, process, or service by trade name, trademark, manufacturer, or otherwise does not necessarily constitute or imply its endorsement, recommendation, or favoring by the United States Government or any agency thereof. The views and opinions of authors expressed herein do not necessarily state or reflect those of the United States Government or any agency thereof.”

*Abridged Legal Disclaimer:* “The views expressed herein do not necessarily represent the views of the U.S. Department of Energy or the United States Government.”

Recipients should make every effort to include the full Legal Disclaimer. However, in the event that recipients are constrained by formatting and/or page limitations set by the publisher, the abridged Legal Disclaimer is an acceptable alternative.

**Term 15. No-Cost Extension**

As provided in 2 CFR 200.308, the Recipient must provide the Contracting Officer with notice in advance if it intends to utilize a one-time, no-cost extension of this Award. The notification must include the supporting reasons and the revised period of performance. The Recipient must submit this notification in writing to the Contracting Officer and DOE Technology Manager/ Project Officer at least 30 days before the end of the current budget period.

Any no-cost extension will not alter the project scope, milestones, deliverables, or budget of this Award.

**Term 16. Property Standards**

The complete text of the Property Standards can be found at 2 CFR 200.310 through 200.316. Also see 2 CFR 910.360 for additional requirements for real property and equipment for For-Profit recipients.

**Term 17. Insurance Coverage**

See 2 CFR 200.310 for insurance requirements for real property and equipment acquired or improved with Federal funds. Also see 2 CFR 910.360(d) for additional requirements for real property and equipment for For-Profit recipients.

**Term 18. Real Property**

Subject to the conditions set forth in 2 CFR 200.311, title to real property acquired or improved under a Federal award will conditionally vest upon acquisition in the non-Federal entity. The non-Federal entity cannot encumber this property and must follow the requirements of 2 CFR 200.311 before disposing of the property.

Except as otherwise provided by Federal statutes or by the Federal awarding agency, real property will be used for the originally authorized purpose as long as needed for that purpose. When real property is no longer needed for the originally authorized purpose, the non-Federal entity must obtain disposition instructions from DOE or pass-through entity. The instructions must provide for one of the following alternatives: (1) retain title after compensating DOE as described in 2 CFR 200.311(c)(1); (2) Sell the property and compensate DOE as specified in 2 CFR 200.311(c)(2); or (3) transfer title to DOE or to a third party designated/approved by DOE as specified in 2 CFR 200.311(c)(3).

See 2 CFR 200.311 for additional requirements pertaining to real property acquired or improved under a Federal award. Also see 2 CFR 910.360 for additional requirements for real property for For-Profit recipients.

### **Term 19. Equipment**

Subject to the conditions provided in 2 CFR 200.313, title to equipment (property) acquired under a Federal award will conditionally vest upon acquisition with the non-Federal entity. The non-Federal entity cannot encumber this property and must follow the requirements of 2 CFR 200.313 before disposing of the property.

A state must use equipment acquired under a Federal award by the state in accordance with state laws and procedures.

Equipment must be used by the non-Federal entity in the program or project for which it was acquired as long as it is needed, whether or not the project or program continues to be supported by the Federal award. When no longer needed for the originally authorized purpose, the equipment may be used by programs supported by DOE in the priority order specified in 2 CFR 200.313(c)(1)(i) and (ii).

Management requirements, including inventory and control systems, for equipment are provided in 2 CFR 200.313(d).

When equipment acquired under a Federal award is no longer needed, the non-Federal entity must obtain disposition instructions from DOE or pass-through entity.

Disposition will be made as follows: (1) items of equipment with a current fair market value of \$5,000 or less may be retained, sold, or otherwise disposed of with no further obligation to DOE; (2) Non-Federal entity may retain title or sell the equipment after compensating DOE as described in 2 CFR 200.313(e)(2); or (3) transfer title to DOE or to an eligible third party as specified in 2 CFR 200.313(e)(3).

See 2 CFR 200.313 for additional requirements pertaining to equipment acquired under a Federal award. Also see 2 CFR 910.360 for additional requirements for equipment for For-Profit recipients. See also 2 CFR 200.439 Equipment and other capital expenditures.

### **Term 20. Supplies**

See 2 CFR 200.314 for requirements pertaining to supplies acquired under a Federal award. See also 2 CFR 200.453 Materials and supplies costs, including costs of computing devices.

### **Term 21. Property Trust Relationship**

Real property, equipment, and intangible property, that are acquired or improved with a Federal award must be held in trust by the non-Federal entity as trustee for the beneficiaries of the project or program under which the property was acquired or improved. See 2 CFR 200.316 for additional requirements pertaining to real property, equipment, and intangible property acquired or improved under a Federal award.



**Term 22. Record Retention**

Consistent with 2 CFR 200.334 through 200.338, the Recipient is required to retain records relating to this Award.

**Term 23. Audits**

**A. Government-Initiated Audits**

The Recipient must provide any information, documents, site access, or other assistance requested by EERE, DOE or Federal auditing agencies (e.g., DOE Inspector General, Government Accountability Office) for the purpose of audits and investigations. Such assistance may include, but is not limited to, reasonable access to the Recipient’s records relating to this Award.

