

**A RESOLUTION FOR APPROVING THE TOWN'S  
ENERGY EFFICIENCY PROGRAM DESIGN**

Resolution No. 52/2010-11

WHEREAS, an ARRA grant application has been submitted to and accepted by the US Department of Energy (USDOE) Retrofit Ramp Up/Better Buildings program by the Southeastern Energy Efficiency Alliance (SEEA) in collaboration with the Town of Carrboro, the Town of Chapel Hill and other southeastern jurisdictions to pursue community scale energy efficiency retrofits; and

WHEREAS, the Town has accepted the grant award of \$75,000 and negotiated an agreement with the Southeast Energy Efficiency Alliance, and developed a Memorandum of Understanding with Chapel Hill to share administrative and monitoring and verification costs and make all necessary arrangements to implement a first year budget; and

WHEREAS, the agreement with SEEA and the Memorandum of Understanding with Chapel Hill through the spring of 2011 includes extension of \$55k of loans through a revolving loan to small businesses, with an additional \$5k of funds for supporting residential energy efficiency, and the remainder to administration via a contractor, Clean Energy Solutions, and monitoring and verification; and

WHEREAS, the Town has received \$37,500 of the grant award, with the remainder being contingent on successful review of progress to date, including completion of a program design. This review will occur in December, 2010; and

WHEREAS, Town staff have worked with Chapel Hill Town staff and staff from Clean Energy Solutions to develop program design details, and have submitted a report to SEEA on progress to date.

NOW THEREFORE BE IT RESOLVED by the Carrboro Board of Aldermen that the Aldermen Approve the program design prepared by staff, in cooperation with Clean Energy Solutions, and authorize staff to work with Clean Energy Solutions, Chapel Hill staff, SEEA, contractors, and other interested parties to implement the program design.



## TOWN OF CARRBORO

NORTH CAROLINA

### TRANSMITTAL PLANNING DEPARTMENT

DELIVERED VIA: ☒ HAND ☐ MAIL ☐ FAX ☐ EMAIL

**To:** Board of Aldermen

**From:** Randy Dodd, Environmental Planner

**Cc:** Steven Stewart, Town Manager  
Patricia McGuire, Planning Administrator  
Matt Efird, Assistant to the Town Manager  
James Harris, Economic and Community Development Director

**Date:** December 3, 2010

**Subject:** Southeast Energy Efficiency Alliance Project Update

#### Summary

The purpose of this memo is to update Board members and the public on Carrboro's design and implementation plans for working on a community scale energy efficiency grant. Town staff have worked with Chapel Hill staff and a nonprofit, the Southeastern Energy Efficiency Alliance (SEEA), to participate in a successful application to the US Department Of Energy (DOE) for ARRA funds geared towards community scale energy efficiency retrofits of existing buildings. This partnership focuses on building science, systems, and usage behavior, with an emphasis on improving energy efficiency, and a second emphasis on phasing in alternative/renewable generation. Previous agenda items about the opportunity were provided on June 1 and June 22, 2010; information from those reports is for the most part not repeated in this memo.

#### Information

Assuming successful startup, the grant funded project will unfold over two to three years, with the vision being the establishment of a long term, sustaining partnership and program. Chapel Hill and Carrboro have entered into separate but coordinated agreements with SEEA, and a Memorandum of Agreement between the towns. Assuming successful performance in the first year, Chapel Hill and Carrboro will receive a dollar for dollar match of first year funds in the second year of the grant, and be eligible to compete with other SEEA participants for additional funding, as described in more detail in June, 2010 staff memos. Chapel Hill and Carrboro are receiving support from Clean Energy Solutions, Inc. to pursue this effort.

The SEEA grant project is supporting the following jurisdictions in the southeast.

**Table 1: Jurisdictions Participating in Southeastern Energy Efficiency Alliance Retrofit Ramp Up**

<b><u>Jurisdiction</u></b>	<b><u>First Year Funding</u></b>
Atlanta	\$1,200,000
New Orleans	\$1,000,000
Jacksonville	\$1,200,000
Hampton Roads Metro	\$350,000
Charlottesville Metro	\$800,000
Huntsville	\$400,000
Virgin Islands	\$200,000
Chapel Hill/Carrboro	\$225,000
Charleston	\$500,000
Decatur	\$125,000
Charlotte	\$400,000
Nashville	\$250,000
<b>TOTAL</b>	<b>\$6,650,000</b>

#### First Year Budget

The following text describes the recommended budget and program design, and represents collaboration between Carrboro and Chapel Hill staff. Future coordination will include exploration of topics such as on-bill and PACE, and federal (e.g., Power Saver) financing for residential retrofits, and other coordination of outreach and leveraging of incentives.

Specific Year One goals implicit in the Carrboro's budget are to:

- allocate a majority of incentive dollars to commercial loans, with a smaller allocation for subsidies for residential energy audits
- secure additional funding for Year Two based on Year One performance
- take advantage of any utility conservation programs which dovetail with this project
- position program to take advantage of any federal conservation programs (e.g., Power Saver)
- investigate opportunities for utility on-bill, PACE, and other financing
- successfully market the program to develop an expanded demand for energy efficiency
- develop a plan for long-term viability of program

Carrboro and Chapel Hill staff have collaborated on a budget for first year funds. About ¼ of the first year combined budget has been allocated to administrative and program support from Clean Energy Solutions (through a contract with Chapel Hill) in order to assist the with the rapid deployment of energy incentives. This contract is guaranteed for one year, and assumes successful midyear review; the long term success will depend on a coordinated effort to successfully launch and market the program. Under the SEEA grant each Town will get back in Year Two as much as it can issue in the way of incentives during Year One. These funds can then be used in part to help support the continued deployment of incentive dollars. The Town will also

be eligible to compete with other SEEA grantees for additional incentive funding consistent with the ability to work with residents and businesses to have retrofit ready projects. Chapel Hill is providing additional support to program administration via EECBG grant funds received. Sustained funding for program deployment will be evaluated by all participants as the program develops.

**Table 2: Combined Chapel Hill-Carrboro Year One Budget**

Category	Chapel Hill SEEA Funds	Chapel Hill EECBG Funds	Carrboro SEEA Funds	Total
a. New Administration Contract	\$17,500	\$25,600	\$10,000	\$53,100
b. Marketing	\$11,000			\$11,000
c. Measure Subsidy/Interest Rate Buydown	\$90,500			\$90,500
d. Residential Audit Subsidy	\$10,000		\$5,000	\$15,000
e. Monitoring & Verification	\$17,000		\$5,000	\$22,000
f. Travel	\$4,000			\$4,000
g. Revolving Loan Fund for Businesses			\$55,000	\$55,000
<b>Total</b>	<b>\$150,000</b>	<b>\$25,600</b>	<b>\$75,000</b>	<b>\$250,600</b>

Based on the budget shown above, \$60,000 of Carrboro's allocation is dedicated to incentives and eligible for Year Two matching. The bulk of these incentives are geared towards subsidies for energy improvement measures in the commercial sector through the revolving loan fund, with the remainder to subsidize residential energy audits. SEEA has contracted to develop a software program that will track the information necessary for DOE reporting; Carrboro's allocation under Monitoring and Verification will be used to support this tool.

While there is no explicit budget line item, working with utilities, (Duke Energy, Public Service Gas, Piedmont Electric, and OWASA), potential funding agencies, and entities such as the NC Utilities Commission is implicit in the program design and relevant for staff, SEEA consultants and contractors, and Clean Energy Solutions, Inc., a consultant providing program support to Carrboro and Chapel Hill.

The steps described below describe highlights of progress to date.

- Negotiated agreements with the Southeast Energy Efficiency Alliance for both Towns
- Memorandum of Understanding between Chapel Hill and Carrboro and SEEA to share administrative and monitoring and verification expenses, and contract with CESI to provide support
- CESI hires administrative position, which in coordination with other CESI staff, provides support for overall program/grant management, reporting, marketing, contractor pre-qualification and oversight, formalizing utility and lending institution relationships, leveraging support
- Preliminary footwork assessing likely businesses/property owner recipients of revolving loans



- First allotment of funding received from SEEA
- CESI, Carrboro and Chapel Hill staff work with SEEA to develop details of the program design, loan structure, and work with contractors to prepare for the program, and prepare a marketing handout. More information about the Carrboro's recommended commercial program design is provided in Appendix 1, with additional details provided in a separate attachment. For the residential sector, the small (\$5k) allocation of year one funds are proposed to be used primarily to subsidize (rebate) residential energy audits. Additional residential program development is the focus of Chapel Hill's efforts (working with CESI) in the first year. Details of Chapel Hill's residential program design are anticipated to be available in January, 2011; this effort should greatly benefit Carrboro's residential program development.

Staff of both Towns and CESI staff are currently working diligently with SEEA to ensure that 6-month milestones are met. This review is occurring in December. Finally, staff have worked with the Transition Carrboro-Chapel Hill Energy Action Group to sponsor a Energy and Community Resilience Fair at the Town Commons on October 10, 2010, and are planning an Energy Fair focused on promoting this grant program in both communities at the Century Center on February 26, 2011.

### **Recommendations**

Staff recommend that the Board adopt the attached resolution approving the program design and authorizing staff to move forward with the program implementation.

## **Appendix 1: Carrboro's Commercial Energy Efficiency Program Design Highlights**

It is proposed that Carrboro initiate a commercial energy efficiency pilot effort using a similar model to Carrboro's existing Small Business Revolving Loan Fund. The goals of these loans include:

- ☐ Reduced energy consumption (a general objective of loans and associated retrofits is a minimum improvement in energy efficiency of 15-20%)
- ☐ Reduced energy bills for local businesses
- ☐ Pilot project for Carrboro, with the hopes of expanding the program in future years

### Marketing Plan

Marketing will occur primarily through the Town's Economic and Community Development Office and Director. However, four channels in total will be used:

1. Online, with Carrboro's existing Small Business Loan Fund materials and possibly through a separate website created by CESI
2. Via press releases, used to announce the launch of the program
3. Possibly through a news feature in local papers
4. Via personal interactions by Carrboro Town Staff. With CESI's support, will Carrboro's Economic and Community Development Office will reach out to businesses to communicate the benefits of the new energy efficiency loan pool.

### Application Process

1. Funds will be available to all for- and non-profit businesses in Carrboro town limits with 50 employees or fewer.
2. All applicants must submit 12 months of utility bills to the Town as part of their application package and must agree to submit 3 years of utility bills after work is completed.
3. Applications are first-come first-served and loans are subject to availability of funds.
4. Funds are NOT available retroactively – only new projects are eligible.

Applications will be reviewed by the Carrboro Economic Sustainability Commission and then approved by the Board of Aldermen.

### Contractor Process for Participation

Carrboro will maintain a list of prequalified contractors. Interested contractors should contact Clean Energy Solutions. Southern Energy Management (SEM) is the only recommended contractor for performance of energy audits identified to date; initially, audits will therefore be performed by Southern Energy Management, unless another contractor is identified. (SEM has extensive experience with commercial sector audits, including ASHRAE audits). The cost of the audit can be rolled into the loan amount. Contractors will provide all required DOE/SEEA reporting information, fully compatible with the reporting protocol and reporting tool being

developed under contract by SEEA. Further information about the contractor process for participation is available in a separate document.

#### Quality Assurance Process

Based on their qualifications, Advanced Energy Corporation will perform Quality Assurance/Monitoring and Verification (QA/M&V) of retrofits. All initial loans will require QA/M&V. Assuming the program becomes well established, QA/M&V requirements may be reduced after Year 1.

#### Suggested Measures

Incentives should be designed to promote the most cost-effective (energy savings per dollar of investment) actions in Carrboro's small business sector, consistent with the minimum 15-20% energy efficiency improvement. A goal of the program is to take advantage of incentives available through utilities including but not limited to Duke Energy and Public Service Gas of NC, to reduce the total loan amount needed. A list of prescriptive measures has been prepared.

If a project involves some energy efficiency features and some non energy efficiency features, only the incremental cost of energy efficiency aspects of the project are eligible to receive the loan. Custom/non-prescriptive retrofits will be considered on a case-by-case basis.

#### Suggested Loan Structure

An initial 3% interest rate is recommended, with terms of up to 10 years, and a minimum loan size of \$1,500. Repayments will be monthly, with a start date to be determined on a loan-by-loan basis (typically 3 months). If the loan recipient moves away from Carrboro, the loan must be paid back in full; loans are non-transferable.

Additional details on the small business program design, including loan structure, a marketing handout, and contractor participation information is included as a separate attachment.



# Carrboro Commercial EERLF Program Design

## Program Overview

In fall 2010, Carrboro received funding from the federal government through their participation in a Better Buildings Program Grant, administered through the Southeast Energy Efficiency Alliance (SEEA). These funds will be administered in a similar model as Carrboro's existing Small Business Revolving Loan Fund to make loans to Carrboro businesses to improve energy efficiency. The goals of these loans include:

- Reduced energy consumption (a general objective of loans and associated retrofits is a minimum improvement in energy efficiency of 15-20%)
- Reduced energy bills for local businesses
- Pilot project for Carrboro, with the hopes of expanding the program in future years

## Marketing Plan

Marketing will occur primarily through the Town's Economic and Community Development Department and Director. However, four channels in total will be used:

1. **Online**, with Carrboro's existing Small Business Loan Fund materials and possibly through a separate website created by Clean Energy Solutions, Inc. (CESI)
2. Via **press releases**, used to announce the launch of the program
3. Possibly through a news feature in **local papers**
4. Via **personal interactions** by Carrboro Town Staff. With CESI's support, Carrboro's Economic and Community Development Office will reach out to businesses to communicate the benefits of the new energy efficiency loan pool.

Marketing will take place in two steps:

1. The program will be advertised with a press release that coincides with the launch of the new promotional materials in early January, 2011.
2. After this release, the Town and CESI staff will actively engage with small business owners.

## Application Process

1. Funds are available to all for- and non-profit businesses in Carrboro town limits with 50 employees or fewer.
2. All applicants must submit 12 months of utility bills to the Town as part of their application package and must agree to submit 3 years of utility bills after work is completed.
3. Applications are first-come first-served and loans are available subject to availability.
4. Funds will be disbursed directly to the applicant.

5. Funds are NOT available retroactively – only new projects are eligible.

Applicants will initially make contact with the Town's Economic and Community Development Department. Applications will be completed with assistance from the Energy Efficiency Program Coordinator and a contractor.

Applications will be reviewed by the Carrboro Economic Sustainability Commission and then approved by the Board of Aldermen.

#### **Contractor Process for Participation**

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Carrboro will maintain a list of prequalified contractors. Interested contractors should contact Clean Energy Solutions | Nora Barger at [nbarger@cleanenergysol.com](mailto:nbarger@cleanenergysol.com) or by phone: (919) 918 7334. Southern Energy Management (SEM) is the only recommended contractor for performance of energy audits identified to date; initially, audits will therefore be performed by Southern Energy Management, unless another contractor is identified. (SEM has extensive experience with commercial sector audits, including ASHRAE Level II). The cost of the audit can be rolled into the loan amount. Retrofit installation will be pursued directly or with oversight/subcontracting by prequalified contractors, chosen by the applicant. For cases where more than one contractor/subcontractor is equally qualified and bids on a job, preference may be given to the firm with a stronger locally based foundation and interest. Contractors will provide all required DOE/SEEA reporting information, fully compatible with the reporting protocol and reporting tool being developed under contract by SEEA. Further information about the contractor process for participation is available in a separate document.

Dispute resolution will be handled on a case-by-case basis. SEM or the relevant contractor will apply for all relevant utility rebates on the loan recipient's behalf.

#### **Quality Assurance (QA) Process**

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Based on their qualifications, Advanced Energy Corporation will perform Quality Assurance (QA) and Monitoring and Verification (M&V) on a case by case basis. All initial loans will require QA and M&V. Assuming the program becomes well established, QA and M&V requirements may be reduced after Year 1.

#### **Suggested Measures**

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Incentives should be designed to promote the most cost-effective (energy savings per dollar of investment) actions in Carrboro's small business sector, consistent with the minimum 15-20% energy efficiency improvement. A goal of the program is to take advantage of incentives available through utilities including but not limited to Duke Energy and Public Service Gas of NC, to reduce the total loan amount needed. We

suggest that the following measures, many of which have incentives available through utilities, be eligible for revolving loan fund award.

Measure	Utility Incentive?	Segment Targeted
Lighting Upgrades	\$3-60 per fixture (Duke)	All
LED Exit Signs	\$12 per sign (Duke)	All
Occupancy Sensors	\$20-\$40 per sensor (Duke)	All
Air Conditioners	\$20-\$40 per ton (Duke)	All
Heat Pumps	\$20-\$40 per ton (Duke)	All
Window AC Units	\$25-\$50 per unit (Duke)	All
Water Heaters	\$2000-\$9000 per unit (Duke)	All
Tankless Water Heater	\$250 (PSNC)	All
Programmable Thermostats	\$50 per unit (Duke)	All
Window Film	\$1 per sq ft (Duke)	All
Motors	\$4-\$10 per HP (Duke)	All
Pumps	\$122-\$400 per pump (Duke)	All
VFDs	\$40-\$100 per HP (Duke)	All
Vending Misers	\$50 (Duke)	All
Display Night Cover	\$5/ln. ft. (Duke)	All
Commercial Refrigerator	\$50-\$90 (Duke)	Food Services
Ice Maker	\$100-\$500 (Duke)	Food Services
Ice Machine	\$150 (Duke)	Food Services
Oven	\$1,000 (Duke)	Food Services
Fryer	\$150 (Duke)	Food Services
Griddle	\$200 (Duke)	Food Services
Steam Cooker	\$600 (Duke)	Food Services
Freezer	\$150 (Duke)	Food Services
Commissioning		All
Retrocommissioning		All
Controls Upgrade		All
Insulation Upgrades		All
Solar Thermal (hot water)		All
Solar PV		All

**\* Solar hot water and PV are only eligible if combined with energy efficiency that is anticipated to result in 15% energy savings!**

If a project involves some energy efficiency features and some non energy efficiency features, only the incremental cost of energy efficiency aspects of the project are eligible to receive the loan. Custom/non-specified retrofits not mentioned above will be considered on a case-by-case basis. If a retrofit qualifies for a tax credit, filing for the tax credit will be the responsibility of the applicant.

