

STATE OF TEXAS

COUNTY OF TRAVIS

* STATE ENERGY CONSERVATION OFFICE
AGREEMENT – Interlocal Cooperation Act

* INTERLOCAL CONTRACT # CM816

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Recitals

Whereas, Austin Energy's Texas Solar for Schools Program and the Comptroller of Public Accounts, State Energy Conservation Office, will enter into an Agreement to provide for the administration and facilitation of Austin Energy's Texas Solar for Schools Program; and

Whereas, Chapter 403 and Section 2305.033, Texas Government Code authorize the Comptroller and State Energy Conservation Office (Comptroller or SECO) to enter into contracts and provide for the administration and activities of Austin Energy's Texas Solar for Schools Program; and

Whereas, Section 791.011, Texas Government Code, authorizes agreements between agencies and entities of the state and local entities, including Austin Energy's Texas Solar for Schools Program; and

Whereas, on June 10, 2004, the Austin City Council, as the governing body of Austin Energy, its municipally owned electric utility, adopted a Resolution in accordance with Section 791.011(d) of the Government Code authorizing Austin Energy to enter into interlocal contracts provided that the annual expenditure of funds by Austin Energy under such interlocal contract does not exceed the threshold City Council expenditure approval amount under the Austin City Charter (currently \$50,000);

Whereas, pursuant to this June 10, 2004 City Council Resolution, Austin Energy has the authority to enter into this Interlocal Agreement; and

Whereas, Comptroller agrees to pay to Austin Energy's Texas Solar for Schools Program in return for the performance of the services as set forth in Attachment A, the total cost of the services not to exceed \$100,000.00, as more fully detailed in Attachment B, "Budget" to this Agreement; and

Whereas, the foregoing amount fairly, reasonably, and adequately compensates Austin Energy's Texas Solar for Schools Program for all personnel, services, materials, and other expenses, provided to Comptroller and Austin Energy's Texas Solar for Schools Program under this Agreement,

Now, Therefore, in consideration of all of the foregoing, the parties hereby agree as follows:

I. Parties

This Interlocal Agreement ("Agreement") is made and entered into by the following parties:

The Agency: Comptroller of Public Accounts, ("Agency")
(Receiving Agency) State Energy Conservation Office
LBJ State Office Building
111 E. 17th Street, Room 1114
Austin, Texas 78774-0100

The Contractor: Austin Energy, ("Contractor")
(Performing Agency) 721 Barton Springs Road
Austin, TX 78704

II. Authority

This Agreement is entered into pursuant to the Oil Overcharge Restitutionary Act, Chapter 2305, Texas Government Code; the Interlocal Cooperation Act, Chapter 791, Texas Government Code; and the State of Texas Oil Overcharge Funds Disbursement Plan. Funding of this program is provided by Exxon Oil Overcharge Funds and/or Federal Funds received from the United States Department of Energy.

III. Services

Contractor shall provide all of the services described in Attachment A to this Agreement, which is attached hereto and incorporated herein for all purposes. In addition, Contractor shall provide all services reasonably related to those specified in Attachment A.

Contractor shall retain full control over the personnel, equipment, supplies, and other items Contractor selects as necessary to provide all of the services described in Attachment A.

Contractor shall submit such records, information, and reports in such form and at such times as may be required by Agency; these reports shall include, but are not limited to, the reports specified in Attachment A.

IV. Payments

Total payments to Contractor under this Agreement shall not exceed One Hundred Thousand Dollars (\$100,000.00). Contractor's payments under this Agreement are limited to reimbursements of authorized costs and out-of-pocket expenses incurred pursuant to the budget provided in Attachment B, which is attached hereto and incorporated herein for all purposes. No other amounts shall be paid. Contractor shall submit each request for payment by submitting a detailed invoice, listing expenses by budget categories. Contractor shall submit invoices that are fully supported by receipts and such other documentation; Agency reserves the right, in its sole discretion, to withhold payment of invoices for which Contractor does not submit documentation acceptable to Agency. Contractor shall submit monthly invoices for services performed and costs incurred in the prior month. Contractor shall submit performance reports as required by Attachment A.