Consistent with 2 CFR part 200 as amended by 2 CFR part 910, DOE may audit the Recipient’s financial records or administrative records relating to this Award at any time. Government-initiated audits are generally paid for by DOE.

DOE may conduct a final audit at the end of the project period (or the termination of the Award, if applicable). Upon completion of the audit, the Recipient is required to refund to DOE any payments for costs that were determined to be unallowable. If the audit has not been performed or completed prior to the closeout of the award, DOE retains the right to recover an appropriate amount after fully considering the recommendations on disallowed costs resulting from the final audit.

DOE will provide reasonable advance notice of audits and will minimize interference with ongoing work, to the maximum extent practicable.

**B. Annual Independent Audits (Single Audit or Compliance Audit)**

The Recipient must comply with the annual independent audit requirements in 2 CFR 200.500 through .521 for institutions of higher education, nonprofit organizations, and state and local governments (Single audit), and 2 CFR 910.500 through .521 for for-profit entities (Compliance audit).

The annual independent audits are separate from Government-initiated audits discussed in part A. of this Term, and must be paid for by the Recipient. To minimize expense, the Recipient may have a Compliance audit in conjunction with its annual audit of financial statements. The financial statement audit is **not** a substitute for the Compliance audit. If the audit (Single audit or Compliance audit, depending on Recipient entity type) has not been performed or completed prior to the closeout of the award, DOE may impose one or more of the actions outlined in 2 CFR 200.338, Remedies for Noncompliance.

**Subpart B. Financial Provisions**

**Term 24. Maximum Obligation**

The maximum obligation of DOE for this Award is the total “Funds Obligated” as stated in Block 13 of the Assistance Agreement to this Award. Additional Federal funding is contingent upon: (1) Recipient’s demonstrated substantial progress towards meeting the objectives of the Award; (2) availability of Federal funds appropriated by Congress for the purpose of this program; and (3) the availability of future-year budget authority.

**Term 25. Continuation Application and Funding**

**A. Continuation Application**

A continuation application is a non-competitive application for an additional budget period and extended project period. The continuation application shall be submitted to EERE in accordance with the annual Announcement/Grant Guidance that is issued.

**B. Continuation Funding**

Continuation funding is contingent on (1) the availability of funds appropriated by Congress for the purpose of this program; (2) the availability of future-year budget authority; (3) Recipient's satisfactory progress towards meeting the objectives of the State Energy Program; (4) Recipient's submittal of required reports; (5) Recipient's compliance with the terms and conditions of the Award; (6) the Recipient's submission of a continuation application; and (7) written approval of the continuation application by the Contracting Officer.

**Term 26. Cost Matching**

- A. Total Estimated Project Cost is the sum of the Federal Government share and Recipient match of the estimated project costs. The Recipient's cost match must come from non-Federal sources unless otherwise allowed by law. Cash and in-kind contributions used to meet the matching contribution requirement are subject to the limitations on expenditures described in 10 CFR 420.18(a), but are not subject to the 20 percent limitation in 10 CFR 420.18(b). Neither Warner, Chevron, nor Exxon Petroleum Violation Escrow (PVE) funds may be used to meet the required match.
- B. By accepting Federal funds under this award, the Recipient agrees that it is liable for its percentage match of Federal Government share, on a budget period basis, even if the project is terminated early or is not funded to its completion.
- C. If the Recipient determines that it is unable to meet its cost matching obligations, the Recipient must notify the DOE Award Administrator in writing immediately. The notification must include the following information: (1) whether the Recipient intends to continue or phase out the project, and (2) if the Recipient intends to continue the project, how the Recipient will pay (or secure replacement funding for) the Recipient's share of the total project cost.

If the Recipient fails to meet its cost matching obligations, EERE may recover some or all of the financial assistance provided under this Award. The amount EERE would seek to recover under this Term would be predicated on EERE's analysis of the Recipient's compliance with their cost matching obligation under the Award.

- D. The Recipient must maintain records of all project costs that it claims as cost matching, including in-kind costs, as well as records of costs to be paid by DOE. Such records are subject to audit.

**Term 27. Refund Obligation**

The Recipient must refund any excess payments received from EERE, including any costs determined unallowable by the Contracting Officer. Upon the end of the project period (or the termination of the Award, if applicable), the Recipient must refund to EERE the difference between (1) the total payments received from EERE, and (2) the Federal share of the costs incurred. Refund obligations under this Term do not supersede the annual reconciliation or true up process if specified under the Indirect Cost Term.

**Term 28. Allowable Costs**

EERE determines the allowability of costs through reference to 2 CFR part 200 as amended by 2 CFR part 910. All project

costs must be allowable, allocable, and reasonable. The Recipient must document and maintain records of all project costs, including, but not limited to, the costs paid by Federal funds, costs claimed by its subrecipients and project costs that the Recipient claims as cost sharing, including in-kind contributions. The Recipient is responsible for maintaining records adequate to demonstrate that costs claimed have been incurred, are reasonable, allowable and allocable, and comply with the cost principles. Upon request, the Recipient is required to provide such records to EERE. Such records are subject to audit. Failure to provide EERE adequate supporting documentation may result in a determination by the Contracting Officer that those costs are unallowable.

The Recipient is required to obtain the prior written approval of the Contracting Officer for any foreign travel costs.