### **Suggested Loan Structure**

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NC General Statutes allows municipalities to establish energy revolving loan funds.<sup>1</sup> The only restrictions are that the interest rate may not exceed 8% per year and loan term may not exceed 15 years. Also, a municipality may not allocate more than \$250,000 to a revolving loan fund.

Given the lack of binding loan restrictions, Carrboro's loan program can be compared against peers:

- **North Carolina's State Energy Office** provides low-interest loans of up to \$1 million for terms of 10 years.<sup>2</sup>
- **North Carolina's Energy Improvement Loan Fund** offers 3% loans of up to \$500,000 for terms of 10 years.<sup>3</sup>
- **Texas's LoanSTAR Program** offers 3% loans of up to \$5 million for terms of 10 years.<sup>4</sup>
- **Rhode Island's Energy Efficiency Loan Program** offers interest-free loans but charges an administrative fee of 10-15% of total loan value. Loan terms are 5 years.<sup>5</sup>

**Based on these data points, and program objectives, an initial 3% interest rate is recommended, with terms of up to 10 years, and a minimum loan size of \$1,500.**

Repayments will be monthly, with a start date to be determined on a loan-by-loan basis (typically 3 months). If the business closes or relocates, the loan recipient is responsible for full repayment of the loan.

Carrboro reserves the right to change the program, loan structure and terms at any point in time.

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<sup>1</sup> House Bill 1389, see

<http://www.ncga.state.nc.us/Sessions/2009/Bills/House/PDF/H1389v7.pdf>

<sup>2</sup> <http://www.energync.net/sdocs/State%20Energy%20Program%20FACT%20SHEET.pdf>

<sup>3</sup> <http://www.energync.net/funding/eilp.html>

<sup>4</sup> <http://www.texasloanstar.com/>

<sup>5</sup> [http://www.energy.ri.gov/programs/efficiency\\_terms.php](http://www.energy.ri.gov/programs/efficiency_terms.php)





# Application for Carrboro Commercial Energy Efficiency Revolving Loan Fund (EERLF)

301 W. Main Street | Carrboro, North Carolina 27510 | p: (919) 918.7319 or (919) 918.7334

**INSTRUCTIONS** | Please read the Energy Efficiency Revolving Loan Description and Criteria before completing this application. It is important that you fill out all sections of this application completely. Questions regarding this application or the application process should be directed to the Town's Economic and Community Development Director or the Energy Efficiency Program Coordinator.

NAME OF APPLICANT: \_\_\_\_\_ DATE: \_\_\_\_\_

# OF YEARS IN OPERATION: \_\_\_\_\_ (circle one) CORPORATION PARTNERSHIP SOLE PROPRIETORSHIP

EMPLOYER ID #: \_\_\_\_\_ PRIVILEGE LICENSE #: \_\_\_\_\_

ADDRESS OF APPLICANT: \_\_\_\_\_

ADDRESS OF PROJECT (IF DIFFERENT FROM ABOVE): \_\_\_\_\_

PHONE NUMBER: \_\_\_\_\_ CONTACT PERSON: \_\_\_\_\_  
(Name and Position)

AMOUNT OF LOAN REQUEST: \_\_\_\_\_ TERM LENGTH REQUESTED: \_\_\_\_\_

**BUSINESS OVERVIEW:** BRIEFLY DESCRIBE THE FOLLOWING ASPECTS OF YOUR BUSINESS/ PROPERTY. (You may attach separate sheets or provide a written history and description of your business if you wish.)

WHAT TYPE OF BUSINESS DO YOU OWN? \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

HOW WILL THE PROJECT AFFECT YOUR COMPANY? \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

AGE OF BUILDING (YR. BUILT): \_\_\_\_\_ TOTAL SQUARE FEET OF BUILDING: \_\_\_\_\_ # OF OCCUPANTS: \_\_\_\_\_

DO YOU PLAN TO MOVE? (Y/N) \_\_\_\_\_

PRIMARY HEATING FUEL: \_\_\_\_\_ PRIMARY SERVICE UTILITY: \_\_\_\_\_

IF YOU ARE LEASING, DESCRIBE THE TERMS OF YOUR LEASE (RENT AND LENGTH OF LEASE) and PROVIDE A COPY OF YOUR CURRENT LEASE: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

DESCRIBE HOW THIS PROJECT WILL FIT WITHIN THE CONSTRAINTS OF YOUR LEASE: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**PROJECT DESCRIPTION AND COSTS:** BRIEFLY DESCRIBE THE FOLLOWING ASPECTS OF YOUR PROJECT. (You may attach separate sheets/ spreadsheets for costs if you wish.)

**\*\* To be provided with assistance of energy auditor/ contractor**



DESCRIBE THE PROJECT, EMPHASIZING ENERGY EFFICIENCY FEATURES: \_\_\_\_\_

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**\*\* LIST EQUIPMENT PURCHASED (INCLUDE RATED ANNUAL ENERGY CONSUMPTION AND MODEL #'S):** \_\_\_\_\_

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**\*\* LIST REMOVED/ REPLACED EQUIPMENT (INCLUDE MODEL #'S):** \_\_\_\_\_

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**\*\* DO YOU PLAN TO UTILIZE ANY OTHER UTILITY INCENTIVES (ie. Duke Energy or PSNC)? PLEASE DESCRIBE:** \_\_\_\_\_

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**\*\* WILL OTHER IMPROVEMENTS OCCUR AT THE SAME TIME AS THE ENERGY EFFICIENCY PROJECT? IF SO, PLEASE DESCRIBE:** \_\_\_\_\_

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**\*\* PROVIDE ITEMIZED COST ESTIMATES FOR THE PROJECT, INCLUDING ESTIMATES FROM A CONTRACTOR, MAKING SURE TO SEGREGATE ENERGY EFFICIENCY COSTS FROM OTHER IMPROVEMENTS:** \_\_\_\_\_

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**\*\* PROVIDE AN ESTIMATE OF THE SIMPLE PAYBACK FOR THE ENERGY EFFICIENCY MEASURES YOU WILL PURSUE WITH THESE FUNDS:** \_\_\_\_\_

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**\*\* PROVIDE A 12-MONTH CASH FLOW PROJECTION, INCLUDING ENERGY SAVINGS AND LOAN REPAYMENTS:** \_\_\_\_\_

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**\*\* EXPECTED ANNUAL ENERGY SAVINGS, AS A % REDUCTION FROM THE BASELINE (previous 12 months of energy bills):** \_\_\_\_\_

**\*\* EXPECTED ANNUAL COST SAVINGS FROM THE INSTALLED ENERGY EFFICIENCY MEASURES:** \_\_\_\_\_

**\*\* EXPECTED kWhs SAVED PER YEAR FOR INSTALLED MEASURES:** \_\_\_\_\_

**\*\* EXPECTED % SAVINGS kWh OF PREVIOUS 12 MONTHS FOR INSTALLED MEASURES:** \_\_\_\_\_

**\*\* EXPECTED THERMS SAVED PER YEAR FOR INSTALLED MEASURES:** \_\_\_\_\_

**\*\* EXPECTED % SAVINGS THERMS OF PREVIOUS 12 MONTHS FOR INSTALLED MEASURES:** \_\_\_\_\_

**\*\* EXPECTED GALLONS SAVED PER YEAR (heating oil/ propane/ LPG) FOR INSTALLED MEASURES:** \_\_\_\_\_

**\*\* EXPECTED % SAVINGS GALLONS OF PREVIOUS 12 MONTHS FOR INSTALLED MEASURES:** \_\_\_\_\_

**\*\* ESTIMATED TOTAL LABOR HOURS FOR AUDIT AND RETROFIT INSTALLATION:** \_\_\_\_\_

#### **OTHER REQUIRED INFORMATION**

PLEASE PROVIDE 12 MONTHS OF PAST UTILITY BILLS FOR YOUR BUSINESS.

PLEASE PROVIDE A RECENT (ie. within last 90 days) CREDIT REPORT.

DO YOU AGREE TO MAKE ALL RELEVANT DOCUMENTS AVAILABLE ON REQUEST? (Y/N) \_\_\_\_\_

DO YOU AGREE TO PROVIDE 36 MONTHS OF UTILITY DATA AFTER THE PROJECT IS COMPLETED? (Y/N) \_\_\_\_\_

DO YOU UNDERSTAND THAT THE **EERLF** LOAN WILL BE SECURED BY A NOTE AND DEED OF TRUST ON REAL ESTATE OR A SECURITY AGREEMENT ON EQUIPMENT, AND THAT PERSONAL GUARANTEES WILL BE REQUIRED? (Y/N) \_\_\_\_\_

HAVE THE APPLICANT FIRM OR ANY OWNER OF MORE THAN 20% OF THE BUSINESS FILED FOR BANKRUPTCY OR PROTECTION FROM CREDITORS? (Y/N) \_\_\_\_\_ ; IF YES, PROVIDE DETAILS: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

THE TOWN MAY AUDIT/ INSPECT APPLICANT'S FINANCIAL RECORDS UPON REQUEST IF LOAN BECOMES PAST DUE.  
(please initial) \_\_\_\_\_

DO YOU AGREE TO PROVIDE A WAIVER OF LIEN IF A TENANT AND NOT A BUILDING OWNER? (Y/N) \_\_\_\_\_

IF THE BUSINESS CLOSSES OR RELOCATES, THE LOAN RECIPIENT IS RESPONSIBLE FOR FULL REPAYMENT OF THE LOAN.  
(please initial) \_\_\_\_\_

HOW DID YOU HEAR ABOUT CARRBORO'S EERLF PROGRAM? \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

WHAT MOTIVATED YOU TO APPLY FOR A CARRBORO EERLF LOAN? \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

AS \_\_\_\_\_ (title) OF \_\_\_\_\_

I CERTIFY THAT THE INFORMATION PROVIDED IN THIS APPLICATION AND IN DOCUMENTS AND EXHIBITS PROVIDED IS TRUE AND COMPLETE TO THE BEST OF MY KNOWLEDGE. I FURTHER COMMIT TO THE FOLLOWING ACTIONS, AS DESCRIBED MORE FULLY IN THE PROJECT APPLICATION:

- A) UNDERTAKE AND CARRY OUT THE PROJECT AS DESCRIBED IN THE PROJECT APPLICATION, AND DOCUMENTS AND EXHIBITS PROVIDED,
- B) PROVIDE THE TOWN WITH NECESSARY INFORMATION FOR COMPLETING REQUIRED REPORTS,
- C) MAKE ALL RELEVANT RECORDS AVAILABLE TO TOWN AND ITS PARTNERS UPON REQUEST,
- D) BEGIN PROJECT ACTIVITIES ONLY FOLLOWING EXECUTION OF A LEGALLY BINDING COMMITMENT BETWEEN THE TOWN AND THE APPLICANT AND THE RELEASE OF OTHER CONDITIONS, IF ANY, PLACED ON THE LOAN BY THE TOWN OF CARRBORO,
- E) COMPLETE PROJECT ACTIVITIES NO LATER THAN \_\_\_\_\_,
- F) (OPTIONAL) SECURE AND OBTAIN ADDITIONAL LOAN FUNDS IN THE AMOUNT OF \$ \_\_\_\_\_ AS DESCRIBED IN THIS APPLICATION, AND

G) (OPTIONAL) PROVIDE \$\_\_\_\_\_ IN EQUITY FROM THE APPLICANT'S OWN RESOURCES FOR THE PROJECT AND COVER ANY COST OVERRUNS IN THE PROJECT FROM APPLICANTS OWN RESOURCES.

MY FIRM IS COMMITTED TO UNDERTAKE THIS PROJECT, AND BUT FOR THE PROVISION OF THE EERLF ASSISTANCE, THIS PROJECT WILL NOT BE UNDERTAKEN:

**PARTNERSHIP AND SOLE PROPRIETORSHIPS**

**CORPORATIONS**

SIGNED: \_\_\_\_\_

(Name)

TITLE: \_\_\_\_\_

BY: \_\_\_\_\_

(President)

DATE: \_\_\_\_\_

ATTEST: \_\_\_\_\_

(Secretary)

(SEAL)

DATE: \_\_\_\_\_

BELOW PLEASE LIST ALL OF THE FOLLOWING: ANY OWNER OF 20% OR MORE OF A CORPORATION AND ALL OFFICERS OF THE CORPORATION; ALL PARTNERS; THE SOLE PROPRIETOR.

Print Name & Title	Signature	% owned
Print Name & Title	Signature	% owned
Print Name & Title	Signature	% owned
Print Name & Title	Signature	% owned
Print Name & Title	Signature	% owned
Print Name & Title	Signature	% owned



# Carrboro EERLF Contractor Criteria 9

The information below presents criteria for contractors to participate in Carrboro's energy efficiency program. The emphasis for initial implementation is on the commercial sector; Carrboro does have limited funds to pursue residential energy efficiency improvements in the first half of 2011. Carrboro anticipates working with Chapel Hill to develop more detailed residential sector criteria later in 2011. These criteria may be modified as the program develops. Interest in being prequalified and questions should be addressed to Clean Energy Solutions through Nora Barger (Energy Efficiency Services Coordinator, 301 West Main Street, Carrboro, NC 27510, (o) 919.918.7334, [nbarger@cleanenergysol.com](mailto:nbarger@cleanenergysol.com))

## COMMERCIAL SECTOR

### Commercial Energy Audits

Southern Energy Management (SEM) will conduct initial energy audits. SEM has been chosen because:

1. From a programmatic standpoint, a single energy auditor will provide an even basis for comparison, on which further work can be bid
2. SEM is one of the most well respected local energy efficiency and renewable energy firms, as recommended by Advanced Energy Corporation, a recognized statewide leader.
3. SEM has deep experience in the EE and RE fields
4. SEM is BPI certified, has ample bonding and insurance ability, and can subcontract and manage any relevant work (HVAC, lighting roofing, equipment, etc)
5. SEM is very familiar with utility incentive programs and has the ability to provide all relevant documentation to ensure maximum incentive dollars get to loan recipients

Loan applicants are responsible for the upfront cost of the energy audit but can roll this cost into the total amount applied for from the Town. Other firms may be qualified to complete audits in the future.

### Commercial Contractor Criteria

After the audit, loan recipients will work with SEM, or another auditor if qualified through the program, to complete retrofits as well.

Loan recipients also have the option to work with other contractors, but we require that the selected contractor meet the following criteria:

1. For auditing, experience and ability providing Level II ASHRAE Audits
2. BPI certified
3. Licensed in NC
4. Relevant references available. Suggested references include
  - a. A satisfactory Dun and Bradstreet Rating, or
  - b. Membership in the Better Business Bureau, or
  - c. A satisfactory banking reference;
  - d. A minimum of three current satisfactory professional/trade references, such as suppliers of materials, tools, credit;
  - e. A minimum of three satisfactory references from customer served within the past 6 months;
  - f. Confirmation that the firm has been in business for at least three years;

- g. Confirmation that the principals in the business have a satisfactory individual credit score with no outstanding liens, judgments or a bankruptcy within the last seven (7) years, and
- h. Confirmation that the principals have a net worth of at least \$50,000, verified by an audited financial statement or the last two year's tax returns
- 5. Able to act as general contractor if subs are needed
- 6. Acceptable surety, bid, and performance bonding (\$50K minimum suggested)
- 7. Acceptable insurance, including general liability and workers compensation. Suggested insurance guidelines include:
  - a. \$1,000,000 in respect of claims arising out of personal injury or sickness or death of any one person, \$1,000,000 in respect of claims arising out of personal injury, sickness or death in any one accident or disaster, and \$1,000,000 in respect of claims arising out of property damage in any one accident or disaster; and
  - b. Commercial automobile liability insurance in respect of motor vehicles owned, licensed or hired by the Contractor and the Subcontractors for bodily injury liability, including death and property damage, incurred in connection with the performance of work in the Program, with minimum limits of \$500,000 in respect of claims arising out of personal injury, sickness, or death of any one person, \$1,000,000 in respect of claims arising out of personal injury, sickness or death in any one accident or disaster; and \$500,000 in respect of claims arising out of property damage in any one accident or disaster; and
  - c. Workers' Compensation Policy covering the obligations of the Contractor as required under the provisions of the Workers' Compensation Law, Employers Liability, and Disability Benefits.
- 8. Davis Bacon compliant to ensure fair wages are paid to workforce.

## **RESIDENTIAL SECTOR**

### **Residential Energy Audits**

Prequalified contractors identified to date for residential energy audits include:

- Southern Energy Management
- SunDog Solutions
- Energy Tribe
- NC Home Performance

Residential audit rebates will be available to homeowners working with prequalified contractors. The rebate amount and audit approach will be determined in early 2011.



# Carrboro EERLF Contractor Participation Application/ Agreement

## Introduction

In the fall of 2010, Carrboro executed an agreement with the Southeast Energy Efficiency Alliance (SEEA) to receive funding from the federal Department of Energy (DOE) through their Better Buildings Program Grant, administered through SEEA. Carrboro will use most of these funds in the first year of the grant to establish a commercial energy efficiency revolving loan fund for Carrboro businesses. These funds will be administered in a manner similar to Carrboro's existing Small Business Revolving Loan Fund. The goals of these loans include:

- Reduced energy consumption (a general objective of loans and associated retrofits is a minimum improvement in energy efficiency of 15-20%)
- Reduced energy bills for local businesses
- Pilot project for Carrboro, with the hopes of expanding the program in future years

Carrboro is creating an Approved Contractors List from which participating loan recipients will select the contractor(s) who will carry out the work described above. Contractor selection is ultimately up to loan recipients.