Contractor shall be reimbursed for authorized travel under this Agreement only if travel is a budget category in Attachment B. If travel is included in Attachment B, Contractor shall be reimbursed for reasonable out-of-pocket travel expenses at rates not to exceed the approved Texas Comptroller of Public Accounts employee rates.

Contractor shall not purchase any equipment or computer software for its performance under this Agreement without prior written approval from Agency. For this purpose, equipment is defined as tangible personal property having a useful life of more than one (1) year and an acquisition cost of five hundred dollars (\$500.00) or more per unit. Title to and control over equipment or license of any software so purchased for Contractor's performance under this Agreement shall remain with Contractor so long as it is being used for the purpose for which it was intended under the terms of this Agreement.

Agency reserves the right, in its sole discretion, to authorize revisions to budgeted amounts to provide for flexibility within budget categories. Agency must give prior approval of all such revisions through its execution of a written amendment to this Agreement.

V. Inspection, Monitoring and Records

Contractor shall permit Agency to inspect and shall make available to Agency for inspection any and all pertinent records, files, information and other written material pertaining to the operation of programs and expenditure of funds under this Agreement. This information includes, but is not limited to, all information maintained by Contractor or any of its subcontractors. Contractor shall maintain, keep and preserve at its

principal office all such records for a period of four (4) years and make the same available to Agency, other state or federal agencies for auditing or other purposes authorized by applicable federal or state law or guidelines. Agency may also carry out monitoring and evaluation activities to ensure Contractor's compliance with the programs that are the subject of this Agreement and to make available copies of all financial audits and related management letters of Contractor and any subcontractors as required under any applicable federal or state law or guidelines.

Contractor shall also comply with the inspection, monitoring and records requirements described in Attachment A.

VI. Termination

Agency may terminate this Agreement by delivering written notice of the termination to Contractor at least thirty (30) days prior to the effective date of termination specified in the notice.

Upon receipt of notice of termination from Agency, Contractor shall have thirty (30) days in which to complete projects which have been substantially performed. Upon receipt of such notice, Contractor shall cancel, withdraw or otherwise terminate any outstanding orders or subcontracts of this Agreement as of the effective date of such termination and shall otherwise cease to incur any costs; Agency shall have no liability for costs incurred after such termination date.

VII. Indemnification

To the extent permitted under the Constitution and laws of the State of Texas, Contractor shall indemnify, save and hold harmless Agency, its officers, agents, representatives and employees, and the State of Texas, its officers, agents, representatives and employees, from all suits, actions, losses, damages, claims, or liability of any character, type, or description, including without limiting the generality of the foregoing all expenses of litigation, court costs, and attorney's fees for injury or death to any person, or injury to any property, received or sustained by any person or persons or property, arising out of, or occasioned by, the negligent acts of Contractor or its officers, agents, representatives or employees, in the execution or performance of this Agreement.

VIII. Subcontracting

Contractor may subcontract for services to be provided under this Agreement with Agency's prior written approval of each such subcontract and subcontractor. Contractor, in subcontracting any of its performance hereunder, shall legally bind subcontractors to perform and make such subcontractors subject to all the duties, requirements, and obligations of Contractor under this Agreement. Contractor shall be jointly and severally liable for all performances under this Agreement, including, but not limited to, the performance of its subcontractors to the extent permitted under the Constitution and laws of the State of Texas.

Contractor represents and warrants that it has obtained all necessary permits, licenses, easements, waivers and permissions of whatsoever kind required for its performance and the performance of its subcontractors under this Agreement. In no event shall any provision of this Paragraph, including, but not limited to, the requirement that Contractor obtain the prior approval of Agency on Contractor's subcontracts, be construed as relieving Contractor of the responsibility for ensuring that all services rendered under its subcontracts comply with all the terms and provisions of this Agreement as if they were rendered by Contractor. Contractor shall furnish Agency with copies of all proposed subcontracts and all proposed amendments, assignments, cancellations or terminations of said subcontracts no later than thirty (30) days prior to the proposed effective date of such contracts, amendments, assignments, cancellations or terminations; provided, however, that this thirty (30) day period may be shortened by written agreement of the parties.