## **Term 29. Indirect Costs**

### **A. Indirect Cost Allocation:**

The Recipient has a current and approved Predetermined or Fixed Negotiated Indirect Cost Rate Agreement (NICRA) and it applies uniformly across all Federal awards through the Recipients fiscal year end 2023. An updated rate proposal or NICRA is required within 180 days prior to the identified expiration if the Recipient is to continue to bill predetermined indirect cost billing rates on the DOE award.

### **B. Fringe Cost Allocation:**

Fringe benefit costs have been allocated to this award under a segregated fringe billing rate. The fringe costs were found to be reasonable, allocable, and allowable as reflected in the budget. Fringe elements apply to both direct and indirect labor. Under a segregated cost pool, the fringe billing rate shall be treated as an indirect cost expenditure and must be reconciled annually.

### **C. Subrecipient Indirect Costs (If Applicable):**

The Recipient must ensure its subrecipient's indirect costs are appropriately managed, have been found to be allowable, and comply with the requirements of this Award and 2 CFR Part 200 as amended by 2 CFR Part 910.

### **D. Indirect Cost Stipulations:**

#### **i. Modification to Indirect Cost Billing Rates**

EERE will not modify this Award solely to provide additional funds to cover increases in the Recipient's indirect cost billing rate(s). Adjustments to the indirect cost billing rates must be approved by the Recipient's Cognizant Agency or Cognizant Federal Agency Official.

The Recipient must provide a copy of an updated NICRA or indirect rate proposal to the DOE Award Administrator in order to increase indirect cost billing rates. If the Contracting Officer provides prior written approval, the Recipient may incur an increase in the indirect cost billing rates.

Reimbursement will be limited by the budgeted dollar amount for indirect costs for each budget period as shown in Attachment 3 to this Award.

#### **ii. Award Closeout**

The closeout of the DOE award does not affect (1) the right of the DOE to disallow costs and recover funds on the basis of a later audit or other review; (2) the requirement for the Recipient to return any funds due as a result of later refunds, corrections or other transactions including final indirect cost billing rate adjustments; and (3) the ability of the DOE to make financial adjustments to a previously closed award resolving indirect cost payments and

making final payments.

**Term 30. Decontamination and/or Decommissioning (D&D) Costs**

Notwithstanding any other provisions of this Award, the Government shall not be responsible for or have any obligation to the Recipient for (1) Decontamination and/or Decommissioning (D&D) of any of the Recipient’s facilities, or (2) any costs which may be incurred by the Recipient in connection with the D&D of any of its facilities due to the performance of the work under this Award, whether said work was performed prior to or subsequent to the effective date of the Award.

**Term 31. Use of Program Income**

If the Recipient earns program income during the project period as a result of this Award, the Recipient must add the program income to the funds committed to the Award and used to further eligible project objectives.

**Term 32. Payment Procedures**

**A. Method of Payment**

Payment will be made by advances through the Department of Treasury’s ASAP system.

**B. Requesting Advances**

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

**C. Adjusting Payment Requests for Available Cash**

The Recipient must disburse any funds that are available from repayments to and interest earned on a revolving fund, program income, rebates, refunds, contract settlements, audit recoveries, credits, discounts, and interest earned on any of those funds before requesting additional cash payments from EERE.

**D. Payments**

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

**E. Unauthorized Drawdown of Federal Funds**

For each budget period, the Recipient may not spend more than the Federal share authorized to that particular budget period, without specific written approval from the Contracting Officer. The Recipient must immediately refund EERE any amounts spent or drawn down in excess of the authorized amount for a budget period. The Recipient and subrecipients shall promptly, but at least quarterly, remit to DOE interest earned on advances drawn in excess of disbursement needs, and shall comply with the procedure for remitting interest earned to the Federal government per 2 CFR 200.305, as applicable.

**F. Supporting Documents for Agency Approval of Payments**

DOE may require Agency pre-approval of payments. If the Agency approval requirement is in effect for the Recipient’s Award, the ASAP system will indicate that Agency approval is required when the Recipient submits a request for payment.

The Recipient must notify the DOE Technical Project Officer and DOE Award Administrator identified on the

Assistance Agreement that a payment request has been submitted.

The following items are required to be submitted to the DOE Technical Project Officer and DOE Award Administrator identified on the Assistance Agreement:

- Summary cost data, for the billing period and cumulative cost data, showing all categories listed in the SF-424A and identifying Federal, non-Federal, and total amounts.
- SF-270.
- If there are unauthorized phases and/or tasks for the current budget period in the NEPA Requirements term in these Special Terms and Conditions, a statement affirming that no invoiced costs are related to tasks or activities prohibited by the NEPA Requirements term.
- *Applicable to for-profit recipients and subrecipients* UCC filing proof for all equipment acquired with project funds (i.e., Federal share or Recipient share) and equipment offered as cost share.

The DOE payment authorizing official may request additional information from the Recipient to support the payment requests prior to release of funds, as deemed necessary. The Recipient is required to comply with these requests. Supporting documents include invoices, copies of contracts, vendor quotes, and other expenditure explanations that justify the payment requests.

### **Term 33. Budget Changes**

#### **A. Budget Changes Generally**

The Contracting Officer has reviewed and approved the SF-424A in Attachment 3 to this Award.