This form is the application to be placed on the Approved Contractor List. If you and your company wish to participate in this program please provide all requested information below, read the terms and conditions, and sign this application. Return the completed application form and appropriate insurance documentation to Nora Barger by email at [nbarger@cleanenergysol.com](mailto:nbarger@cleanenergysol.com) or by mail at 301 West Main Street | Carrboro, NC 27510. Carrboro, through its contractor Clean Energy Solutions, will provide written notice within 30 days of receipt of this Application/ Agreement either approving your status or requesting any additional information needed to complete your application.

Thank you for your interest. If you have any questions please contact Nora Barger, Chapel Hill/Carrboro Energy Efficiency Program Coordinator by email at [nbarger@cleanenergysol.com](mailto:nbarger@cleanenergysol.com) or by phone at 919.918.7334.

Business Name: \_\_\_\_\_

Type of Business: \_\_\_\_\_

Address: \_\_\_\_\_

Federal Tax Identification Number: \_\_\_\_\_

Telephone Number: \_\_\_\_\_ E-mail Address: \_\_\_\_\_

Primary Contact: \_\_\_\_\_ Job Title: \_\_\_\_\_

Contractor License Number: \_\_\_\_\_

This Application/Agreement sets out the terms and conditions under which contractors shall participate in the Carrboro Energy Efficiency Program. Under this Application/Agreement Contractors and Energy Auditors (hereafter referred to as "Contractors") agree to accept



referrals of eligible customers from Carrboro's Program and to meet Program requirements and standards in doing so.

Carrboro will make available the following services and support to Contractors:

- Promotion of Approved Contractors in Town program marketing;
- Referrals of customers;
- Affiliation with Duke Energy, PSNC, and potentially other incentive resources;
- Web-based program communications for customer referral, project tracking, and reporting to reduce paperwork and promote timely communications;
- Quality assurance (QA), quality control (QC) and monitoring and verification with prompt feedback to the Contractor to ensure adherence to high standards of quality; and
- Easy access to Carrboro and Clean Energy Solutions staff for prompt response to program issues.

By executing this Application/Agreement, the Contractor agrees to play an active role in the Program by providing high-quality services to Program customers. As a condition of participating in the Program and accessing Carrboro's financial benefits, the Contractor agrees that:

**1. The Contractor shall provide Carrboro with proof of the following:**

1. One of the following:
  - a. A satisfactory Dun and Bradstreet Rating, or
  - b. Membership in the Better Business Bureau, or
  - c. Specific evidence of business capacity including the following:
    - a satisfactory banking reference;
    - a minimum of three current satisfactory professional/trade references, such as suppliers of materials, tools, credit;
    - a minimum of three satisfactory references from customer served within the past 6 months;
    - confirmation that the firm has been in business for three years;
    - confirmation that the principals in the business have a satisfactory individual credit score with no outstanding liens, judgments or a bankruptcy within the last seven (7) years, and
    - confirmation that the principals have a net worth of at least \$50,000, verified by an audited financial statement or the last two year's tax returns.
2. For commercial audit, experience and ability providing Level II ASHRAE Audits
3. BPI certification
4. NC licensure
5. Commercial general liability insurance for bodily injury liability, including death, and property damage liability, incurred in connection with the performance of work in the Program, with minimum limits of \$1,000,000 in respect of claims arising out of personal injury or sickness or death of any one person, \$1,000,000 in respect of claims arising out of personal injury, sickness or death in any one accident or disaster, and \$1,000,000 in respect of claims arising out of property damage in any one accident or disaster; and
6. Commercial automobile liability insurance in respect of motor vehicles owned, licensed or hired by the Contractor and the Subcontractors for bodily injury liability, including death and property damage, incurred in connection with the performance of work in the Program, with minimum limits of \$500,000 in respect of claims arising out of personal injury, sickness, or death of any one person, \$1,000,000 in respect of claims arising out of

personal injury, sickness or death in any one accident or disaster; and \$500,000 in respect of claims arising out of property damage in any one accident or disaster: and

7. Workers' Compensation Policy covering the obligations of the Contractor as required under the provisions of the Workers' Compensation Law, Employers Liability, and Disability Benefits.

If any of the requirements above are not met, Carrboro reserves the right to waive the requirement[s] for a particular contractor upon submission of a written request for an exception showing good cause for the requested waiver. The request should be accompanied by a detailed, reasonable, and credible explanation of the reasons for failure to meet any of the requirements so marked. However, Carrboro is under no obligation to approve any or all such requests.

## **2. The Contractor shall properly respond to customer referrals by Carrboro**

Initial energy audits will be performed by Southern Energy Management. Suggested measures will include, but are not limited to:

<b>Measure</b>	<b>Utility Incentive</b>	<b>Segment Targeted</b>
Lighting Upgrades	\$3-60 per fixture (Duke)	All
LED Exit Signs	\$12 per sign (Duke)	All
Occupancy Sensors	\$20-\$40 per sensor (Duke)	All
Air Conditioners	\$20-\$40 per ton (Duke)	All
Heat Pumps	\$20-\$40 per ton (Duke)	All
Window AC Units	\$25-\$50 per unit (Duke)	All
Water Heaters	\$2000-\$9000 per unit (Duke)	All
Tankless Water Heater	\$250 (PSNC)	All
Programmable Thermostats	\$50 per unit (Duke)	All
Window Film	\$1 per sq ft (Duke)	All
Motors	\$4-\$10 per HP (Duke)	All
Pumps	\$122-\$400 per pump (Duke)	All
VFDs	\$40-\$100 per HP (Duke)	All
Vending Misers	\$50 (Duke)	All
Display Night Cover	\$5/ln. ft. (Duke)	All
Commercial Refrigerator	\$50-\$90 (Duke)	Food Services
Ice Maker	\$100-\$500 (Duke)	Food Services
Ice Machine	\$150 (Duke)	Food Services
Oven	\$1,000 (Duke)	Food Services
Fryer	\$150 (Duke)	Food Services
Griddle	\$200 (Duke)	Food Services
Steam Cooker	\$600 (Duke)	Food Services



Freezer	\$150 (Duke)	Food Services
Commissioning		All
Retrocommissioning		All
Controls Upgrade		All
Insulation Upgrades		All
Solar Thermal (hot water)		All
Solar PV		All

After completion of the energy audit, the customer will interact with Contractors to solicit bids for work to be performed. The Contractor recognizes that customer personal data and utility usage information that may be shared with the Contractor must be treated as confidential and not disclosed to any party other than Carrboro, subject to applicable laws. The requirement for confidential treatment of customer information shall survive the termination of this Application/Agreement.

### **3. Business Practices**

The contractor shall treat Program customers fairly and attempt in good faith to deliver promised services in a timely and responsible manner. Contractor shall perform work within 60 days of contracting with client, unless otherwise specified.

The contractor shall properly represent the relationship of the Contractor to Carrboro. The Contractor is an independent contractor and an Approved Contractor in the Carrboro Energy Efficiency Program. Neither Contractors nor their employees shall represent themselves as employees of or certified by Carrboro.

The contractor shall maintain all relevant licenses as required by federal, state, county or municipal governments or any other agencies for work in the trades it undertakes through this Program.

The contractor shall obtain from customers all required authorizations, including homeowner permission to perform work and sign-offs that work was completed.

The contractor shall provide warranty for all labor and materials for a minimum of one (1) year from the date the service is performed. Equipment installed shall carry manufacturer's warranty.

If a Contractor becomes involved in a dispute with a customer over business practices, the Contractor shall work with Carrboro to resolve the dispute amicably. If such discussion does not produce an outcome acceptable to the customer and the Contractor, the Contractor shall settle the dispute through the Contractor's customer complaint resolution process. In any event the Contractor shall hold Carrboro harmless from any claim or suit arising from work in the Program, including, but not limited to any claim or suit resulting from or related to mildew, fungus, moisture intrusion or mold of every type and nature.

Contractor shall allow field inspections and Quality Assurance (QA), by Carrboro, or Carrboro - designated inspectors, of work that has been performed. Contractor, upon request of Carrboro

and at no additional cost to the customer, shall make reasonable repairs or corrections to work that the Contractor has performed to bring such work up to Program standards.

Contractors performing walkthrough assessments, audits and/or retrofit work will conduct themselves in a professional manner at all times. Any one of the following actions will remove a Contractor or their business from the program: smoking in or on a resident's property without permission, illicit drug use, and drinking alcohol on the job.

**4. Contractor recognizes that participation is at the Town of Carrboro's discretion**

Contractor shall not employ as a subcontractor any firm or person who has been suspended or terminated from this Program without Carrboro prior written permission.

Carrboro reserves the right to make changes to the Program upon notice to Contractors.

Contractor acknowledges that participation in the Program is voluntary, and Carrboro may suspend or terminate Contractor's participation in the Program for any reason, including but not limited to, failure to maintain these standards. Contractor acknowledges that failure to follow Program requirements and procedures, including processing of required documents and reporting, will result in removal from this Program. Contractor acknowledges that the Town expects a high rate of completed retrofits, and may terminate a contractor's prequalification if the contractor is not successful in promoting the installation of retrofits subsequent to audits. In all cases involving termination of firm's participation, Carrboro written decision is final.

The Town of Carrboro will provide equal opportunity access to all contractors. Program participants will not be discriminated against based upon gender, age, ethnicity, sexual orientation, gender identity or gender expression.

**APPLICANT CERTIFICATION**

I certify, under the penalties of law, that the statements made in this Application/Agreement have been examined by me, and are true and complete. I understand that by signing this Application/Agreement, I consent to any other inquiry to verify or confirm the information I have given.

Signed:

\_\_\_\_\_  
Contractor

\_\_\_\_\_  
Date

\_\_\_\_\_  
Carrboro

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name, Title

# Carrboro's Commercial Energy Efficiency Revolving Loan Fund

**If you are a small business owner, you could:**

- Receive 3% loan for 10 years to invest in energy efficiency at your business
  - Minimum Loan Size \$1,500
- Access a network of pre-qualified contractors and quality assurance

**Eligible measures include most energy efficiency measures, such as:**

- Lighting upgrades
- HVAC upgrades
- Cool roofs
- Water heater upgrades
- Windows
- Motors, pumps, drives
- New equipment such as
  - Refrigerators
  - Fryers
  - Ovens
  - Ice machines
- Controls
- Retrocommissioning
- Insulation
- Solar (in combination with other significant energy efficiency improvements)

**Program will begin in Winter 2010/11**

To learn more,

Email: [nbarger@cleanenergysol.com](mailto:nbarger@cleanenergysol.com) or

call: 919.918.7334



STATE OF NORTH CAROLINA  
COUNTY OF ORANGE

MEMORANDUM OF AGREEMENT

TOWN OF CHAPEL HILL AND TOWN OF CARRBORO  
BETTER BUILDINGS PROGRAM (A Subaward from the Retrofit Ramp-Up)

THIS AGREEMENT, made and entered into between the Town of Chapel Hill, North Carolina, a North Carolina municipal corporation, 405 Martin Luther King Jr. Blvd., Chapel Hill, NC 27514 (hereinafter referred to as "Chapel Hill"), and the Town of Carrboro, North Carolina, a North Carolina municipal corporation, 301 West Main Street, Carrboro, NC 27510 (hereinafter referred to as "Carrboro") (Chapel Hill and Carrboro being sometimes referred to collectively herein as the "Towns"), for a joint project for the Better Buildings Program, a subaward from the Southeast Energy Efficiency Alliance which is funded by the U.S. Department of Energy and described in each Town's contract with the Southeast Energy Efficiency Alliance found in Exhibits A and B:

WHEREAS, the parties to this agreement are public bodies, politic and corporate, under the laws of the State of North Carolina; and

WHEREAS, the parties are vested with the power and authority to undertake joint projects for the health, safety, and general welfare of the citizens; and

WHEREAS, the Towns have collaborated, through the Southeastern Energy Efficiency Alliance, on a joint proposal to the United States Department of Energy; and

WHEREAS, the Southeastern Energy Efficiency Alliance is offering one year of grant funds eligible to the Town of Chapel Hill in the full amount of \$150,000, and to the Town of Carrboro in the full amount of \$75,000; and

WHEREAS, the Towns are required to demonstrate progress in the first six months of the grant period to receive the full grant award; and

WHEREAS, if the Towns collaborate and perform successfully during the grant period, they will be eligible to compete with other jurisdictions working with the Southeastern Energy Efficiency Alliance for additional grant monies.

NOW, THEREFORE, in consideration of the foregoing and of the mutual promises and obligations set forth herein, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. The Towns will jointly support contract services to administer the project. With a successful six-month performance evaluation by the Southeast Energy Efficiency

Alliance, in Year One Chapel Hill will provide up to \$43,100 in funding and Carrboro will provide up to \$10,000, per the project budgets included in Exhibits A and B. Chapel Hill's funding for program management includes activities from both the Energy Efficiency and Conservation Block Grant Program and the Better Buildings Program Grant through the Southeast Energy Efficiency Alliance. Services dedicated to activities in each jurisdiction will be prorated based on this allocation, with administrative details determined by mutual agreement of Town staff dedicated to the project. The contract for program management for both Towns will be administered by Chapel Hill. Once each Town has signed a contract with the Southeast Energy Efficiency Alliance and funds have been received, Chapel Hill will invoice Carrboro for program management costs that are specific to hours worked for Carrboro. Such hours will be reported on invoices from the program management contractor. Because the program management contract will be between the Town of Chapel Hill and the contractor, Chapel Hill will pay all contractor invoices for both Towns upon receipt. In the event of a successful six-month program evaluation for both Towns by the Southeast Energy Efficiency Alliance, both Towns will receive the second half of their Year One allotment. Once these funds are received, Chapel Hill will continue making program management payments in the manner described above.

2. Chapel Hill and Carrboro staff will work with the contractor to advertise and recruit additional contract support staff. Hiring decisions will be based upon mutual agreement of the contractor and staff from both Towns.
3. Chapel Hill and Carrboro will share expenses from grant monies for monitoring and verification. Chapel Hill will provide \$17,000 and Carrboro will provide \$5,000, each as "not to exceed" allocations per the project budgets included in Exhibits A and B. These funds will support shared software licensing cost and customer specific monitoring and verification expenses. Similar to the arrangement noted above for program management, Chapel Hill will pay invoices related to monitoring and verification costs for both Towns. Once the Southeast Energy Efficiency Alliance has confirmed the final cost for monitoring and verification, Chapel Hill will invoice Carrboro for the costs that are specific to monitoring and verification for Carrboro. Such costs will be reported on invoices from the monitoring and verification contractor with the Southeast Energy Efficiency Alliance. In the event of a successful six-month program evaluation for both Towns by the Southeast Energy Efficiency Alliance, both Towns will receive the second half of their Year One allotment. Once these funds are received, Chapel Hill will continue making monitoring and verification payments in the manner described above.
4. Both Towns agree to coordinate efforts closely, meet regularly, pursue the project to maximize the likelihood of continue financial support through the grant, and to seek opportunities to partner with other entities to leverage technical and financial participation.
5. Carrboro and Chapel Hill each agree to keep appropriate records to be used as documentation for grant reimbursement, and to satisfy all quarterly reporting requirements. Each jurisdiction will enter into a separate grant agreement with SEEA;

final execution of the agreement with SEEA for each jurisdiction will be contingent upon execution in the other jurisdiction. This agreement shall commence upon execution of the respective grant agreements. This agreement will be in effect until the grant is completed and the Towns have received the entire reimbursement.

6. Project reports will be completed and submitted to SEEA by the contractor with review from each jurisdiction.
7. The total financial commitment of Carrboro to Chapel Hill for the services covered by this agreement is \$15,000.
8. This agreement may be amended by mutual written agreement of Chapel Hill and Carrboro.
9. This Agreement constitutes the entire Agreement of the parties hereto.

IN WITNESS THEREOF, the parties to this Agreement have duly and validly approved it and caused it to be executed in their behalf by the undersigned agents.

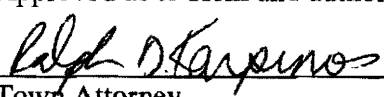
This, the 27<sup>th</sup> day of Sept., 2010.

TOWN OF CHAPEL HILL


  
Roger Stanch, Town Manager

Attest: Town Clerk

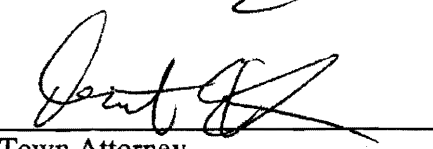
Approved as to form and authorization:

  
Town Attorney

TOWN OF CARRBORO

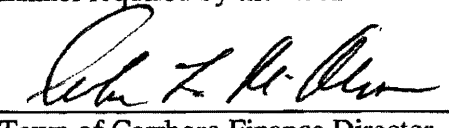
  
Steve Stewart, Town Manager

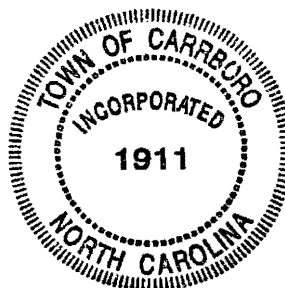
Attest: Town Clerk

  
Town Attorney

This Agreement has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act.

 9/23/10  
Town of Chapel Hill Finance Officer

 9/23/10  
Town of Carrboro Finance Director



## EXHIBIT A

Southeast Community Retrofit Ramp-up Consortium

Southeast Energy Efficiency Alliance  
Southeast Community Retrofit Ramp-Up Consortium

Grant Agreement

Project Title: Chapel Hill, North Carolina

DOE Grant Number: DE-EE0003375

Recipient: Town of Chapel Hill, North Carolina

Contract Administrator:

John Richardson  
Sustainability Officer  
Phone: (919) 969-5075  
Fax: (919) 969-2063  
Email: jrichardson@townofchapelhill.org

Federal I.D. Number: 56-6001199

Effective Date: \_\_\_\_\_, 2010

Expiration Date: June 2, 2013

## EXHIBIT A

Southeast Community Retrofit Ramp-up Consortium

This Grant Agreement ("Agreement") is made and entered into as of the Effective Date by and between the Southeast Energy Efficiency Alliance ("SEEA") and Recipient.