IX. Amendments

This Agreement may only be amended upon the written agreement of the parties by executing an amendment to this Agreement; however, Agency may unilaterally amend this Agreement as provided in Paragraph XVIII.

X. Incorporation of Attachments; Incorporation by Reference

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

| | |
|------------------------|---|
| Attachment A: | Statement of Services To Be Performed |
| Attachment B: | Budget |
| Attachment C-1: | DOE Assurance of Compliance, as completed by Contractor |
| Attachment C-2: | DOE Assurance of Compliance, as completed by each subcontractor |
| Attachment D: | Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion-Lower Tier Covered Transactions, as completed by Contractor |
| Attachment E: | Certifications Regarding Lobbying; Debarment, Suspension and Other Responsibility Matters; and Drug-Free Workplace Requirements, as completed by Contractor |
| Attachment F: | Disclosure of Lobbying Activities, as completed by Contractor |
| Attachment G: | Assurances -- Non-Construction Programs, as completed by Contractor |
| Attachment H: | Intellectual Property Provisions, as completed by Contractor |
| Attachment I: | Nondisclosure Agreement, as completed by Contractor |

Contractor represents and warrants that it completed and provided the following Attachments to Agency prior to executing this Agreement: C-1, D, E, F, G, H and I. In addition, Contractor represents and warrants that each of its subcontractors will complete and provide an Attachment C-2 to Contractor and Agency prior to Contractor executing this Agreement.

All applicable rules, regulations and all other requirements imposed by law, including, but not limited to, those pertinent rules and regulations of the State of Texas and those of federal agencies providing funds to the State of Texas are incorporated into this Agreement by reference as if specifically written herein.

XI. Funding

Agency's performance of its obligations under this Agreement is contingent upon and subject to availability of and actual receipt by Agency of sufficient and adequate funds from the sources contemplated by this Agreement. This Agreement is subject to immediate cancellation or termination, without penalty to Agency or the State of Texas, subject to the availability and receipt of these funds. In addition, Agency is a state agency whose authority and appropriations are subject to the actions of the Texas Legislature. If Agency becomes subject to a legislative change, revocation of statutory authority or lack of funds that would render the services to be provided under this Agreement impossible or unnecessary, Agency may terminate this Agreement without penalty to Agency or the State of Texas. In the event of a termination or cancellation under this Paragraph, Agency shall not be required to give notice and shall not be liable for damages or losses caused or associated with such termination or cancellation.

XII. Term of Agreement

The term of this Agreement shall be upon signature by Agency until August 31, 2009 unless terminated earlier in accordance with other provisions of this Agreement. The provisions of the following shall survive the termination or expiration of this Agreement: Paragraphs V, VII, XV, XVI, XVII; Sections 19.2, 19.3, 19.6; and Attachments C-1, C-2, G, H and I.

XIII. Force Majeure

Except as otherwise provided, neither Contractor nor Agency shall be liable to the other for any delay in, or failure of performance, of any requirement contained in this Agreement caused by force majeure. The existence of such causes of delay or failure shall extend the period of performance until after the causes of delay or failure have been removed provided the non-performing party exercises all reasonable due diligence to perform. Force majeure is defined as acts of God, war, fires, explosions, hurricanes, floods, failure of transportation, or other causes that are beyond the reasonable control of either party and that by exercise of due foresight such party could not reasonably have been expected to avoid, and which, by the exercise of all reasonable due diligence, such party is unable to overcome. Each party must inform the other in writing with proof of receipt within three (3) business days of the existence of such force majeure or otherwise waive this right as a defense.

XIV. Assignment

Without the prior written consent of Agency, Contractor may not transfer or assign any rights or duties under or any interest in this Agreement.