Any increase in the total project cost, whether DOE share or Cost Share, which is stated as "Total" in Block 12 to the Assistance Agreement of this Award, must be approved in advance and in writing by the Contracting Officer.

Any change that alters the project scope, milestones or deliverables requires prior written approval of the Contracting Officer. EERE may deny reimbursement for any failure to comply with the requirements in this term.

#### **B. Transfers of Funds Among Direct Cost Categories**

The Recipient is required to submit written notification via email (not in PAGE) to the Project Officer identified in the Assistance Agreement of any transfer of funds among direct cost categories where the cumulative amount of such transfers exceeds or is expected to exceed 10 percent of the total project cost, which is stated as "Total" in Block 12 to the Assistance Agreement of this Award.

Upon receipt of adequate notification documentation by the Project Officer, the recipient is hereby authorized to transfer funds among direct cost categories for program activities consistent with their approved State/Annual Plan, without prior approval by the awarding agency.

Limitations on supplies and equipment as detailed in the respective year's SEP Grant Guidance still apply and are not waived under this provision.

#### **C. Transfer of Funds Between Direct and Indirect Cost Categories**

The Recipient is required to obtain the prior written approval of the Contracting Officer for any transfer of funds between direct and indirect cost categories. If the Recipient's actual allowable indirect costs are less than those budgeted in Attachment 3 to this Award, the Recipient may use the difference to pay additional

allowable direct costs during the project period so long as the total difference is less than 10% of total project costs and the difference is reflected in actual requests for reimbursement to DOE.

**Term 34. Carryover of Unobligated Balances**

The recipient is hereby authorized to carry over unobligated balances of Federal and non-Federal funds from one budget period to a subsequent budget period, for program activities consistent with their approved State/Annual Plan, without prior approval by the Contracting Officer. Should the recipient wish to use carryover funds for activities that are not consistent with the approved State/Annual Plan, a budget revision application must be submitted for approval by DOE.

For purposes of this award, an unobligated balance is the portion of the funds authorized by DOE that have not been obligated by the recipient at the end of a budget period. Recipients are advised to carefully manage grant funds to minimize unobligated balances each year, but especially at the end of the grant project period.

**Subpart C. Miscellaneous Provisions**

**Term 35. Reporting Subawards and Executive Compensation**

**A. Reporting of first-tier subawards**

- i. *Applicability.* Unless the Recipient is exempt as provided in paragraph D. of this award term, the Recipient must report each action that equals or exceeds \$30,000 in Federal funds for a subaward to an entity (see definitions in paragraph E. of this award term).
- ii. *Where and when to report.*
  - 1. The Recipient must report each obligating action described in paragraph A.i. of this award term to <https://www.fsrc.gov>.
  - 2. For subaward information, report no later than the end of the month following the month in which the obligation was made. (For example, if the obligation was made on November 7, 2010, the obligation must be reported no later than December 31, 2010.)
- iii. *What to report.* The Recipient must report the information about each obligating action that the submission instructions posted at <https://www.fsrc.gov> specify.

**B. Reporting Total Compensation of Recipient Executives**

- i. *Applicability and what to report.* The Recipient must report total compensation for each of its five most highly compensated executives for the preceding completed fiscal year, if:
  - 1. The total Federal funding authorized to date under this Award equals or exceeds \$30,000 as defined in 2 CFR 170.320;
  - 2. In the preceding fiscal year, the Recipient received;
    - a. 80 percent or more of the Recipient’s annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and
    - b. \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act,

as defined at 2 CFR 170.320 (and subawards)

3. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>).
- ii. *Where and when to report.* The Recipient must report executive total compensation described in paragraph B.i. of this award term:
    1. As part of the Recipient's registration profile at <https://www.sam.gov>.
    2. By the end of the month following the month in which this award is made, and annually thereafter.

**C. Reporting of Total Compensation of Subrecipient Executives**

- i. *Applicability and what to report.* Unless the Recipient is exempt as provided in paragraph D. of this award term, for each first-tier subrecipient under this award, the Recipient shall report the names and total compensation of each of the subrecipient's five most highly compensated executives for the subrecipient's preceding completed fiscal year, if:
  1. In the subrecipient's preceding fiscal year, the subrecipient received:
    - a. 80 percent or more of its annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and
    - b. \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts), and Federal financial assistance subject to the Transparency Act (and subawards)
  2. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>).
- ii. *Where and when to report.* The Recipient must report subrecipient executive total compensation described in paragraph C.i. of this award term:
  1. To the recipient.
  2. By the end of the month following the month during which the Recipient makes the subaward. For example, if a subaward is obligated on any date during the month of October of a given year (*i.e.*, between October 1 and 31), the Recipient must report any required compensation information of the subrecipient by November 30 of that year.

**D. Exemptions**

If, in the previous tax year, the Recipient had gross income, from all sources, under \$300,000, it is exempt from the requirements to report:

- i. Subawards; and
- ii. The total compensation of the five most highly compensated executives of any subrecipient.