Whereas, Recipient has submitted to SEEA an application requesting a grant of monies to engage in an energy efficiency retrofit program as more particularly described on Exhibit A (the "Project");

Whereas, SEEA desires to fund such Project in order to share best practices and leverage a common approach to program structure, evaluation and data-sharing, and to create a model for replication of the project across the Southeastern United States and beyond;

Whereas, SEEA has received a grant from the United States Department of Energy under the American Recovery and Reinvestment Act of 2009 (the "Reinvestment Act") to fund projects like the Project; and

Whereas, the parties desire to enter into this Agreement and intend to be bound by its terms.

Now, therefore, for and in consideration of the mutual promises contained in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties mutually agree as follows:

1. **Grant Documents.** The documents described below are collectively referred to as the "Grant Documents". In the case of conflict between any of these documents, each shall have priority over all others in the order listed below. Upon execution and delivery of this Agreement, it and the other Grant Documents and items required hereunder will constitute a valid and binding agreement between the parties, enforceable in accordance with the terms thereof. The Agreement constitutes the entire agreement between the parties, superseding all prior oral and written statements or agreements.

The Grant Documents consist of:

- (a) This Agreement
- (b) Exhibit A - Project Description
- (c) Exhibit B - Project Budget
- (d) Exhibit C - General Terms and Conditions.
- (e) Exhibit D - Reporting and Audit Requirements
- (f) Exhibit E - Definitions
- (g) Exhibit F - Request for Reimbursement Form
- (h) Exhibit G - Form for Monthly Progress Report

2. **Purpose.** The purposes of the grant are for establishing and/or expanding Recipient's building retrofit programs; retrofitting Recipient's commercial and residential facilities; distributing second- and third-year funds to Recipient on a performance basis; and supporting the development of local retrofit workforces.



## EXHIBIT A

Southeast Community Retrofit Ramp-up Consortium

8. **Refunds and Reversion of Unexpended Funds.** Recipient shall repay to SEEA any and all: (a) compensation it has received that is in excess of the payment to which it is entitled herein, including any interest earned on funds granted pursuant to this Agreement; and (b) unexpended Grant monies upon termination of this Agreement.

9. **Reporting Requirements.** Reporting requirements are set forth on Exhibit D. Reports shall be made on the form set forth on Exhibit F.

10. **Advance Understanding Concerning Publicly-Financed Energy Improvement Programs.** The parties recognize that Recipient may use funds under this Agreement for Property-Assessed Clean Energy (PACE) loans, Sustainable Energy Municipal Financing, Clean Energy Assessment Districts, Energy Loan Tax Assessment Programs (ELTAPS), or any other form or derivation of Special Taxing District whereby taxing entities collect payments through increased tax assessments for energy efficiency and renewable energy building improvements made by their constituents. The Department of Energy intends to publish "Best Practices" or other guidelines pertaining to the use of funds made available to Recipient under this award pertaining to the programs identified herein. By accepting Funds under this Agreement, Recipient agrees to incorporate, to the maximum extent practicable, those Best Practices and other guidelines into the Project within a reasonable time after notification by SEEA or the DOE that the Best Practices or guidelines have been made available.

#### 11. Indemnification.

(a) To the maximum extent allowed by Law, Recipient will indemnify and hold harmless SEEA and its directors, officers, employees and agents (the "*Indemnitees*") from and against any and all third party claims (including those made by Recipient's directors, officers and employees), losses, damages, suits, fees, judgments, costs and expenses (collectively referred to as "*Claims*"), including attorneys' fees incurred in responding to such Claims, that the Indemnitees may suffer or incur arising out of or in connection with: (i) Recipient's gross negligence, willful misconduct or breach of the representations and warranties set forth herein; (ii) any agreement between Recipient and any subsequent recipient of Funds, or any contractor, employee or consultant of any of them; or (iii) any personal injury (including death) or damage to property resulting from Recipient's, its subsequent recipients or their respective contractors, employees or consultants acts or omissions.

(b) Notwithstanding any unenforceability of Recipient's obligations under Section 11(a) (the "*Indemnification Obligations*") arising directly or indirectly from Recipient's status as a municipal corporation: (i) the parties acknowledge that the Indemnification Obligations are fundamental to the basis of the bargain under this Agreement, and that SEEA would not enter into this Agreement or Grant Funds absent such obligations; (ii) SEEA shall be entitled to the full benefit of the Indemnification Obligations; (iii) Recipient shall promptly pay to SEEA all costs incurred by SEEA in pursuing such benefit or contesting the enforceability of any Indemnification Obligation; and (iv) all such costs will be deemed reimbursable costs, which Recipient will pay to SEEA upon SEEA's request.

#### 12. Limits on Liability.

(a) EXCEPT AS SET FORTH IN SECTION 12(B), IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, CONTINGENT OR CONSEQUENTIAL LOSS OR DAMAGES SUFFERED BY THE OTHER PARTY

## EXHIBIT A

Southeast Community Retrofit Ramp-up Consortium

OR ANY THIRD PARTY, INCLUDING LOSS OF USE, DATA, BUSINESS, ANTICIPATED SAVINGS, PROFIT, REPUTATION, GOODWILL OR REVENUE, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, WHETHER AS A RESULT OF A BREACH OF THIS AGREEMENT OR OTHERWISE AND WHETHER IN AN ACTION IN LAW, EQUITY, CONTRACT OR TORT (INCLUDING NEGLIGENCE OR STRICT LIABILITY), EVEN IF THE OTHER PARTY OR ANY THIRD PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. Except as set forth in Section 12(b), the liability of each party to the other party for any direct damages resulting from, arising out of or relating to this Agreement, whether based on an action or claim in contract, negligence, tort, strict liability or otherwise, will not exceed, in the aggregate, an amount equal to Funds paid by SEEA hereunder prior to the assertion of the first claim hereunder.

(b) The limitations set forth in Section 12(a) are not applicable to: (i) damages recoverable under Section 11; or (ii) damages resulting from, arising out of or relating to the fraudulent conduct, gross negligence or willful misconduct of a party.

13. **Notice.** All notices and communications required or permitted to be given by either party under this Agreement ("*Notices*") shall be in writing. Each party's address for purposes of this Section 13 (such party's "*Notice Address*") will be as set forth on the cover page hereto, provided that each party will be entitled to change its Notice Address upon notice to the other party. No Notice will be effective unless given in accordance with one or more of Sections 13(a) – (e); *provided, however*, that notice by email pursuant to Section 13(e) will not be effective notice for purposes of Section 11 of this Agreement or Section 4 of Exhibit C.

(a) *Hand Delivery.* Notice may be hand delivered. Such Notices will be deemed received immediately upon actual delivery.

(b) *Overnight.* Notice may be sent to the receiving party's Notice Address by an internationally recognized express overnight courier with a reliable system for tracking delivery. Such Notices will be deemed received immediately upon actual delivery.

(c) *Certified Mail.* Notice may be sent to the receiving party's Notice Address by registered or certified mail, return receipt requested, postage prepaid. Such Notices will be deemed received on the fourth business day after sending.

(d) *Fax.* Notice may be sent to the receiving party's Notice Address by confirmed fax transmission. Such Notices will be deemed received on the date of such fax transmission, provided that the sending fax machine used for such transmission generates a report showing successful completion of such transaction; provided, however, that if such fax transmission is sent after 5:00 p.m. local time at the location of the receiving fax machine, or is sent on a day other than a business day, such notice or communication will be deemed given as of 9:00 a.m. local time at such location on the next succeeding business day.

(e) *Email.* Notices sent by email to the receiving party's Notice Address will be deemed received when the recipient acknowledges having received that email, either by an email sent to the email address for the sender on the signature page of this Agreement or by a Notice given in accordance with one or more of Sections 13(a) – (d) (with an automatic "read receipt" not constituting acknowledgment of an email for purposes of this Section 13(e)).

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To provide Chapel Hill's access to financing programs, SEEA will allocate funds to a Regional Loan Loss Reserve (LLR) for a Financing Program that SEEA establishes for all communities. SEEA will select a leading team which will establish a program throughout the Southeast to provide process, market, and service a loan program. Consistent with the program strategy above, the LLR will not set allocations by community, but rather will use a single program serving all participating communities. Chapel Hill will not be obligated to use the LLR.

If Chapel Hill is successful in meeting Year One goals, SEEA agrees to make available on a competitive basis to Chapel Hill remaining funds in SEEA's award from the USDOE. SEEA and Chapel Hill understand that funds available after Year One will be allocated to communities based on completed project agreements with customers, with a minimal cost-share or leveraging requirement of 50%. To do so, SEEA intends to establish a central bank account and process, consistent with DOE guidelines, that disburses incentives and program support funds. These future allotments allocated would be split between customer incentives and program support in any manner Chapel Hill decides but following SEEA guidelines. SEEA will plan to disburse 50% of the "earned" funds once a customer Letter of Intent (LOI) is signed. The remaining 50% will be sent upon the signing of a customer agreement or contract to move forward. If Carrboro establishes a consistent stream of small customer transactions, SEEA may convert that formula to an advance based on the monthly average of total project dollar value in energy efficiency projects completed. SEEA will establish a dollar ceiling for allocation of the \$7.4 M that any one community cannot surpass. If the federal government passes Home Star/Building Star legislation, SEEA will adjust the leveraging requirement accordingly.

In part because SEEA is establishing a first come, first served basis for funds available after Year One, SEEA will establish ground rules on acceptable customer incentive levels. SEEA will also establish customer incentive limitations as a percentage of total project value by customer end-use and measure category. These incentive formulas would be established in consultation with Chapel Hill, but will be consistent across the region (controlling for utility rates).

The steps described in the below in the schedule show details of the proposed approach for implementing the project. This approach has been approved by the Carrboro Board of Aldermen and Chapel Hill Town Council and updated for consistency based developments since June. Steps for project advancement completed prior to August 2010 are not included.

**Conditions:** Assessment of milestones at 6 and 12 months by SEEA.

SEEA will assess the milestones (indicated below) to insure that the project goals have been achieved. Chapel Hill will receive their Year One allocation in two allotments, with the second contingent (50%) upon reaching specific milestones, during the first six months of program start-up. These milestones will focus on program management in place, program designs completed, leverage sources committed, utility relationships formalized, and marketing strategies underway. If Chapel Hill fails to meet midterm milestones, the remaining Year One funds (50%) are subject to a termination in December 2010 (based on the date of receipt of funding by SEEA from the USDOE). With a successful 6-month performance evaluation, Chapel Hill will gain access to all remaining Year One funds. An evaluation by SEEA in June, 2010 will review the success of the program, largely focusing on the deployment of incentive dollar,

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leveraged funds and metrics related to community energy efficiency and conservation.

Schedule:

September 2010

- Towns to check with State Historic Preservation Office about guidance on home retrofits
- Towns simultaneously finalize SEEA contracts and Memorandum of Agreement for shared administrative position and monitoring and verification support from SEEA
- Towns finalize contract for program management
- Clean Energy Solutions Inc (CESI), under contract by the Town of Chapel Hill and supporting the Town of Carrboro through a memorandum of agreement with the Town of Chapel Hill, drafts a program design for Carrboro and Chapel Hill with Town input (dependent on Duke Energy's program)
  - Application forms
  - Marketing materials
  - Qualifying criteria
  - Lending opportunities
  - Finalize incentives (with Duke Energy info)
- Chapel Hill completes budget amendment to accept grant funds
- Towns and CESI meet with Jeff Hughes of UNC Environmental Finance Center
- Monthly conference call CESI and Towns

October 2010

- Program administrator hired and onboard
- Eligibility requirements for energy grants finalized
- CESI and Towns finalize program design
- Monthly conference call CESI and Towns

November 2010

- Town begins accepting residential applications
- Towns begin identifying contractors
- Monthly conference call CESI and Towns

December 2010

- Towns finalize list of contractors
- Contractors begin doing audits and energy improvements in residential neighborhoods and continue this for next six months
- 6-month evaluation for both Towns
- Monthly conference call CESI and Towns

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## EXHIBIT C

## General Terms and Conditions

1. **Affirmative Covenants.** (a) Compliance with Laws. Recipient shall obtain any required permits, ensure the safety and structural integrity of any repair, replacement, construction or alteration, and perform and maintain the Project in compliance with all federal, state and local laws and regulations, including, without limitation, environmental, zoning and other land use laws and regulations. Recipient agrees to take reasonable steps to advise Project participants that they shall comply in the same manner.

(b) Insurance. Recipient agrees to keep structures or improvements of any sort constituting the Project fully insured at all times during construction and to keep fully insured all building materials at any time located on the Project. Recipient will ensure that all contractors furnish adequate payment and performance bonds.

(c) Right of Entry and Inspections. Recipient shall permit representatives of SEEA to visit Recipient's properties that are being used to perform work in connection with the Project to examine such work and property purchased with the Funds, and to review activities pursuant to the Grant. Recipient shall require its direct and indirect subrecipients, contractors and subcontractors to grant SEEA representatives access to properties being used to perform work in connection with the Project for the purposes set forth above.

(d) Material Modifications. Any proposed material modification of the Project shall be subject to approval by SEEA.

(e) Publicity. An acknowledgment of DOE support and a disclaimer must appear in the publication of any material, whether copyrighted or not, based on or developed under the Project, as follows:

*Acknowledgment:* "This material is based upon work supported by the Department of Energy (add name(s) of other agencies, if applicable) under Award Number(s) [enter the award number(s)]."

*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."

(f) Schedule of Expenditures. If Recipient is covered by the Single Audit Act Amendments of 1996 and OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations,"

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Recipient shall separately identify the expenditures of Funds as expenditures of Federal awards under the Recovery Act on the Schedule of Expenditures of Federal Awards (SEFA) and the Data Collection Form (SF-SAC) required by OMB Circular A-133. OMB Circular A-133 is available at <http://www.whitehouse.gov/omb/circulars/a133/a133.html>. This shall be accomplished by identifying expenditures for Federal awards made under the Recovery Act separately on the SEFA, and as separate rows under Item 9 of Part III on the SF-SAC by CFDA number, and inclusion of the prefix "ARRA-" in identifying the name of the Federal program on the SEFA and as the first characters in Item 9d of Part III on the SF-SAC. Recipient agrees to separately identify to each subrecipient, and document at the time of subaward and at the time of disbursement of funds, the Federal award number, CFDA number and amount of Recovery Act funds.

(g) Compliance with the Davis-Bacon Act and Contract Work Hours and Safety Standard Act. Recipient shall comply with the Davis-Bacon Act of 1931 ("DBA") and the Contract Work Hours and Safety Standard Act, including the provisions thereof attached hereto as Schedule 2 to this Exhibit C. Without limitation of the foregoing, Recipient shall:

- (i) obtain, maintain, and monitor all DBA-certified payroll records submitted by its subrecipients and contractors at any tier under this Agreement;
- (ii) review all DBA-certified payroll records for compliance with DBA requirements, including applicable Department of Labor ("DOL") wage determinations;
- (iii) notify SEEA of any non-compliance with DBA requirements by subrecipients or contractors at any tier, including any non-compliances identified as the result of reviews performed pursuant to paragraph (ii) above;
- (iv) address any subrecipient and any contractor DBA non-compliance issues; if DBA non-compliance issues cannot be resolved in a timely manner, forward complaints, summary of investigations and all relevant information to DOE and SEEA;
- (v) provide SEEA with detailed information regarding the resolution of any DBA non-compliance issues;
- (vi) perform services in support of SEEA and DOE investigations of complaints filed regarding noncompliance by subrecipients and contractors with DBA requirements;
- (vii) perform audit services as necessary to ensure compliance by Subrecipients and contractors with DBA requirements and as requested by SEEA or the DOE; and
- (viii) provide copies of all records upon request by SEEA, DOE or DOL in a timely manner.

(b) Conflicts of Interest. Recipient, as a local government entity, shall comply with all conflicts of interest laws, rules and regulations applicable to it in the State.

(i) Additional Requirements. Recipient shall comply with all legal requirements applicable to the use of the Grant.

2. **Representations and Warranties.** In order to induce SEEA to enter into this Agreement and to make the Grant as herein provided, Recipient after reasonable inquiry makes the following representations, warranties and covenants, which shall remain in effect after the execution and delivery of

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- (v) Abandonment of the Project. If Recipient abandons or otherwise ceases to continue to make reasonable progress towards completion of the Project.

5. SEEA's Rights and Remedies. If an Event of Default shall occur, SEEA shall have the following rights and remedies, all of which are exercisable at SEEA's sole discretion, and are cumulative, concurrent and independent rights:

- (i) Project Termination. If an Event of Default occurs, SEEA may, at its discretion suspend and/or terminate all obligations of SEEA hereunder. If, in the judgment of SEEA, such failure was due to no fault of Recipient, amounts required to resolve at minimum costs any irrevocable obligations properly incurred by Recipient shall, in the discretion of SEEA, be eligible for assistance under this Agreement.
- (ii) Additional Remedies. If an Event of Default occurs, SEEA shall have the power and authority, consistent with its statutory authority: (a) to prevent any impairment of the Project by any acts which may be unlawful or in violation of this Agreement or any other item or document required hereunder, (b) to obtain title to or otherwise preserve or protect its interest in the Project and any property acquired with Funds, (c) to compel specific performance of any of Recipient's obligations under this Agreement, (d) to obtain return of all Grant Funds, including equipment if applicable and/or (e) to seek damages from any appropriate person or entity. SEEA, or its designee, may also, at SEEA's sole discretion, continue to complete the Project, or any portion thereof deemed appropriate by SEEA, and Recipient shall cooperate in the completion of the Project. SEEA shall be under no obligation to complete the Project.
- (iii) Nonwaiver. No delay, forbearance, waiver, or omission of SEEA to exercise any right, power or remedy accruing upon any Event of Default shall exhaust or impair any such right, power or remedy or shall be construed to waive any such Event of Default or to constitute acquiescence therein. Every right, power and remedy given to SEEA may be exercised from time to time and as often as may be deemed expedient by SEEA.

6. Miscellaneous. (a) Modification. The terms and conditions of this Agreement may not be amended, waived or modified, except in a writing signed by both parties.