**E. Definitions**

For purposes of this Award term:

- i. Entity means all of the following, as defined in 2 CFR Part 25:
  - 1. A Governmental organization, which is a State, local government, or Indian tribe.
  - 2. A foreign public entity.
  - 3. A domestic or foreign nonprofit organization.
  - 4. A domestic or foreign for-profit organization.
  - 5. A Federal agency, but only as a subrecipient under an award or subaward to a non-Federal entity.
- ii. Executive means officers, managing partners, or any other employees in management positions.
- iii. Subaward:
  - 1. This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which the Recipient received this award and that the recipient awards to an eligible subrecipient.
  - 2. The term does not include the Recipient's procurement of property and services needed to carry out the project or program (for further explanation, see 2 CFR 200.501 Audit requirements, (f) *Subrecipients and Contractors* and/or 2 CFR 910.501 Audit requirements, (f) *Subrecipients and Contractors*).
  - 3. A subaward may be provided through any legal agreement, including an agreement that the Recipient or a subrecipient considers a contract.
- iv. Subrecipient means an entity that:
  - 1. Receives a subaward from the Recipient under this award; and
  - 2. Is accountable to the Recipient for the use of the Federal funds provided by the subaward.
- v. Total compensation means the cash and noncash dollar value earned by the executive during the recipient's or subrecipient's preceding fiscal year and includes the following (for more information see 17 CFR 229.402(c)(2)):
  - 1. Salary and bonus.
  - 2. Awards of stock, stock options, and stock appreciation rights. Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in



accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.

3. Earnings for services under non-equity incentive plans. This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.
4. Change in pension value. This is the change in present value of defined benefit and actuarial pension plans.
5. Above-market earnings on deferred compensation which is not tax-qualified.
6. Other compensation, if the aggregate value of all such other compensation (*e.g.* severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds \$10,000.

### **Term 36. System for Award Management and Universal Identifier Requirements**

#### **A. Requirement for Registration in the System for Award Management (SAM)**

Unless the Recipient is exempted from this requirement under 2 CFR 25.110, the Recipient must maintain the currency of its information in SAM until the Recipient submits the final financial report required under this Award or receive the final payment, whichever is later. This requires that the Recipient reviews and updates the information at least annually after the initial registration, and more frequently if required by changes in its information or another award term.

#### **B. Unique Entity Identifier (UEI)**

SAM automatically assigns a UEI to all active SAM.gov registered entities. Entities no longer have to go to a third-party website to obtain their identifier. This information is displayed on SAM.gov.

If the Recipient is authorized to make subawards under this Award, the Recipient:

- i. Must notify potential subrecipients that no entity (see definition in paragraph C of this award term) may receive a subaward from the Recipient unless the entity has provided its UEI number to the Recipient.
- ii. May not make a subaward to an entity unless the entity has provided its UEI number to the Recipient.

#### **C. Definitions**

For purposes of this award term:

- i. System for Award Management (SAM) means the Federal repository into which an entity must provide information required for the conduct of business as a recipient. Additional information about registration procedures may be found at the SAM Internet site (currently at <https://www.sam.gov>).
- ii. Unique Entity Identifier (UEI) is the 12-character, alpha-numeric identifier that will be assigned by SAM.gov upon registration.
- iii. Entity, as it is used in this award term, means all of the following, as defined at 2 CFR Part 25,

subpart C:

1. A Governmental organization, which is a State, local government, or Indian Tribe.
2. A foreign public entity.
3. A domestic or foreign nonprofit organization.
4. A domestic or foreign for-profit organization.
5. A Federal agency, but only as a subrecipient under an award or subaward to a non-Federal entity.

iv. Subaward:

1. This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which the Recipient received this Award and that the Recipient awards to an eligible subrecipient.
2. The term does not include the Recipient's procurement of property and services needed to carry out the project or program (for further explanation, see 2 CFR 200.501 Audit requirements, (f) *Subrecipients and Contractors* and/or 2 CFR 910.501 Audit requirements, (f) *Subrecipients and Contractors*).
3. A subaward may be provided through any legal agreement, including an agreement that the Recipient considers a contract.

v. Subrecipient means an entity that:

1. Receives a subaward from the Recipient under this Award; and
2. Is accountable to the Recipient for the use of the Federal funds provided by the subaward.

### **Term 37. Nondisclosure and Confidentiality Agreements Assurances**

- A. By entering into this agreement, the Recipient attests that it **does not and will not** require its employees or contractors to sign internal nondisclosure or confidentiality agreements or statements prohibiting or otherwise restricting its employees or contractors from lawfully reporting waste, fraud, or abuse to a designated investigative or law enforcement representative of a Federal department or agency authorized to receive such information.
- B. The Recipient further attests that it **does not and will not** use any Federal funds to implement or enforce any nondisclosure and/or confidentiality policy, form, or agreement it uses unless it contains the following provisions:
  - i. *“These provisions are consistent with and do not supersede, conflict with, or otherwise alter the employee obligations, rights, or liabilities created by existing statute or Executive order relating to (1) classified information, (2) communications to Congress, (3) the reporting to an Inspector General of a violation of any law, rule, or regulation, or mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety, or (4) any other whistleblower protection. The definitions, requirements, obligations, rights, sanctions, and liabilities created by controlling Executive orders and statutory provisions are incorporated into this agreement and are controlling.”*

- ii. The limitation above shall not contravene requirements applicable to Standard Form 312, Form 4414, or any other form issued by a Federal department or agency governing the nondisclosure of classified information.
- iii. Notwithstanding provision listed in paragraph (a), a nondisclosure or confidentiality policy form or agreement that is to be executed by a person connected with the conduct of an intelligence or intelligence-related activity, other than an employee or officer of the United States Government, may contain provisions appropriate to the particular activity for which such document is to be used. Such form or agreement shall, at a minimum, require that the person will not disclose any classified information received in the course of such activity unless specifically authorized to do so by the United States Government. Such nondisclosure or confidentiality forms shall also make it clear that they do not bar disclosures to Congress, or to an authorized official of an executive agency or the Department of Justice, that are essential to reporting a substantial violation of law.

**Term 38. Conference Spending**

The Recipient shall not expend any funds on a conference not directly and programmatically related to the purpose for which the grant or cooperative agreement was awarded that would defray the cost to the United States Government of a conference held by any Executive branch department, agency, board, commission, or office for which the cost to the United States Government would otherwise exceed \$20,000, thereby circumventing the required notification by the head of any such Executive Branch department, agency, board, commission, or office to the Inspector General (or senior ethics official for any entity without an Inspector General), of the date, location, and number of employees attending such conference.

**Term 39. Recipient Integrity and Performance Matters**

**A. General Reporting Requirement**

If the total value of your currently active Financial Assistance awards, cooperative agreements, and procurement contracts from all Federal awarding agencies exceeds \$10,000,000 for any period of time during the period of performance of this Federal award, then you as the recipient during that period of time must maintain the currency of information reported to the System for Award Management (SAM) that is made available in the designated integrity and performance system (currently the Federal Awardee Performance and Integrity Information System (FAPIIS)) about civil, criminal, or administrative proceedings described in paragraph 2 of this term. This is a statutory requirement under section 872 of Public Law 110-417, as amended (41 U.S.C. 2313). As required by section 3010 of Public Law 111-212, all information posted in the designated integrity and performance system on or after April 15, 2011, except past performance reviews required for Federal procurement contracts, will be publicly available.

**B. Proceedings About Which You Must Report**

Submit the information required about each proceeding that:

- i. Is in connection with the award or performance of a Financial Assistance, cooperative agreement, or procurement contract from the Federal Government;
- ii. Reached its final disposition during the most recent five-year period; and
- iii. Is one of the following:
  - 1. A criminal proceeding that resulted in a conviction, as defined in paragraph E of this award term and condition;
  - 2. A civil proceeding that resulted in a finding of fault and liability and payment of a monetary

- fine, penalty, reimbursement, restitution, or damages of \$5,000 or more;
- 3. An administrative proceeding, as defined in paragraph E of this term, that resulted in a finding of fault and liability and your payment of either a monetary fine or penalty of \$5,000 or more or reimbursement, restitution, or damages in excess of \$100,000; or
- 4. Any other criminal, civil, or administrative proceeding if:
  - a. It could have led to an outcome described in paragraph B.iii.1, 2, or 3 of this term;
  - b. It had a different disposition arrived at by consent or compromise with an acknowledgment of fault on your part; and
  - c. The requirement in this term to disclose information about the proceeding does not conflict with applicable laws and regulations.

**C. Reporting Procedures**

Enter in the SAM Entity Management area the information that SAM requires about each proceeding described in paragraph B of this term. You do not need to submit the information a second time under assistance awards that you received if you already provided the information through SAM because you were required to do so under Federal procurement contracts that you were awarded.

**D. Reporting Frequency**

During any period of time when you are subject to the requirement in paragraph A of this term, you must report proceedings information through SAM for the most recent five-year period, either to report new information about any proceeding(s) that you have not reported previously or affirm that there is no new information to report. Recipients that have Federal contract, Financial Assistance awards, (including cooperative agreement awards) with a cumulative total value greater than \$10,000,000, must disclose semiannually any information about the criminal, civil, and administrative proceedings.

**E. Definitions**

For purposes of this term:

- i. Administrative proceeding means a non-judicial process that is adjudicatory in nature in order to make a determination of fault or liability (e.g., Securities and Exchange Commission Administrative proceedings, Civilian Board of Contract Appeals proceedings, and Armed Services Board of Contract Appeals proceedings). This includes proceedings at the Federal and State level but only in connection with performance of a Federal contract or Financial Assistance awards. It does not include audits, site visits, corrective plans, or inspection of deliverables.
- ii. Conviction means a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, and includes a conviction entered upon a plea of *nolo contendere*.
- iii. Total value of currently active Financial Assistance awards, cooperative agreements and procurement contracts includes—
  - 1. Only the Federal share of the funding under any Federal award with a recipient cost share or match; and
  - 2. The value of all expected funding increments under a Federal award and options, even if not yet exercised.

**Term 40. Export Control**

The U.S. government regulates the transfer of information, commodities, technology, and software considered to be strategically important to the U.S. to protect national security, foreign policy, and economic interests without imposing undue regulatory burdens on legitimate international trade. There is a network of Federal agencies and regulations that govern exports that are collectively referred to as “Export Controls.” To ensure compliance with Export Controls, it is

the Recipient's responsibility to determine when its project activities trigger Export Controls and to ensure compliance.