(b) Benefit. The parties do not intend to create rights for any person as a third party beneficiary of this Agreement; *provided, however*, that this section shall not preclude SEEA from bringing claims on behalf of an Indemnitee under Section 11 of the Agreement.

(c) Further Assurance. In connection with and after the disbursement of Funds under this Agreement, upon the reasonable request of SEEA, Recipient shall execute, acknowledge and deliver or cause to be delivered all such further documents and assurances, and comply with any other requests as may be reasonably required by SEEA or otherwise appropriate to carry out and effectuate the Grant as contemplated by this Agreement and the purposes of the Project.

(d) Compliance by Others. Recipient shall be responsible for compliance with the terms of this Agreement by any sub-grant recipient, including but not limited to, a political subdivision, public agency, or qualified non-profit organization to which funds or obligations are transferred, delegated or assigned pursuant to this Agreement. Delegation by Recipient to a sub-grant recipient of any duty or obligation

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hereunder does not relieve Recipient of any duty or obligation created hereunder. Failure by such sub-grant recipient to comply with the terms of this Agreement shall be deemed failure by Recipient to comply with the terms of this Agreement. Any such delegation of duties or obligations shall be in writing, signed by Recipient and sub-grant recipient.

(e) Independent Status of the Parties. The parties are independent entities and neither this Agreement nor any provision of it or any of the Grant Documents shall be deemed to create a partnership or joint venture between the parties. Further, neither the Agreement nor any of the Grant Documents shall in any way be interpreted or construed as making Recipient, its agents or employees, agents or representatives of SEEA. Recipient is and shall be an independent contractor in the performance of this Agreement and as such shall be wholly responsible for the work to be performed and for the supervision of its employees. In no event shall SEEA be liable for debts or claims accruing or arising against Recipient. Recipient represents that it has, or shall secure at its own expense, all personnel required in the performance of this Agreement. Such employees shall not be employees of, nor have any individual contractual relationship with, SEEA.

(f) Binding Effect Agreement Assignable. The terms hereof shall be binding upon and inure to the benefit of the successors, assigns, and personal representatives of the parties hereto; *provided, however*, that Recipient may not assign this Agreement or any of its rights, interests, duties or obligations hereunder or any Funds or other moneys to be advanced hereunder in whole or in part without the prior written consent of SEEA, which may be withheld, conditioned or delayed for any reason. Any attempted assignment (whether voluntary or by operation of law) in violation of this Section 6(f) shall be void *ab initio*.

(g) Governing Law, Construction and Jurisdiction. This Agreement and the other Grant documents and all matters relating thereto shall be governed by and construed and interpreted in accordance with the laws of the State of Georgia, notwithstanding the principles of conflicts of law. The headings and section numbers contained herein are for reference purposes only. The terms of this Agreement shall be construed according to their plain meaning, and not strictly construed for or against either party hereto. Recipient hereby submits to the jurisdiction of the state and Federal courts located in Georgia and agrees that SEEA may, at its option, enforce its rights under the Grant Documents in such courts. Capitalized terms used but not otherwise defined in this Agreement shall have the meaning ascribed to them in Exhibit E.

(h) Severability. In the event that any provision of this Agreement is held invalid or unenforceable in any circumstances by a court of competent jurisdiction, the remainder of this Agreement, and the application of such provision in any other circumstances, will not be affected thereby.

(i) Additional Remedies. Except as otherwise specifically set forth herein, the rights and remedies provided hereunder shall be in addition to, and not in lieu of, all other rights and remedies available in connection with this Agreement.

(j) Survival. The sections of this Agreement that by their nature are intended to survive its expiration or termination, including Sections [to be determined] will survive the expiration or termination of this Agreement.

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government, or any private entity, for any casino or other gambling establishment, aquarium, zoo, golf course, or swimming pool.

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

(1) to examine any records of the contractor or grantee, any of its subcontractors or subgrantees, or any State or local agency administering such contract that pertain to, and involve transactions that relate to, the subcontract, subgrant, grant, or subgrant; and

(2) to interview any officer or employee of the contractor, grantee, subgrantee, or agency regarding such transactions.

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

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

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

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

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

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

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

(2) Agency Action: Not later than 30 days after receiving an inspector general report of an alleged reprisal, the head of the agency shall determine whether there is sufficient basis to conclude that the non-Federal employer has subjected the employee to a prohibited reprisal. The agency shall either issue an order denying relief in whole or in part or shall take one or more of the following actions: (a) order the employer to take affirmative action to abate the reprisal; (b) order the employer to reinstate the person to the position that the person held before the reprisal, together with compensation including back pay, compensatory damages, employment benefits, and other terms and conditions of employment that would apply to the person in that position if the reprisal had not been taken; (c) order the employer to pay the employee an amount equal to the aggregate amount of all costs and expenses (including attorneys' fees and expert witnesses' fees) that were reasonably incurred by the employee for or in connection with, bringing the complaint regarding the reprisal, as determined by the head of a court of competent jurisdiction.

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

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

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

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

J. Availability of Funds. Funds obligated to this award are available for reimbursement of costs until 36 months after the award date.

K. Additional Funding Distribution and Assurance of Appropriate Use of Funds. Certification by Governor - For funds provided to any State or agency thereof by the American Reinvestment and

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(i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and, without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in § 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein, provided that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii)(A) The Contracting Officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the Contract shall be classified in conformance with the wage determination. The Contracting Officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

- (1) The work to be performed by the classification requested is not performed by a classification in the wage determination;
- (2) The classification is utilized in the area by the construction industry; and
- (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the Contracting Officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the Contracting Officer to the Administrator of

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the Wage and Hour Division, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.

(C) In the event the Contractor, the laborers or mechanics to be employed in the classification or their representatives, and the Contracting Officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the Contracting Officer shall refer the questions, including the views of all interested parties and the recommendation of the Contracting Officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii)(B) or (C) of this section, shall be paid to all workers performing work in the classification under this Contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the Contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, provided that the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(2) Withholding. The Department of Energy or the Recipient or Subrecipient shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the Contractor under this Contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Contractor or any subcontractor the full amount of wages required by the Contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the Contract, the Department of Energy, Recipient, or Subrecipient, may, after written notice to the Contractor, sponsor, applicant, or owner, take such

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or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a Contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on

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## Southeast Community Retrofit Ramp-up Consortium

the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity. The utilization of apprentices, trainees, and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended and 29 CFR part 30.

(5) Compliance with Copeland Act requirements. The Contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this Contract.

(6) Contracts and Subcontracts. The Recipient, Subrecipient, the Recipient's, and Subrecipient's contractors and subcontractor shall insert in any Contracts the clauses contained herein in (a)(1) through (10) and such other clauses as the Department of Energy may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The Recipient shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of the paragraphs in this clause.

(7) Contract termination; debarment. A breach of the Contract clauses in 29 CFR 5.5 may be grounds for termination of the Contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this Contract.

(9) Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this Contract shall not be subject to the general disputes clause of this Contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the Recipient, Subrecipient, the Contractor (or any of its subcontractors), and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(10) Certification of eligibility.

(i) By entering into this Contract, the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this Contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

## EXHIBIT A

Southeast Community Retrofit Ramp-up Consortium

SCHEDULE 3 TO EXHIBIT CIntangible Property

10 C.F.R. 600.136 (a) through (d)

§ 600.136 Intangible property.

(a) Recipients may copyright any work that is subject to copyright and was developed, or for which ownership was purchased, under an award. DOE reserves a royalty-free, nonexclusive and irrevocable right to reproduce, publish or otherwise use the work for Federal purposes and to authorize others to do so.

(b) Recipients are subject to applicable regulations governing patents and inventions, including government-wide regulations issued by the Department of Commerce at 37 CFR part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements."

(c) The DOE has the right to:

(1) Obtain, reproduce, publish or otherwise use the data first produced under an award; and

(2) Authorize others to receive, reproduce, publish, or otherwise use such data for Federal purposes.

(d)(1) In addition, in response to a Freedom of Information Act (FOIA) request for research data relating to published research findings produced under an award that were used by the Federal Government in developing an agency action that has the force and effect of law, the DOE shall request, and the recipient shall provide, within a reasonable time, the research data so that they can be made available to the public through the procedures established under the FOIA. If the DOE obtains the research data solely in response to a FOIA request, the agency may charge the requester a reasonable fee equaling the full incremental cost of obtaining the research data. This fee should reflect costs incurred by the agency, the recipient, and applicable subrecipients. This fee is in addition to any fees the agency may assess under the FOIA (5 U.S.C. 552(a)(4)(A)).

(2) The following definitions apply for purposes of this paragraph (d):

(i) *Research data* is defined as the recorded factual material commonly accepted in the scientific community as necessary to validate research findings, but not any of the following: preliminary analyses, drafts of scientific papers, plans for future research, peer reviews, or communications with colleagues. This "recorded" material excludes physical objects (e.g., laboratory samples). *Research data* also do not include:

(A) Trade secrets, commercial information, materials necessary to be held confidential by a researcher until they are published, or similar information which is protected under law; and

## EXHIBIT A

Southeast Community Retrofit Ramp-up Consortium

(B) Personnel and medical information and similar information the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, such as information that could be used to identify a particular person in a research study.

(ii) *Published* is defined as either when:

(A) Research findings are published in a peer-reviewed scientific or technical journal; or

(B) A Federal agency publicly and officially cites the research findings in support of an agency action that has the force and effect of law.

(iii) *Used by the Federal Government in developing an agency action that has the force and effect of law* is defined as when an agency publicly and officially cites the research findings in support of an agency action that has the force and effect of law.



## EXHIBIT A

Southeast Community Retrofit Ramp-up Consortium

- (a) A narrative statement evaluating and summarizing the completed Project including a concise statement of the Scope of Work in Exhibit A, a detailed description of the objectives Recipient hoped to accomplish with the Project, and comparison of the objectives with accomplishments;
- (b) A narrative description and evaluation of the energy efficiency improvements achieved or are expected to be achieved as a result of this Project;
- (c) A discussion of the extent to which local partners and stakeholders participated in the Project, with respect to both funding and effort or time;
- (d) A discussion of what Recipient might do differently on a similar future project (*i.e.*, "lessons learned");
- (e) Any other documents, reports or other evidence, including photographs necessary to verify that the Project has been concluded in compliance with this Agreement; and
- (f) A copy of Engineer's Certification of Completion, if applicable.

5. **Protected Personally Identifiable Information (PII).** Reports must not contain any Protected PII. PII is any information about an individual which can be used to distinguish or trace an individual's identity. Some information that is considered to be PII is available in public sources such as telephone books, public websites, university listings, etc. This type of information is considered to be Public PII and includes, for example, first and last name, address, work telephone number, e-mail address, home telephone number, and general educational credentials. In contrast, Protected PII is defined as an individual's first name or first initial and last name in combination with any one or more of types of information, including, but not limited to, social security number, passport number, credit card numbers, clearances, bank numbers, biometrics, date and place of birth, mother's maiden name, criminal, medical and financial records, educational transcripts, etc.

6. **Registration Requirements Under § 1512 of the Recovery Act.** Recipient shall maintain a current registration in the Central Contractor Registration (<http://www.ccr.gov>) at all times during which it is in receipt of Funds. A Dun and Bradstreet Data Universal Numbering System (DUNS) Number (<http://www.dnb.com>) is one of the requirements for registration in the Central Contractor Registration.

7. **Project Audits.** Recipient will maintain full, correct and complete books and records and supporting documentation (including timesheets, work specifications, invoices and receipts) pertaining to the Project and the Funds (collectively, "*Recipient Records*"). Recipient Records will be maintained for a period of five years following completion of the Project. During the term of this Agreement and for a period of five years thereafter, SEEA will be entitled, either directly or through an independent accounting firm, to audit the Recipient Records for the purpose of verifying Recipient's compliance with this Agreement. Such audits shall take place during Recipient's normal business hours upon not less than five business days' prior written notice, and shall be conducted in a manner that does not unreasonably interfere with Recipient's normal operations.

8. **Department of Energy Oversight.** DOE will exercise normal Federal stewardship in overseeing the project activities performed under amounts awarded by the DOE (including the Funds). 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

## EXHIBIT A

Southeast Community Retrofit Ramp-up Consortium

to correct deficiencies which develop during the project; assuring compliance with terms and conditions; and reviewing technical performance after project completion to ensure that the award objectives have been accomplished. DOE's authorized representatives have the right to make site visits at reasonable times to review project accomplishments and management control systems and to provide technical assistance, if required. Recipient shall 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.

9. **Further Assurances.** Recipient will promptly, completely and accurately respond to all reasonable requests by the SEEA for additional reporting relating to the Project or the Funds. Any such request for information required by Law to be included in any report to a Governmental Authority, or necessary for SEEA's completion of any such report required by Law, will be deemed to be a reasonable request.

## EXHIBIT B

Southeast Community Retrofit Ramp-up Consortium

Southeast Energy Efficiency Alliance  
Southeast Community Retrofit Ramp-Up Consortium

Grant Agreement

Project Title: Better Building Retrofit Program, Carrboro, North Carolina

DOE Grant Number: DE-EE0003575

Recipient: Town of Carrboro, North Carolina

## Contract Administrator:

Randy Dodd  
Phone: (919) 918-7326  
Fax: (919) 918-4454  
Email: [rdodd@townofcarrboro.org](mailto:rdodd@townofcarrboro.org)

Federal I.D. Number: 56-6001194

Effective Date: September 27, 2010

Expiration Date: June 2, 2013

## EXHIBIT B

Southeast Community Retrofit Ramp-up Consortium

This Grant Agreement ("*Agreement*") is made and entered into as of the Effective Date by and between the Southeast Energy Efficiency Alliance ("*SEEA*") and the Town of Carrboro ("*Recipient*").

Whereas, Recipient has submitted to SEEA an application requesting a grant of monies to engage in an energy efficiency retrofit program, the Better Building Retrofit Program, Carrboro, North Carolina, as more particularly described on Exhibit A

Whereas, SEEA desires to fund such Project in order to share best practices and leverage a common approach to program structure, evaluation and data-sharing, and to create a model for replication of the project across the Southeastern United States and beyond;

Whereas, SEEA has received a grant from the United States Department of Energy under the American Recovery and Reinvestment Act of 2009 (the "*Reinvestment Act*") to fund projects like the Project; and

Whereas, the parties desire to enter into this Agreement and intend to be bound by its terms.

Now, therefore, for and in consideration of the mutual promises contained in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties mutually agree as follows:

1. **Grant Documents.** The documents described below are collectively referred to as the "*Grant Documents*". In the case of conflict between any of these documents, each shall have priority over all others in the order listed below. Upon execution and delivery of this Agreement, it and the other Grant Documents and items required hereunder will constitute a valid and binding agreement between the parties, enforceable in accordance with the terms thereof. The Agreement constitutes the entire agreement between the parties, superseding all prior oral and written statements or agreements.

The Grant Documents consist of:

- (a) This Agreement
- (b) Exhibit A - Project Description
- (c) Exhibit B - Project Budget
- (d) Exhibit C - General Terms and Conditions.
- (e) Exhibit D - Reporting and Audit Requirements
- (f) Exhibit E - Definitions
- (g) Exhibit F - Year One Allocation

2. **Purpose.** The purposes of the grant are for establishing and/or expanding Recipient's building retrofit programs; retrofitting Recipient's commercial and residential facilities; distributing second- and

## EXHIBIT B

Southeast Community Retrofit Ramp-up Consortium

third-year funds to Recipient on a performance basis; and supporting the development of local retrofit workforces.

3. **SEEA's Duties.** Subject to the appropriation, allocation and availability to SEEA of funds for the Project, SEEA hereby agrees to pay the grant funds (the "*Funds*") to Recipient in accordance with Recipient's performance and the payment procedures set forth herein.

4. **Recipient's Duties.** Recipient shall carry out the Project pursuant to the terms of, and in compliance with, this Agreement.

5. **Contract Period.** SEEA's commitment to disburse grant funds under this Agreement shall cease on June 2, 2013 and in accordance with the schedule and explanation in Exhibit A. Recipient shall ensure that all Project work products and the Project final invoice are received by SEEA by the Expiration Date. After the Expiration Date, any Funds remaining under this Agreement will no longer be available to Recipient.

6. **Disbursement Requirements.**

(a) **Application for Reimbursement.** Disbursement of Funds for the Project shall be made as set forth in Exhibits A and B.

(b) **Certification.** At the option of SEEA, reimbursements may be made only on the certificate and seal of a Registered Professional, that the improvements for which the reimbursement is requested have been completed in accordance with approved plans and specifications, to which certificate shall be attached an estimate by the construction contractor setting forth items to be paid out of the proceeds of each such reimbursement. SEEA, at its option, may further require a certificate from such Registered Professional that the portion of the Project completed as of the date of the request for reimbursement has been completed according to schedule and otherwise as approved by SEEA and according to applicable engineering standards and requirements. However, SEEA may, at its discretion, make reimbursements without requiring such certificates or construction contractor's estimate, in which event Recipient shall furnish SEEA a list of and the amounts of items to be paid out of the reimbursement, or such other evidence as SEEA may require. For purposes of this Section 6(b), a "*Registered Professional*" is an appropriately-qualified registered professional determined by SEEA, in its discretion, to be qualified to provide the certification required hereunder. A registered professional may be, without limitation, a professional engineer, a licensed contractor, a Building Performance Institute-certified auditor or a program implementer.

(c) **Reimbursement Based on Progress.** Recipient agrees to proceed with diligence to accomplish the Project according to the schedule set out in Exhibit A and shall show appropriate progress prior to each reimbursement. Reimbursement may be withheld or delayed, in whole or in part, if Recipient fails to make progress on the Project satisfactory to SEEA. Amounts withheld shall be reimbursed with subsequent reimbursements in the event that Recipient is able to demonstrate an ability to resume satisfactory progress toward completion of the Project.

(d) **Proof of Payment.** Recipient agrees to pay, as the work progresses, all bills for labor and materials going into the accomplishment of the Project, and agrees to submit to SEEA all such receipts, affidavits, cancelled checks, or other evidences of payment as may be requested from time to time and.

## EXHIBIT B

Southeast Community Retrofit Ramp-up Consortium

when and if requested by SEEA, furnish adequate proof of payment of all indebtedness incurred in the development of the Project.

(e) **Alternate Disbursement of Grant Funds.** SEEA may, upon request, disburse grant funds prior to actual project payments by Recipient if costs are documented by unpaid third-party invoices. In order for SEEA to disburse grant funds to Recipient based upon unpaid third-party invoices, Recipient shall indicate its review and approval of the unpaid third-party invoice in writing, and certify to SEEA that the unpaid third-party invoice will be paid within three (3) working days of receipt of the disbursed grant funds. Recipient will confirm to SEEA that the required payment has been made.

(f) **No Excess Costs.** SEEA agrees to pay or reimburse Recipient only for costs actually incurred by Recipient that do not exceed the funds budgeted for the Project shown on Exhibit B.

(g) **Costs of Project Administration.** SEEA agrees to reimburse Recipient for administrative costs consisting only of costs of labor for administrative work conducted exclusively on this Project. Recipient's requests for such reimbursement shall be made under the Project Administration line item of Exhibit B and shall conform with the following:

(i) Costs allowable under the Project Administration line item shall be only costs of labor needed to comply with the general conditions of the Agreement (e.g., progress reports, payment requests, preparing the project final report, revisions to the Agreement). Allowable Project Administration labor costs may include any of the following: (a) pay to Recipient's payroll employees, plus Recipient's cost of paying benefits on such pay (usually employees' pay times an audited or auditable benefits multiplier); (b) pay to contract employees of Recipient (e.g., temporary office support), payable at Recipient's actual cost, without application of a benefits multiplier; and/or (c) cost of professional services labor contracted by Recipient (e.g., engineering firm or consultant), payable at Recipient's actual cost for that labor.

(ii) Costs of any other work described in the Project Scope of Work in Exhibit A are not allowable under the Project Administration line item.

(h) **Period for Incurring Reimbursable Expenditures.** SEEA will reimburse Recipient only for allowable Project expenditures that are incurred by Recipient or Recipient's consultants, contractors, or vendors during the period between the Approval Date and the Expiration Date. SEEA will not reimburse Recipient for Project expenditures that are not incurred during this period.

7. **Funding Agent.** SEEA shall be entitled to notify Recipient at any time during the term of the Agreement that SEEA will disburse Funds to, and disbursed Funds will be paid on behalf of Recipient from an account administered by, a Person other than Recipient (the "*Funding Agent*"). For the avoidance of doubt, SEEA may be the Funding Agent for Funds disbursed to Recipient. Recipient hereby appoints SEEA or its delegate as Recipient's agent for the purposes of receiving Funds from SEEA, disbursing Funds in accordance with the Project, returning unused Funds to SEEA or otherwise administering or investing the Funds on behalf of the recipient, and acknowledges that all actions taken by the Funding Agent in connection with such purposes will be undertaken as Recipient's agent. In no event will the Funding Agent be liable to any Person for any failure by Recipient to comply with the

## EXHIBIT B

Southeast Community Retrofit Ramp-up Consortium

terms and conditions of this Agreement or in connection with the receipt, disbursement, holding or administration of Funds.

8. **Refunds and Reversion of Unexpended Funds.** Recipient shall repay to SEEA any and all: (a) compensation it has received that is in excess of the payment to which it is entitled herein, including any interest earned on funds granted pursuant to this Agreement; and (b) unexpended Grant monies upon termination of this Agreement.

9. **Reporting Requirements.** Reporting requirements are set forth on Exhibit D. Reports shall be made on the form set forth on Exhibit E.

10. **Advance Understanding Concerning Publicly-Financed Energy Improvement Programs.** The parties recognize that Recipient may use funds under this Agreement for Property-Assessed Clean Energy (PACE) loans, Sustainable Energy Municipal Financing, Clean Energy Assessment Districts, Energy Loan Tax Assessment Programs (ELTAPS), or any other form or derivation of Special Taxing District whereby taxing entities collect payments through increased tax assessments for energy efficiency and renewable energy building improvements made by their constituents. The Department of Energy intends to publish "Best Practices" or other guidelines pertaining to the use of funds made available to Recipient under this award pertaining to the programs identified herein. By accepting Funds under this Agreement, Recipient agrees to incorporate, to the maximum extent practicable, those Best Practices and other guidelines into the Project within a reasonable time after notification by SEEA or the DOE that the Best Practices or guidelines have been made available.

11. **Indemnification.**

(a) To the maximum extent allowed by Law, Recipient will indemnify and hold harmless SEEA and its directors, officers, employees and agents (the "*Indemnitees*") from and against any and all third party claims (including those made by Recipient's directors, officers and employees), losses, damages, suits, fees, judgments, costs and expenses (collectively referred to as "*Claims*"), including attorneys' fees incurred in responding to such Claims, that the Indemnitees may suffer or incur arising out of or in connection with: (i) Recipient's gross negligence, willful misconduct or breach of the representations and warranties set forth herein; (ii) any agreement between Recipient and any subsequent recipient of Funds, or any contractor, employee or consultant of any of them; or (iii) any personal injury (including death) or damage to property resulting from Recipient's, its subsequent recipients or their respective contractors, employees or consultants acts or omissions.

(b) Notwithstanding any unenforceability of Recipient's obligations under Section 11(a) (the "*Indemnification Obligations*") arising directly or indirectly from Recipient's status as a municipal corporation: (i) the parties acknowledge that the Indemnification Obligations are fundamental to the basis of the bargain under this Agreement, and that SEEA would not enter into this Agreement or Grant Funds absent such obligations; (ii) SEEA shall be entitled to the full benefit of the Indemnification Obligations; (iii) Recipient shall promptly pay to SEEA all costs incurred by SEEA in pursuing such benefit or contesting the enforceability of any Indemnification Obligation; and (iv) all such costs will be deemed reimbursable costs, which Recipient will pay to SEEA upon SEEA's request.

12. **Limits on Liability.**

## EXHIBIT B

Southeast Community Retrofit Ramp-up Consortium

(a) EXCEPT AS SET FORTH IN SECTION 12(B), IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, CONTINGENT OR CONSEQUENTIAL LOSS OR DAMAGES SUFFERED BY THE OTHER PARTY OR ANY THIRD PARTY, INCLUDING LOSS OF USE, DATA, BUSINESS, ANTICIPATED SAVINGS, PROFIT, REPUTATION, GOODWILL OR REVENUE, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, WHETHER AS A RESULT OF A BREACH OF THIS AGREEMENT OR OTHERWISE AND WHETHER IN AN ACTION IN LAW, EQUITY, CONTRACT OR TORT (INCLUDING NEGLIGENCE OR STRICT LIABILITY), EVEN IF THE OTHER PARTY OR ANY THIRD PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. Except as set forth in Section 12(b), the liability of each party to the other party for any direct damages resulting from, arising out of or relating to this Agreement, whether based on an action or claim in contract, negligence, tort, strict liability or otherwise, will not exceed, in the aggregate, an amount equal to Funds paid by SEEA hereunder prior to the assertion of the first claim hereunder.

(b) The limitations set forth in Section 12(a) are not applicable to: (i) damages recoverable under Section 11; or (ii) damages resulting from, arising out of or relating to the fraudulent conduct, gross negligence or willful misconduct of a party.

13. **Notice.** All notices and communications required or permitted to be given by either party under this Agreement ("*Notices*") shall be in writing. Each party's address for purposes of this Section 13 (such party's "*Notice Address*") will be as set forth on the cover page hereto, provided that each party will be entitled to change its Notice Address upon notice to the other party. No Notice will be effective unless given in accordance with one or more of Sections 13(a) - (e); *provided, however*, that notice by email pursuant to Section 13(e) will not be effective notice for purposes of Section 11 of this Agreement or Section 4 of Exhibit C.

(a) **Hand Delivery.** Notice may be hand delivered. Such Notices will be deemed received immediately upon actual delivery.

(b) **Overnight.** Notice may be sent to the receiving party's Notice Address by an internationally recognized express overnight courier with a reliable system for tracking delivery. Such Notices will be deemed received immediately upon actual delivery.

(c) **Certified Mail.** Notice may be sent to the receiving party's Notice Address by registered or certified mail, return receipt requested, postage prepaid. Such Notices will be deemed received on the fourth business day after sending.

(d) **Fax.** Notice may be sent to the receiving party's Notice Address by confirmed fax transmission. Such Notices will be deemed received on the date of such fax transmission, provided that the sending fax machine used for such transmission generates a report showing successful completion of such transaction; provided, however, that if such fax transmission is sent after 5:00 p.m. local time at the location of the receiving fax machine, or is sent on a day other than a business day, such notice or communication will be deemed given as of 9:00 a.m. local time at such location on the next succeeding business day.

(e) **Email.** Notices sent by email to the receiving party's Notice Address will be deemed received when the recipient acknowledges having received that email, either by an email sent to the email

## EXHIBIT B

Southeast Community Retrofit Ramp-up Consortium  
address for the sender on the signature page of this Agreement or by a Notice given in accordance with  
one or more of Sections 13(a) – (d) (with an automatic "read receipt" not constituting acknowledgment of  
an email for purposes of this Section 13(e)).

14. **Signature Warranty.** Each individual signing below warrants that he or she is duly authorized  
to sign this Agreement for the respective party, and to bind said party to the terms and conditions of this  
Agreement.

In witness whereof, the parties have executed and delivered this Agreement as of the Effective Date.

Southeast Energy Efficiency Alliance

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
PRINTED NAME & TITLE

\_\_\_\_\_  
ATTEST

\_\_\_\_\_  
PRINTED NAME & TITLE

TOWN OF CARRBORO

\_\_\_\_\_  
TOWN MANAGER

ATTEST BY TOWN CLERK:

\_\_\_\_\_  
TOWN CLERK

\_\_\_\_\_  
TOWN SEAL

Town Clerk attests date this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Approved as to Form and Authorization

\_\_\_\_\_  
TOWN ATTORNEY

This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal  
Control Act.

\_\_\_\_\_  
FINANCE OFFICER

## EXHIBIT B

Southeast Community Retrofit Ramp-up Consortium

## EXHIBIT A

Better Building Retrofit Program, Carrboro, North Carolina

Project Description:

The following text describes Carrboro's Year One project design. This approach represents a  
collaboration between Carrboro and Chapel Hill staff; pursuit of these efforts assumes that SEEA enters  
into an agreement with Chapel Hill that authorizes the pursuit of the activities described below. Working  
with utilities (Duke Energy, Public Service Gas, Piedmont Electric, and OWASA), potential funding  
agencies, and entities such as the NC Utilities Commission is implicit in the program design. This  
coordination will include exploration of topics such as on-bill financing, PACE, and other coordination of  
outreach and leveraging of incentives.

Specific Year One goals are to:

- allocate a majority of incentive dollars to small business commercial loans, with a smaller allocation  
for subsidies for residential energy audits
- secure additional funding for Year Two based on Year One performance
- take advantage of existing/emerging utility, State, and Federal conservation programs
- investigate opportunities for utility on-bill financing
- develop plan for long-term viability of program

Carrboro and Chapel Hill staff have been collaborating on a proposed budget for first year funds. A  
principal recommendation is that about ¼ of the first year combined budget be allocated to the  
establishment of contract support in order to assist with the rapid deployment of energy incentives. This  
support would be guaranteed for one year; the long term success will depend on successfully launching  
and marketing the program. Funding for contract support from Clean Energy Solutions, Inc. (CESI) will  
be provided by Retrofit Ramp Up funds as well as Chapel Hill block grant (EECBG) funds. Sustained  
funding for the administrative position will be evaluated in the spring of 2011. SEEA is working to  
develop a monitoring and verification software program that will track the information necessary for DOE  
reporting. Carrboro has budgeted for the cost and use of this software.

## EXHIBIT B

## Southeast Community Retrofit Ramp-up Consortium

SEEA agrees to provide Carrboro with support to facilitate successful completion of the project. Funding from DOE to SEEA will provide the resources for SEEA to staff the program with a: program director, accounting director, communication manager, and one or two community program associates. SEEA will also support consultants and vendors as needed by cities participating in the SEEA retrofit ramp up DOE grant for nine categories of anticipated support; this support will be available to Carrboro on an as needed basis during the first year of the program. These categories are:

1. Management Support
2. Accounting Support
3. Monitoring and Verification/Customer Tracking
4. Marketing Strategy
5. Financing assistance
6. State Support
7. Workforce Development
8. Program Design Assistance
9. Communication/Best Practices

To provide Carrboro's access to financing programs, SEEA will allocate funds to a Regional Loan Loss Reserve (LLR) for a Financing Program that SEEA establishes for all communities. SEEA will select a lending team which will establish a program throughout the Southeast to provide process, market, and service a loan program. Consistent with the program strategy above, the LLR will not set allocations by community, but rather will use a single program serving all participating communities. Carrboro will not be obligated to use the LLR.

If Carrboro is successful in meeting Year One goals, SEEA agrees to make available on a competitive basis to Carrboro remaining funds in SEEA's award from the USDOE. SEEA and Carrboro understand that funds available after Year One will be allocated to communities based on completed project agreements with customers, with a minimal cost-share or leveraging requirement of 50%. To do so, SEEA intends to establish a central bank account and process, consistent with DOE guidelines, that disburses incentives and program support funds. These future allotments allocated would be split between customer incentives and program support in any manner Carrboro decides but following SEEA guidelines. SEEA will plan to disburse 50% of the "earned" funds once a customer Letter of Intent (LOI) is signed. The remaining 50% will be sent upon the signing of a customer agreement or contract to move forward. If Carrboro establishes a consistent stream of small customer transactions, SEEA may convert that formula to an advance based on the monthly average of total project dollar value in energy efficiency projects completed. SEEA will establish a dollar ceiling for allocation of the \$7.4 M that any one community cannot surpass. (If the federal government passes Home Star/Building Star legislation, SEEA will adjust the leveraging requirement accordingly.)

## EXHIBIT B

## Southeast Community Retrofit Ramp-up Consortium

In part because SEEA is establishing a first come, first served basis for funds available after Year One, SEEA will establish ground rules on acceptable customer incentive levels. SEEA will also establish customer incentive limitations as a percentage of total project value by customer end-use and measure category. These incentive formulas would be established in consultation with Carrboro, but will be consistent across the region (controlling for utility rates).

The steps described below in the schedule show details of the proposed approach for implementing the project. This approach has been approved by the Carrboro Board of Aldermen and Chapel Hill Town Council. Steps completed prior to summer 2010 are not included.

Conditions: Assessment of milestones at 6 and 12 months by SEEA.

SEEA will assess the milestones (indicated below) to insure that the project goals have been achieved. Carrboro will receive their Year One allocation in two equal allotments. The first allotment will be received upon execution of this agreement. The second allotment is contingent upon reaching specific milestones. These milestones will focus on program management in place, program designs completed, leverage sources committed, utility relationships formalized, and marketing strategies underway. If Carrboro fails to meet mid term milestones, the remaining Year One funds (50%) are subject to a termination in December 2010 (based on the date of receipt of funding by SEEA from the USDOE). With a successful performance evaluation, Carrboro will gain access to all remaining Year One funds. An evaluation by SEEA in June, 2010 will review the success of the program, largely focusing on the deployment of incentive dollars, leveraged funds and metrics related to community energy efficiency and conservation.

Schedule:

September, 2010

- Carrboro and Chapel Hill ("Towns") simultaneously finalize SEEA contracts and Memorandum of Agreement (MOA) for shared administrative position and monitoring and verification support from SEEA.
- Clean Energy Solutions Inc (CESI), under contract by Chapel Hill and supporting Carrboro through the MOA, draft a program design for Carrboro and Chapel Hill. The program will consider programs from utilities, including, but not necessarily limited to Duke Energy.
  - Application forms
  - Marketing materials
  - Qualifying criteria
  - Loan structure
  - Lending opportunities
  - Finalize incentives (in cooperation with utilities, including but not necessarily limited to Duke Energy)
- Towns and CESI advertise and interview for administrative position
- Monthly conference call CESI and Towns

**EXHIBIT B**

## Southeast Community Retrofit Ramp-up Consortium

- Carrboro receives first allotment of SEEA funds

**EXHIBIT B**

## Southeast Community Retrofit Ramp-up Consortium

October 2010

- CESI and Towns finalize program design
- Program administrator hired and onboard (with Chapel Hill/CESI)
- Carrboro begins pre-application process and program marketing
- Monthly conference calls/report: SEEA/CESI/Towns

November 2010

- Carrboro begins receiving loan applications
- Towns begin identifying contractors
- Monthly conference calls/report: SEEA/CESI/Towns

December

- Towns finalize list of contractors
- Contractors begin doing audits and energy improvements and continue this for next six months
- 6-month evaluation for both Towns
- Monthly conference calls/report: SEEA/CESI/Towns

Spring 2011

- Carrboro pursues residential energy audits
- All Carrboro SEEA year one funds expended by June 4, 2011

Milestones for first 12 months entail:

- Hire energy program manager (contract)
- Finalize program design
- Utilize all incentive funds by completing:
  - Small business retrofits
  - residential energy audits
- Complete monitoring and verification



**EXHIBIT B**

Southeast Community Retrofit Ramp-up Consortium

**EXHIBIT B**

Project Budget

(First Year)

**Combined Chapel Hill-Carrboro Year One Budget**

Category	Chapel Hill SEEA Funds	Chapel Hill EECBG Funds	Carrboro SEEA Funds	Total
a. New Administration Position	\$17,500	\$25,600	\$10,000	\$53,100
b. Marketing	\$11,000			\$11,000
c. Measure Subsidy/Interest Rate Buydown	\$90,500			\$90,500
d. Audit Subsidy	\$10,000		\$5,000	\$15,000
e. Monitoring & Verification	\$17,000		\$5,000	\$22,000
f. Travel	\$4,000			\$4,000
g. Revolving Loan Fund for Businesses			\$55,000	\$55,000
<b>Total</b>	<b>\$150,000</b>	<b>\$25,600</b>	<b>\$75,000</b>	<b>\$250,600</b>

Based on the draft budget shown above, \$60,000 of Carrboro's allocation is dedicated to incentives. The bulk of these incentives would be geared towards subsidies for energy improvement measures in the commercial sector through the revolving loan fund, with the remainder to subsidize residential energy audits.