Certain information, technology or material under an award may be considered export-controlled items that cannot be released to any foreign entity (organization, company, or person) without a license. All recipients, including subrecipients, must take the appropriate steps to obtain any required licenses, monitor and control access to restricted information and material, and safeguard all controlled items to ensure compliance with Export Controls. Under no circumstances may any foreign entity (organizations, companies, or persons) receive access to an export-controlled item unless proper export procedures have been satisfied and such access is authorized pursuant to law or regulation.

The Recipient shall immediately report to DOE any export control violations related to the project funded under this award, at the recipient or subrecipient level, and provide the corrective action(s) to prevent future violations.

#### **Term 41. Financial Conflict of Interest**

The Recipient must have a written and enforced administrative process to identify and manage Financial Conflicts of Interest (FCOI) with respect to all projects for which DOE funding is sought or received. When requested, the Recipient must promptly make information available to the DOE Contracting Officer relating to any disclosure of financial interests and the Recipient's review of, and response to, such disclosure, whether or not the disclosure resulted in the Recipient's determination of an FCOI.

The Recipient is responsible for ensuring subrecipient compliance with this term and reporting identified financial conflicts of interests for the subrecipient to the DOE Contracting Officer. The Recipient must incorporate as part of a written agreement with a subrecipient terms that establish whether the Financial Conflict of Interest policy of the Recipient Institution or that of the subrecipient will apply to subrecipient.

#### **Term 42. Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment**

As set forth in 2 CFR 200.116, recipients and subrecipients are prohibited from obligating or expending project funds (Federal funds and recipient cost share) to:

- (1) Procure or obtain;
- (2) Extend or renew a contract to procure or obtain; or
- (3) Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).
  - (i) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).
  - (ii) Telecommunications or video surveillance services provided by such entities or using such equipment.

(iii) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

See Public Law 115-232, section 889 for additional information.

### **Term 43. Fraud, Waste and Abuse**

The mission of the DOE Office of Inspector General (OIG) is to strengthen the integrity, economy and efficiency of DOE's programs and operations including deterring and detecting fraud, waste, abuse and mismanagement. The OIG accomplishes this mission primarily through

investigations, audits, and inspections of Department of Energy activities to include grants, cooperative agreements, loans, and contracts. The OIG maintains a Hotline for reporting allegations of fraud, waste, abuse, or mismanagement. To report such allegations, please visit

<https://www.energy.gov/ig/ig-hotline>.

Additionally, the Recipient must be cognizant of the requirements of 2 CFR § 200.113 Mandatory disclosures, which states:

The non-Federal entity or applicant for a Federal award must disclose, in a timely manner, in writing to the Federal awarding agency or pass-through entity all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award. Non-Federal entities that have received a Federal award including the term and condition outlined in appendix XII of 2 CFR Part 200 are required to report certain civil, criminal, or administrative proceedings to SAM (currently FAPIIS). Failure to make required disclosures can result in any of the remedies described in § 200.339. (See also 2 CFR part 180, 31 U.S.C. 3321, and 41 U.S.C. 2313.)

### **Term 44. Buy American Requirements for Infrastructure Projects**

#### *A. Definitions*

**Infrastructure** includes, at a minimum, the structures, facilities, and equipment for, in the United States:

- Roads, highways, and bridges;
- Public transportation;
- Dams, ports, harbors, and other maritime facilities;
- Intercity passenger and freight railroads;
- Freight and intermodal facilities;
- Airports;
- Water systems, including drinking water and wastewater systems;
- Electrical transmission facilities and systems;
- Utilities;
- Broadband infrastructure;
- Buildings and real property; and
- Facilities that generate, transport, and distribute energy.

Further, the “infrastructure” in question must either be publicly owned or serve a public function; privately owned infrastructure that is not open to the public, such as a personal residence, is not considered “infrastructure” for purposes of this requirement. In cases where the “public” nature of the infrastructure is unclear, the recipient is required to consult with the DOE Grants Officer who will render a determination.

**Project** means the construction, alteration, maintenance, or repair of infrastructure in the United States.

**Construction Materials** includes an article, material, or supply—other than an item of primarily iron or steel; a manufactured product; cement and cementitious materials; aggregates such as stone, sand, or gravel; or aggregate binding agents or additives—that is, or consists primarily of:

- Non-ferrous metals;
- Plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables);
- Glass (including optic glass);
- Lumber; or
- Drywall.

**Domestic content procurement preference** means and refers to the same thing as “Buy America Preference.”

*B. Buy America Preference*

None of the funds provided under this award may be used for a project for infrastructure unless:

1. All iron and steel used in the project are produced in the United States—this means all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States;
2. All manufactured products used in the project are produced in the United States—this means the manufactured product was manufactured in the United States; and the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product, unless another standard for determining the minimum amount of domestic content of the manufactured product has been established under applicable law or regulation; and
3. All construction materials are manufactured in the United States—this means that all manufacturing processes for the construction material occurred in the United States.

The Buy America Preference only applies to articles, materials, and supplies that are consumed in, incorporated into, or affixed to an infrastructure project. As such, it does not apply to tools, equipment, and supplies, such as temporary scaffolding, brought into the construction site and removed at or before the completion of the infrastructure project. Nor does a Buy America Preference apply to equipment and furnishings, such as movable chairs, desks, and portable computer equipment, that are used at or within the finished infrastructure project but are not an integral part of the structure or permanently affixed to the infrastructure project.