# EXHIBIT C

## General Terms and Conditions

1. **Affirmative Covenants.** (a) **Compliance with Laws.** Recipient shall obtain any required permits, ensure the safety and structural integrity of any repair, replacement, construction or alteration, and perform and maintain the Project in compliance with all federal, state and local laws and regulations, including, without limitation, environmental, zoning and other land use laws and regulations. Recipient agrees to take reasonable steps to advise Project participants that they shall comply in the same manner.

(b) **Insurance.** In establishment of contracts, recipient agrees to keep structures or improvements of any sort constituting the Project fully insured at all times during construction and to keep fully insured all building materials at any time located on the Project. Recipient will ensure that all contractors furnish adequate payment and performance bonds.

(c) **Right of Entry and Inspections.** Recipient shall permit representatives of SEEA to visit Recipient's properties that are being used to perform work in connection with the Project to examine such work and property purchased with the Funds, and to review activities pursuant to the Grant. Recipient shall require its direct and indirect subrecipients, contractors and subcontractors to grant SEEA representatives access to properties being used to perform work in connection with the Project for the purposes set forth above.

(d) **Material Modifications.** Any proposed material modification of the Project shall be subject to approval by SEEA.

(e) **Publicity.** An acknowledgment of DOE support and a disclaimer must appear in the publication of any material, whether copyrighted or not, based on or developed under the Project, as follows:

*Acknowledgment:* "This material is based upon work supported by the Department of Energy [add name(s) of other agencies, if applicable] under Award Number(s) [enter the award number(s)]."

*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."

(f) **Schedule of Expenditures.** If Recipient is covered by the Single Audit Act Amendments of 1996 and OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations,"

Recipient shall separately identify the expenditures of Funds as expenditures of Federal awards under the Recovery Act on the Schedule of Expenditures of Federal Awards (SEFA) and the Data Collection Form (SF-SAC) required by OMB Circular A-133. OMB Circular A-133 is available at <http://www.whitehouse.gov/omb/circulars/a133/a133.html>. This shall be accomplished by identifying expenditures for Federal awards made under the Recovery Act separately on the SEFA, and as separate rows under Item 9 of Part III on the SF-SAC by CFDA number, and inclusion of the prefix "ARRA-" in identifying the name of the Federal program on the SEFA and as the first characters in Item 9d of Part III on the SF-SAC. Recipient agrees to separately identify to each subrecipient, and document at the time of subaward and at the time of disbursement of funds, the Federal award number, CFDA number and amount of Recovery Act funds.

(g) **Compliance with the Davis-Bacon Act and Contract Work Hours and Safety Standard Act.** Recipient shall comply with the Davis-Bacon Act of 1931 ("DBA") and the Contract Work Hours and Safety Standard Act, including the provisions thereof attached hereto as Schedule 2 to this Exhibit C. Without limitation of the foregoing, Recipient shall:

- (i) obtain, maintain, and monitor all DBA-certified payroll records submitted by its subrecipients and contractors at any tier under this Agreement;
  - (ii) review all DBA-certified payroll records for compliance with DBA requirements, including applicable Department of Labor ("DOL") wage determinations;
  - (iii) notify SEEA of any non-compliance with DBA requirements by subrecipients or contractors at any tier, including any non-compliances identified as the result of reviews performed pursuant to paragraph (ii) above;
  - (iv) address any subrecipient and any contractor DBA non-compliance issues; if DBA non-compliance issues cannot be resolved in a timely manner, forward complaints, summary of investigations and all relevant information to DOE and SEEA;
  - (v) provide SEEA with detailed information regarding the resolution of any DBA non-compliance issues;
  - (vi) perform services in support of SEEA and DOE investigations of complaints filed regarding noncompliance by subrecipients and contractors with DBA requirements;
  - (vii) perform audit services as necessary to ensure compliance by Subrecipients and contractors with DBA requirements and as requested by SEEA or the DOE; and
  - (viii) provide copies of all records upon request by SEEA, DOE or DOL in a timely manner.
- (h) **Conflicts of Interest.** Recipient, as a local government entity, shall comply with all conflicts of interest laws, rules and regulations applicable to it in the State.
- (i) **Additional Requirements.** Recipient shall comply with all legal requirements applicable to the use of the Grant.

2. **Representations and Warranties.** In order to induce SEEA to enter into this Agreement and to make the Grant as herein provided, Recipient after reasonable inquiry makes the following representations, warranties and covenants, which shall remain in effect after the execution and delivery of

this Agreement and any other documents required hereunder, any inspection or examinations at any time made by or on behalf of SEEA, and the completion of the Project by Recipient.

(a) No Actions. There are no actions, suits, or proceedings pending, or to the knowledge of Recipient, threatened, against or affecting Recipient before any court, arbitrator, or governmental or administrative body or agency which might affect Recipient's ability to observe and perform its obligations under this Agreement.

(b) Validity of Grant Documents. Upon execution and delivery of items required hereunder, this Agreement and the other grant documents and items required hereunder will be valid and binding agreements, enforceable in accordance with the terms thereof.

(c) No Untrue Statements. Neither this Agreement nor any information, certificate, statement, or other document furnished by Recipient in connection with the Grant, contains any untrue statement of a material fact or omits disclosure of a material fact which affects the Project or the ability of Recipient to perform this Agreement.

(d) Waste Stream. Recipient shall create or obtain a waste management plan addressing waste generated by a proposed Project prior to the Project generating waste. This waste management plan will describe Recipient's (and each of its subrecipients') plan to dispose of any sanitary or hazardous waste (e.g., construction and demolition debris, old light bulbs, lead ballasts, piping, roofing material, discarded equipment, debris and asbestos) generated as a result of the Project. Without limitation of Section 1(a) of this Exhibit C, Recipient shall ensure that the Project is in compliance with all Federal, state and local regulations for waste disposal. Recipient shall make the waste management plan and related documentation available upon request to SEEA and the DOE.

(e) Historic Preservation. Prior to the expenditure of Funds to alter any historic structure or site, Recipient or its subrecipient shall ensure that it is compliant with Section 106 of the National Historic Preservation Act (NHPA), consistent with DOE's 2009 letter of delegation of authority regarding the NHPA. Section 106 applies to historic properties that are listed in or eligible for listing in the National Register of Historic Places. If applicable, Recipient or subrecipient must contact the State Historic Preservation Officer ("SHPO"), and the Tribal Historic Preservation Officer ("THPO") to coordinate the Section 106 review outlined in 36 CFR Part 800. In the event that a State, State SHPO and DOE enter into a Programmatic Agreement, the terms of that Programmatic Agreement shall apply to all Recipient and subrecipient activities within that State. SHPO contact information is available at the following link: <http://www.ncshpo.org/find/index.htm>. THPO contact information is available at the following link: <http://www.nathpo.org/map.html>. Section 110(k) of the NHPA applies to DOE funded activities. Recipient or subrecipient certifies that it will retain sufficient documentation to demonstrate that Recipient or subrecipient has received required approval(s) from the SHPO or THPO for the Project. Recipients or subrecipients shall avoid taking any action that results in an adverse effect to historic properties pending compliance with Section 106. Recipient or subrecipient shall deem compliance with Section 106 of the NHPA complete only after it has received this documentation. Recipient or subrecipient shall make this documentation available to DOE on DOE's request (for example, during a post-award audit). Recipient will be required to report annually on September 1 the disposition of all historic preservation consultations by category.

(f) Special Requirements under the Recovery Act. The terms and conditions set forth on Schedule 1 to this Exhibit C are hereby incorporated by reference.

(g) Lobbying Restrictions. Recipient shall not directly or indirectly expend any of the Funds 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.

(h) Additional Requirements. Recipient shall comply with all legal requirements applicable to the use of the Funds.

(i) Books and Records. Recipient agrees to maintain and make available to SEEA at all reasonable times all documents, books, and records of all expenditures for costs applicable to this Agreement, and to submit properly certified billings for such costs on forms prescribed by SEEA and supported by detailed data sheets which will facilitate the audit of Recipient's records.

3. Intellectual Property. Nonprofit organizations are subject to the intellectual property requirements at 10 CFR 600.136(a), (c) and (d) (attached hereto as Schedule 3). All other organizations are subject to the intellectual property requirements at 10 CFR 600.136(a) and (c).

4. Termination. (a) By Mutual Consent. The parties may terminate this Agreement by mutual written consent with 60 days prior written notice to the Contract Administrators, or as otherwise provided by law.

(b) Termination for Performance. SEEA shall be entitled to terminate this Agreement upon 30 days' prior written notice to Recipient's Contract Administrator if the SEEA determines that Recipient's performance, or the effectiveness of the Project, is insufficient to justify, in SEEA's discretion, further disbursements of Funds to Recipient hereunder.

(c) Termination for Cause: Events of Default. The happening of any of the following, after the expiration of any applicable cure period without the cure thereof, shall constitute an event of default ("Event(s) of Default") by Recipient of its obligations to SEEA, and shall entitle SEEA to exercise all rights and remedies under this Agreement and as otherwise available at law or equity:

- (i) Unsuitable Use. The Funds are used in a manner materially inconsistent with the purposes of this Agreement or the Project.
- (ii) Default in Performance. The default by Recipient in the observance or performance of any of the terms, conditions or covenants of this Agreement; provided, however, that no such default shall occur until Recipient has been given written notice of the default and 30 days to cure have elapsed.
- (iii) Misrepresentation. If any representation or warranty made by Recipient in connection with the Grant or any information, certificate, statement or report heretofore or hereafter made shall be untrue or misleading in any material respect at the time made.
- (iv) Eligibility of Recipient. If Recipient ceases to be qualified to receive Funds or is dissolved or otherwise ceases to exist.
- (v) Abandonment of the Project. If Recipient abandons or otherwise ceases to continue to make reasonable progress towards completion of the Project.

5. **SEEA's Rights and Remedies.** If an Event of Default shall occur, SEEA shall have the following rights and remedies, all of which are exercisable at SEEA's sole discretion, and are cumulative, concurrent and independent rights:

- (i) **Project Termination.** If an Event of Default occurs, SEEA may, at its discretion suspend and/or terminate all obligations of SEEA hereunder. If, in the judgment of SEEA, such failure was due to no fault of Recipient, amounts required to resolve at minimum costs any irrevocable obligations properly incurred by Recipient shall, in the discretion of SEEA, be eligible for assistance under this Agreement.
- (ii) **Additional Remedies.** If an Event of Default occurs, SEEA shall have the power and authority, consistent with its statutory authority: (a) to prevent any impairment of the Project by any acts which may be unlawful or in violation of this Agreement or any other item or document required hereunder, (b) to obtain title to or otherwise preserve or protect its interest in the Project and any property acquired with Funds, (c) to compel specific performance of any of Recipient's obligations under this Agreement, (d) to obtain return of all Grant Funds, including equipment if applicable and/or (e) to seek damages from any appropriate person or entity. SEEA, or its designee, may also, at SEEA's sole discretion, continue to complete the Project, or any portion thereof deemed appropriate by SEEA, and Recipient shall cooperate in the completion of the Project. SEEA shall be under no obligation to complete the Project.
- (iii) **Nonwaiver.** No delay, forbearance, waiver, or omission of SEEA to exercise any right, power or remedy accruing upon any Event of Default shall exhaust or impair any such right, power or remedy or shall be construed to waive any such Event of Default or to constitute acquiescence therein. Every right, power and remedy given to SEEA may be exercised from time to time and as often as may be deemed expedient by SEEA.

6. **Miscellaneous.** (a) **Modification.** The terms and conditions of this Agreement may not be amended, waived or modified, except in a writing signed by both parties.

(b) **Benefit.** The parties do not intend to create rights for any person as a third party beneficiary of this Agreement; *provided, however*, that this section shall not preclude SEEA from bringing claims on behalf of an Indemnitee under Section 11 of the Agreement.

(c) **Further Assurance.** In connection with and after the disbursement of Funds under this Agreement, upon the reasonable request of SEEA, Recipient shall execute, acknowledge and deliver or cause to be delivered all such further documents and assurances, and comply with any other requests as may be reasonably required by SEEA or otherwise appropriate to carry out and effectuate the Grant as contemplated by this Agreement and the purposes of the Project.

(d) **Compliance by Others.** Recipient shall be responsible for compliance with the terms of this Agreement by any sub-grant recipient, including but not limited to, a political subdivision, public agency, or qualified non-profit organization to which funds or obligations are transferred, delegated or assigned pursuant to this Agreement. Delegation by Recipient to a sub-grant recipient of any duty or obligation hereunder does not relieve Recipient of any duty or obligation created hereunder. Failure by such sub-grant recipient to comply with the terms of this Agreement shall be deemed failure by Recipient to

comply with the terms of this Agreement. Any such delegation of duties or obligations shall be in writing, signed by Recipient and sub-grant recipient.

(e) **Independent Status of the Parties.** The parties are independent entities and neither this Agreement nor any provision of it or any of the Grant Documents shall be deemed to create a partnership or joint venture between the parties. Further, neither the Agreement nor any of the Grant Documents shall in any way be interpreted or construed as making Recipient, its agents or employees, agents or representatives of SEEA. Recipient is and shall be an independent contractor in the performance of this Agreement and as such shall be wholly responsible for the work to be performed and for the supervision of its employees. In no event shall SEEA be liable for debts or claims accruing or arising against Recipient. Recipient represents that it has, or shall secure at its own expense, all personnel required in the performance of this Agreement. Such employees shall not be employees of, nor have any individual contractual relationship with, SEEA.

(f) **Binding Effect, Agreement Assignable.** The terms hereof shall be binding upon and inure to the benefit of the successors, assigns, and personal representatives of the parties hereto; *provided, however*, that Recipient may not assign this Agreement or any of its rights, interests, duties or obligations hereunder or any Funds or other moneys to be advanced hereunder in whole or in part without the prior written consent of SEEA, which may be withheld, conditioned or delayed for any reason. Any attempted assignment (whether voluntary or by operation of law) in violation of this Section 6(f) shall be void *ab initio*.

(g) **Governing Law, Construction and Jurisdiction.** This Agreement and the other Grant documents and all matters relating thereto shall be governed by and construed and interpreted in accordance with the laws of the State of Georgia, notwithstanding the principles of conflicts of law. The headings and section numbers contained herein are for reference purposes only. The terms of this Agreement shall be construed according to their plain meaning, and not strictly construed for or against either party hereto. Recipient hereby submits to the jurisdiction of the state and Federal courts located in Georgia and agrees that SEEA may, at its option, enforce its rights under the Grant Documents in such courts. Capitalized terms used but not otherwise defined in this Agreement shall have the meaning ascribed to them in **Exhibit E**.

(h) **Severability.** In the event that any provision of this Agreement is held invalid or unenforceable in any circumstances by a court of competent jurisdiction, the remainder of this Agreement, and the application of such provision in any other circumstances, will not be affected thereby.

(i) **Additional Remedies.** Except as otherwise specifically set forth herein, the rights and remedies provided hereunder shall be in addition to, and not in lieu of, all other rights and remedies available in connection with this Agreement.

(j) **Survival.** The sections of this Agreement that by their nature are intended to survive its expiration or termination, including Sections [to be determined] will survive the expiration or termination of this Agreement.

(k) **Incorporation of Exhibits.** All exhibits attached to this Agreement are fully incorporated as if set forth herein.

(l) Entire Agreement. This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof. All recitals, exhibits, schedules and other attachments hereto are incorporated herein by reference.

(m) Counterparts. This Agreement may be executed in counterparts, all of which when taken together constitute a single agreement.

#### SCHEDULE 1 TO EXHIBIT C

##### Recovery Act Terms and Conditions

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

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

The Government has not fully developed the implementing instructions of the Recovery Act, particularly concerning specific procedural requirements for the new reporting requirements. Recipient will be provided these details as they become available.

##### A. Definitions.

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

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

B. Flow Down Requirement. Recipient must include these special terms and conditions in any subaward.

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

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

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

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

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

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

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

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

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

- (1) Prohibition on Retaliation: An employee of any non-Federal employer receiving covered funds under the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing, including a disclosure made in the ordinary course of an employee's duties, to the Accountability and Transparency Board, an inspector general, the Comptroller General, a member of Congress, a State or Federal regulatory or law enforcement agency, a person with supervisory authority over the employee (or other person working for the employer who has the authority to investigate, discover or terminate misconduct), a court or grand jury, the head of a Federal agency, or their representatives information that the employee believes is evidence of (a) gross management of an agency contract or grant relating to covered funds; (b) a gross waste of covered funds; (c) a substantial and specific danger to public health or safety related to the implementation or use of covered funds; (d) an abuse of authority related to the implementation or use of

covered funds; or (e) as violation of law, rule, or regulation related to an agency contract (including the competition for or negotiation of a contract) or grant, awarded or issued relating to covered funds.

(2) Agency Action: Not later than 30 days after receiving an inspector general report of an alleged reprisal, the head of the agency shall determine whether there is sufficient basis to conclude that the non-Federal employer has subjected the employee to a prohibited reprisal. The agency shall either issue an order denying relief in whole or in part or shall take one or more of the following actions: (a) order the employer to take affirmative action to abate the reprisal; (b) order the employer to reinstate the person to the position that the person held before the reprisal, together with compensation including back pay, compensatory damages, employment benefits, and other terms and conditions of employment that would apply to the person in that position if the reprisal had not been taken; (c) order the employer to pay the employee an amount equal to the aggregate amount of all costs and expenses (including attorneys' fees and expert witnesses' fees) that were reasonably incurred by the employee for or in connection with, bringing the complaint regarding the reprisal, as determined by the head of a court of competent jurisdiction.