*C. Waivers*

When necessary, recipients may apply for, and DOE may grant, a waiver from the Buy America Preference requirements. Requests to waive the application of the Buy America Preference must be in writing. Waiver requests are subject to public comment periods of no less than 15 days, as well as review by the Office of Management and Budget.

Waivers must be based on one of the following justifications:

1. Applying the Buy America Preference would be inconsistent with the public interest (Public Interest);
2. The types of iron, steel, manufactured products, or construction materials are not produced in the United States in sufficient and reasonably available quantities or of a satisfactory quality (Nonavailability); or
3. The inclusion of iron, steel, manufactured products, or construction materials produced in the United States will increase the cost of the overall project by more than 25 percent (Unreasonable Cost).

Requests to waive the Buy America Preference must include the following:

- Waiver type (Public Interest, Nonavailability, or Unreasonable Cost);
- Recipient name and Unique Entity Identifier (UEI);
- A detailed justification as to how the non-domestic item(s) is/are essential the project;
- A certification that the recipient made a good faith effort to solicit bids for domestic products supported by terms included in requests for proposals, contracts, and non-proprietary communications with potential suppliers;
- Total estimated project cost, with estimated Federal share and recipient cost share breakdowns;
- Total estimated infrastructure costs, with estimated Federal share and recipient cost share breakdowns;
- A brief description of the project, its location, and the specific infrastructure involved;
- List and description of iron or steel item(s), manufactured goods, and/or construction material(s) the recipient seeks to waive from the Buy America Preference, including name, cost, country(ies) of origin, and relevant PSC and NAICS codes for each;
- A justification statement—based on one of the applicable justifications outlined above—as to why the items in question cannot be procured domestically, including the due diligence performed (e.g., market research, industry outreach) by the recipient to attempt to avoid the need for a waiver. This justification may cite, if applicable, the absence of any Buy America-compliant bids received for domestic products in response to a solicitation; and
- Anticipated impact to the project if no waiver is issued.

DOE may request, and the recipient must provide, additional information for consideration of this waiver. The Agency's final determination regarding approval or rejection of the waiver request may not be appealed.

#### **Term 45. SEP ARRA Funded Financing Program Requirements**

- a. Under the annual SEP formula award, the grantee may continue its financing program(s) capitalized with SEP Recovery Act funds beyond the period of performance of the Recovery Act award. To ensure the continuation of the required reporting and DOE oversight of the federal requirements that apply to the federally funded financing programs in perpetuity or so long as the grantee continues to operate the programs, the grantee is subject to the terms and conditions of the SEP formula award and the Recovery Act terms and conditions set forth in the grantee's original Recovery Act award. The Recovery Act terms and conditions applicable to the financing program(s) (Appendix A) are hereby incorporated into the grantee's annual SEP formula award and will remain incorporated into the award so long as the grantee chooses to continue to operate the financing program(s) capitalized with Recovery Act funds.
- b. The Recovery Act terms incorporated into the annual SEP award are only applicable to grantee's financing program(s) capitalized with SEP Recovery Act funds, and only where the grantee chooses to continue operating the financing program beyond the period of performance of the Recovery Act award. The Recovery Act terms incorporated into the annual SEP award do not extend to the other programs funded under the annual SEP award. Nor does this action extend to other activities funded under the grantee's SEP Recovery Act award.
- c. Continued administration of the existing financing program(s) beyond the period of performance of the



Recovery Act award, including the necessary reporting, is an eligible use of annual SEP formula award funds as set forth in 10 CFR 420.17(a)(3). Use of annual SEP formula award funds for the administration of a financing program capitalized with Recovery Act funds does not constitute a comingling of funds. If the grantee or third party administrator elects to discontinue a financing program, the grantee may elect to move funds to other eligible currently approved SEP program activities for energy efficiency measures and renewable energy measures, upon written approval by the DOE Contracting Officer.

- d. See Term 7 “NEPA Requirements” and Term 8 “Historic Preservation” for information on these topics for ARRA Funding Finance Programs or funds repurposed from ARRA Financing programs.
- e. By accepting this award or amendment, the grantee agrees to comply with the provisions listed below for financing programs capitalized with Recovery Act funds (see Appendix A for full text of provisions):

- **SPECIAL PROVISIONS RELATING TO WORK FUNDED UNDER AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009 (MAR 2009)**
- **REQUIRED USE OF AMERICAN IRON, STEEL, AND MANUFACTURED GOODS (COVERED UNDER INTERNATIONAL AGREEMENTS)--SECTION 1605 OF THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009**
- **WAGE RATE REQUIREMENTS UNDER SECTION 1606 OF THE RECOVERY ACT**
- **RECOVERY ACT TRANSACTIONS LISTED IN SCHEDULE OF EXPENDITURES OF FEDERAL AWARDS AND RECIPIENT RESPONSIBILITIES FOR INFORMING SUBRECIPIENTS**
- **HISTORIC PRESERVATION**
- **DAVIS BACON ACT AND CONTRACT WORK HOURS AND SAFETY STANDARDS ACT**
- **RECIPIENT FUNCTIONS**