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

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

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

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

J. Availability of Funds: Funds obligated to this award are available for reimbursement of costs until 36 months after the award date.

K. Additional Funding Distribution and Assurance of Appropriate Use of Funds: Certification by Governor - For funds provided to any State or agency thereof by the American Reinvestment and Recovery Act of 2009, Pub. L. 111-5, the Governor of the State shall certify that: 1) the state will request and use funds provided by the Act; and 2) the funds will be used to create jobs and promote economic growth.

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

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

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

## SCHEDULE 2 TO EXHIBIT C

### Davis-Bacon Act Provisions and Contract Work Hours and Safety Standard Act Provisions

Definitions: For purposes of this Schedule 2 to Exhibit C, the following definitions are applicable:

- (1) "Award" means any grant, cooperative agreement or technology investment agreement made with Recovery Act funds by the Department of Energy (DOE) to a Recipient. Such Award must require compliance with the labor standards clauses and wage rate requirements of the Davis-Bacon Act (DBA) for work performed by all laborers and mechanics employed by Recipients (other than a unit of State or local government whose own employees perform the construction) Subrecipients, Contractors, and subcontractors.
- (2) "Contractor" means an entity that enters into a Contract. For purposes of these clauses, Contractor shall include (as applicable) prime contractors, Recipients, Subrecipients, and Recipients' or Subrecipients' contractors, subcontractors, and lower-tier subcontractors. "Contractor" does not mean a unit of State or local government where construction is performed by its own employees."
- (3) "Contract" means a contract executed by a Recipient, Subrecipient, prime contractor, or any tier subcontractor for construction, alteration, or repair. It may also mean (as applicable) (i) financial assistance instruments such as grants, cooperative agreements, technology investment agreements, and loans; and, (ii) Sub awards, contracts and subcontracts issued under financial assistance agreements. "Contract" does not mean a financial assistance instrument with a unit of State or local government where construction is performed by its own employees.
- (4) "Contracting Officer" means the DOE official authorized to execute an Award on behalf of DOE and who is responsible for the business management and non-program aspects of the financial assistance process.
- (5) "Recipient" means any entity other than an individual that receives an Award of Federal funds in the form of a grant, cooperative agreement, or technology investment agreement directly from the Federal Government and is financially accountable for the use of any DOE funds or property, and is legally responsible for carrying out the terms and conditions of the program and Award.
- (6) "Subaward" means an award of financial assistance in the form of money, or property in lieu of money, made under an award by a Recipient to an eligible Subrecipient or by a Subrecipient to a lower-tier subrecipient. The term includes financial assistance when provided by any legal agreement, even if the agreement is called a contract, but does not include the Recipient's procurement of goods and services to carry out the program nor does it include any form of assistance which is excluded from the definition of "Award" above.
- (7) "Subrecipient" means a non-Federal entity that expends Federal funds received from a Recipient to carry out a Federal program, but does not include an individual that is a beneficiary of such a program.

#### (a) Davis Bacon Act

- (1) Minimum wages.

(i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and, without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in § 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein, provided that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii)(A) The Contracting Officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the Contract shall be classified in conformance with the wage determination. The Contracting Officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

- (1) The work to be performed by the classification requested is not performed by a classification in the wage determination;
- (2) The classification is utilized in the area by the construction industry; and
- (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the Contracting Officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the Contracting Officer to the Administrator of the Wage and Hour Division, U.S. Department of Labor, Washington, DC 20210. The

Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.

(C) In the event the Contractor, the laborers or mechanics to be employed in the classification or their representatives, and the Contracting Officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the Contracting Officer shall refer the questions, including the views of all interested parties and the recommendation of the Contracting Officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii)(B) or (C) of this section, shall be paid to all workers performing work in the classification under this Contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the Contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, provided that the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(2) Withholding. The Department of Energy or the Recipient or Subrecipient shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the Contractor under this Contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Contractor or any subcontractor the full amount of wages required by the Contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the Contract, the Department of Energy, Recipient, or Subrecipient, may, after written notice to the Contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.



## (3) Payrolls and basic records.

(i) Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made, and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The Contractor shall submit weekly for each week in which any Contract work is performed a copy of all payrolls to the Department of Energy if the agency is a party to the Contract, but if the agency is not such a party, the Contractor will submit the payrolls to the Recipient or Subrecipient (as applicable), applicant, sponsor, or owner, as the case may be, for transmission to the Department of Energy. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead, the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime Contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the Department of Energy if the agency is a party to the Contract, but if the agency is not such a party, the Contractor will submit them to the Recipient or Subrecipient (as applicable), applicant, sponsor, or owner, as the case may be, for transmission to the Department of Energy, the Contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the sponsoring government agency (or the Recipient or Subrecipient (as applicable), applicant, sponsor, or owner).

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the Contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be provided under § 5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under § 5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the Contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the Contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the Contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 3729 of title 31 of the United States Code.

(iii) The Contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the Department of Energy or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the Contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

## (4) Apprentices and trainees—

(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not

be greater than the ratio permitted to the Contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a Contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity. The utilization of apprentices, trainees, and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended and 29 CFR part 30.

(5) Compliance with Copeland Act requirements. The Contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this Contract.

(6) Contracts and Subcontracts. The Recipient, Subrecipient, the Recipient's, and Subrecipient's contractors and subcontractor shall insert in any Contracts the clauses contained herein in (a)(1) through (10) and such other clauses as the Department of Energy may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The Recipient shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of the paragraphs in this clause.

(7) Contract termination: debarment. A breach of the Contract clauses in 29 CFR 5.5 may be grounds for termination of the Contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this Contract.

(9) Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this Contract shall not be subject to the general disputes clause of this Contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the Recipient, Subrecipient, the Contractor (or any of its subcontractors), and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(10) Certification of eligibility.

(i) By entering into this Contract, the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this Contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

(b) Contract Work Hours and Safety Standards Act. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

(1) Overtime requirements. No Contractor or subcontractor contracting for any part of the Contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at

a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (b)(1) of this section, the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.

(3) Withholding for unpaid wages and liquidated damages. The Department of Energy or the Recipient or Subrecipient shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any other Federal contract with the same prime Contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.

(4) Contracts and Subcontracts. The Recipient, Subrecipient, and Recipient's and Subrecipient's contractor or subcontractor shall insert in any Contracts, the clauses set forth in paragraph (b)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The Recipient shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (b)(1) through (4) of this section.

(5) The Contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the Contract for all laborers and mechanics, including guards and watchmen, working on the Contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. The records to be maintained under this paragraph shall be made available by the Contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the Department of Energy and the Department of Labor, and the Contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

(c) [Intentionally Omitted]

(d) Rates of Wages. The prevailing wage rates determined by the Secretary of Labor can be found at <http://www.wdol.gov/>.

### SCHEDULE 3 TO EXHIBIT C

#### Intangible Property 10 C.F.R. 600.136 (a) through (d)

#### § 600.136 Intangible property.

(a) Recipients may copyright any work that is subject to copyright and was developed, or for which ownership was purchased, under an award. DOE reserves a royalty-free, nonexclusive and irrevocable right to reproduce, publish or otherwise use the work for Federal purposes and to authorize others to do so.

(b) Recipients are subject to applicable regulations governing patents and inventions, including government-wide regulations issued by the Department of Commerce at 37 CFR part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements."

(c) The DOE has the right to:

(1) Obtain, reproduce, publish or otherwise use the data first produced under an award; and

(2) Authorize others to receive, reproduce, publish, or otherwise use such data for Federal purposes.

(d)(1) In addition, in response to a Freedom of Information Act (FOIA) request for research data relating to published research findings produced under an award that were used by the Federal Government in developing an agency action that has the force and effect of law, the DOE shall request, and the recipient shall provide, within a reasonable time, the research data so that they can be made available to the public through the procedures established under the FOIA. If the DOE obtains the research data solely in response to a FOIA request, the agency may charge the requester a reasonable fee equaling the full incremental cost of obtaining the research data. This fee should reflect costs incurred by the agency, the recipient, and applicable subrecipients. This fee is in addition to any fees the agency may assess under the FOIA (5 U.S.C. 552(a)(4)(A)).

(2) The following definitions apply for purposes of this paragraph (d):

(i) *Research data* is defined as the recorded factual material commonly accepted in the scientific community as necessary to validate research findings, but not any of the following: preliminary analyses, drafts of scientific papers, plans for future research, peer reviews, or communications with colleagues. This "recorded" material excludes physical objects (e.g., laboratory samples). *Research data* also do not include:

(A) Trade secrets, commercial information, materials necessary to be held confidential by a researcher until they are published, or similar information which is protected under law; and

(B) Personnel and medical information and similar information the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, such as information that could be used to identify a particular person in a research study.

(ii) *Published* is defined as either when:

(A) Research findings are published in a peer-reviewed scientific or technical journal; or

(B) A Federal agency publicly and officially cites the research findings in support of an agency action that has the force and effect of law.

(iii) *Used by the Federal Government in developing an agency action that has the force and effect of law* is defined as when an agency publicly and officially cites the research findings in support of an agency action that has the force and effect of law.

#### **EXHIBIT D**

##### **Reporting and Audit Requirements**

1. **Generally.** Failure to comply with the reporting requirements set forth in this **Exhibit D** may result in termination of the Grant. Recipient acknowledges that information in reports provided under this Agreement may be made available to the public, and that public disclosure of certain information required by such reports is mandated by applicable Laws.

2. **Special Status Reports.** Recipient must report the following events by e-mail as soon as possible after they occur:

(a) Developments that have a significant favorable impact on the Project.

(b) Problems, delays, or adverse conditions which materially impair the recipient's ability to meet the objectives of the Project or which may require SEEA or DOE to respond to questions relating to such events from the public. For example, the recipient must report any of the following incidents and include the anticipated impact and remedial action to be taken to correct or resolve the problem/condition:

- (i) Any single fatality or injuries requiring hospitalization of five or more individuals;
- (ii) Any significant environmental permit violation;
- (iii) Any verbal or written Notice of Violation of any Environmental, Safety, and Health statutes or regulations;
- (iv) Any incident which causes a significant process or hazard control system failure;
- (v) Any event which is anticipated to cause a significant schedule slippage or cost increase;
- (vi) Any damage to Government-owned equipment in excess of \$50,000; or
- (vii) Any other incident that has the potential for high visibility in the media.

##### **3. Monthly Status Reports.**

(a) Recipient shall submit a written detailed narrative progress report describing the work accomplished on the Project and progress toward meeting the Project objectives to the Contract Administrator of SEEA no later than three business days after the end of each calendar month. Such report shall include:

- (i) A detailed list of all projects for which Funds were expended or obligated including:
  - (A) A description of each project;
  - (B) An evaluation of the completion status of project;
  - (C) An estimate of number of jobs created and retained by project in the manner and form prescribed by SEEA from time to time; and
  - (D) Infrastructure investments made by State and local governments, purpose, total cost, rationale or agency for funding infrastructure investment, name of agency contact.
- (E) Energy (kwh/therms/gallons/BTUs/etc.) saved
- (F) Renewable energy generated
- (G) GHG emissions reduced
- (H) Cost savings

- (I) Square footage of buildings retrofitted.
- (ii) A description of short-term outcomes, calculated in accordance with guidelines provided by SEEA or DOE from time to time, including:
  - (A) Energy Savings (kwh equivalents):
    - (1) Annual reduction in natural gas consumption (mmcf) by sector and end-use category
    - (2) Annual reduction in electricity consumption (MWh) by sector and end-use category
    - (3) Annual reduction in electricity demand (MW) by sector and end-use category
    - (4) Annual reduction in fuel oil consumption (gallons) by sector and end-use category
    - (5) Annual reduction in propane consumption (gallons) by sector and end-use category
    - (6) Annual reduction in gasoline and diesel fuel consumption (gallons) by sector and end-use category
  - (B) Job Creation/Retention:
    - (1) Number
    - (2) Type
    - (3) Duration
  - (C) Renewable Energy Capacity and Generation:
    - (1) Amount of wind-powered electric generating capacity installed (MW)
    - (2) Amount of electricity generated from wind systems (MWh)
    - (3) Amount of photovoltaic generating capacity installed (MW)
    - (4) Amount of electricity generated from photovoltaic systems (MWh)
    - (5) Amount of electric generating capacity from other renewable sources installed (MW)
    - (6) Amount of electricity generated from other renewable sources (MWh)
  - (D) Emissions Reductions (tons) (CO2 equivalents)
    - (1) Methane
    - (2) Carbon
    - (3) Sulfur dioxide
    - (4) Nitrogen oxide
    - (5) Carbon monoxide

4. **Annual Report.** Recipient shall submit to SEEA's Contract Administrator an annual report on the following dates (July 8, 2011; July 6, 2012, and June 21, 2013) and in accordance with the schedule shown on Exhibit A. The annual report shall parallel the scope and conditions of the Agreement as defined in Exhibit A. If the annual report is not acceptable to SEEA, it shall be returned to Recipient for correction. Final payment will not be made until the annual report is acceptable to SEEA. The required format for this report is set forth on Exhibit G, and the report shall include:

- (a) A narrative statement evaluating and summarizing the completed Project including a concise statement of the Scope of Work in Exhibit A, a detailed description of the objectives Recipient hoped to accomplish with the Project, and comparison of the objectives with accomplishments;
- (b) A narrative description and evaluation of the energy efficiency improvements achieved or are expected to be achieved as a result of this Project;
- (c) A discussion of the extent to which local partners and stakeholders participated in the Project, with respect to both funding and effort or time;
- (d) A discussion of what Recipient might do differently on a similar future project (i.e., "lessons learned");
- (e) Any other documents, reports or other evidence, including photographs necessary to verify that the Project has been concluded in compliance with this Agreement; and
- (f) A copy of Engineer's Certification of Completion, if applicable.

5. **Protected Personally Identifiable Information (PII).** Reports must not contain any Protected PII. PII is any information about an individual which can be used to distinguish or trace an individual's identity. Some information that is considered to be PII is available in public sources such as telephone books, public websites, university listings, etc. This type of information is considered to be Public PII and includes, for example, first and last name, address, work telephone number, e-mail address, home telephone number, and general educational credentials. In contrast, Protected PII is defined as an individual's first name or first initial and last name in combination with any one or more of types of information, including, but not limited to, social security number, passport number, credit card numbers, clearances, bank numbers, biometrics, date and place of birth, mother's maiden name, criminal, medical and financial records, educational transcripts, etc.

6. **Registration Requirements Under § 1512 of the Recovery Act.** Recipient shall maintain a current registration in the Central Contractor Registration (<http://www.ccr.gov>) at all times during which it is in receipt of Funds. A Dun and Bradstreet Data Universal Numbering System (DUNS) Number (<http://www.dnb.com>) is one of the requirements for registration in the Central Contractor Registration.

7. **Project Audits.** Recipient will maintain full, correct and complete books and records and supporting documentation (including timesheets, work specifications, invoices and receipts) pertaining to the Project and the Funds (collectively, "Recipient Records"). Recipient Records will be maintained for a period of five years following completion of the Project. During the term of this Agreement and for a period of five years thereafter, SEEA will be entitled, either directly or through an independent accounting firm, to audit the Recipient Records for the purpose of verifying Recipient's compliance with this Agreement. Such audits shall take place during Recipient's normal business hours upon not less than five business days' prior written notice, and shall be conducted in a manner that does not unreasonably interfere with Recipient's normal operations.

8. **Department of Energy Oversight.** DOE will exercise normal Federal stewardship in overseeing the project activities performed under amounts awarded by the DOE (including the Funds). Stewardship activities include, but are not limited to, conducting site visits; reviewing performance and financial reports; providing technical assistance and/or temporary intervention in unusual circumstances to correct deficiencies which develop during the project; assuring compliance with terms and conditions;

and reviewing technical performance after project completion to ensure that the award objectives have been accomplished. DOE's authorized representatives have the right to make site visits at reasonable times to review project accomplishments and management control systems and to provide technical assistance, if required. Recipient shall 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.

9. **Further Assurances.** Recipient will promptly, completely and accurately respond to all reasonable requests by the SEEA for additional reporting relating to the Project or the Funds. Any such request for information required by Law to be included in any report to a Governmental Authority, or necessary for SEEA's completion of any such report required by Law, will be deemed to be a reasonable request.

#### EXHIBIT E

##### Definitions

Unless indicated otherwise from the context, the following terms shall have as their meanings in this Agreement the definitions set forth below.

1. **"DOE"** means the United States Department of Energy.
2. **"Governmental Authority"** means any nation or government, any federal, state, local or other political subdivision thereof, any quasi-governmental authority, and any court, tribunal, arbitral body, taxation authority, department, commission, board, bureau, agency, instrumentality thereof or thereto which exercises executive, legislative, judicial, regulatory or administrative functions of or pertaining to government.
3. **"Grant"** means financial assistance provided by SEEA to Recipient to carry out activities described in this Agreement.
4. **"Law"** means all applicable laws (including those arising under common law), statutes, codes, rules, regulations, reporting or licensing requirements, ordinances and other pronouncement having the effect of law of the United States, any foreign country or any domestic or foreign state, county, city or other political subdivision, including those promulgated, interpreted or enforced by any Governmental Authority.
5. **"Person"** means an individual, corporation, limited liability company, partnership, trust, association, joint venture, unincorporated organization or entity of any kind or nature, or a Governmental Authority.

**EXHIBIT F****Year One Allocation**

Under this Grant Agreement and DOE award #DE-EE0003575, the Town of Carboro will be given up to \$75,000 for the year one allocation from the SEEA program. Only the first \$37,500 of year one funding is guaranteed. The remainder of year one funding will be allocated based on the Town's ability to meet the criteria set forth in SEEA's six-month performance evaluation. Years 2 and 3 of the program are also performance based, whereby SEEA will match incentives and rebate levels, and therefore a dollar amount cannot be assigned at this date.