XV. Property Rights

For the purposes of this Agreement, the term "Work" is defined as all reports, work papers, work products, materials, approaches, designs, specification, systems, documentation, methodologies, concepts, intellectual property or other property developed, produced or generated in connection with the services provided under this Agreement. Agency and Contractor intend this Agreement to be a contract for services and each considers the Work and any and all documentation or other products and results of the services rendered by Contractor to be work made for hire. Contractor acknowledges and agrees that the Work (and all rights therein) belongs to and shall be the sole and exclusive property of Agency.

If for any reason the Work would not be considered work-for-hire under applicable law, Contractor does hereby sell, assign, and transfer to Agency, its successors and assigns, the entire right, title and interest in and to the copyright in the Work and any registrations and copyright applications relating thereto and any renewals and extensions thereof, and in and to all works based upon, derived from, and incorporating the Work, and in and to all income, royalties, damages, claims, and payments now or hereafter due or payable with respect thereto, and in and to all causes of action, either in law or in equity for past, present, or future infringement based on the copyrights, and in and to all rights corresponding to the foregoing. Contractor agrees to execute all papers and to perform such other property rights as Agency may deem necessary to secure for Agency or its designee the rights herein assigned.

Contractor and Contractor's employees shall have no rights in or ownership of the Work and any and all documentation or other products and results of these services or any other property of Agency.

No later than the first calendar day after the termination or expiration of this Agreement or at Agency's request, Contractor shall deliver to Agency all completed, or partially completed, Work and any and all documentation or other products and results of these services. Failure to timely deliver such Work and any and all documentation or other products and results of services shall be considered a material breach of this Agreement. Contractor shall not make or retain any copies of the Work or any and all documentation or other products and results of the services without the prior written consent of Agency.

In the event of any conflicting provisions between this Paragraph and Attachment H, Attachment H shall control.

XVI. Severability Clause

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

XVII. Dispute Resolution Process

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

The dispute resolution process provided for in Chapter 2260 of the Government Code shall be used, as further described herein, by Agency and Contractor to attempt to resolve any claim for breach of contract made by Contractor under this Agreement:

- (A) Contractor's claim for breach of this Agreement that the parties cannot resolve in the ordinary course of business shall be submitted to the negotiation process provided in Chapter 2260. To initiate the process, Contractor shall submit written notice, as required by Chapter 2260, to the Deputy Comptroller or his or her designee. Said notice shall also be given to all other representatives of Agency and Contractor otherwise entitled to notice under this Agreement. Compliance by Contractor with Chapter 2260 is a condition precedent to the filing of a contested case proceeding under Chapter 2260.
- (B) The contested case process provided in Chapter 2260 is Contractor's sole and exclusive process for seeking a remedy for an alleged breach of contract by Agency if the parties are unable to resolve their disputes under subparagraph (A) of this Section.
- (C) Compliance with the contested case process provided in Chapter 2260 is a condition precedent to seeking consent to sue from the Legislature under Chapter 107, Civil Practice and Remedies Code. Neither the execution of this Agreement by Agency nor any other conduct of any representative of Agency relating to this Agreement shall be considered a waiver of sovereign immunity to suit.

For all other specific breach of contract claims or disputes under this Agreement, the following shall apply:

Should a dispute arise out of this Agreement, Agency and Contractor shall first attempt to resolve it through direct discussions in a spirit of mutual cooperation. If the parties' attempts to resolve their disagreements through negotiations fail, the dispute will be mediated by a mutually acceptable third party to be chosen by Agency and Contractor within fifteen (15) days after written notice by one of them demanding mediation under this Section. Contractor shall pay all costs of the mediation unless Agency, in its sole good faith discretion, approves its payment of all or part of such costs. By mutual agreement, Agency and Contractor may use a non-binding form of dispute resolution other than mediation. The purpose of this Section is to reasonably ensure that Agency and Contractor shall in good faith utilize mediation or another non-binding dispute resolution process before pursuing litigation. Agency's participation in or the results of any mediation or another non-binding dispute resolution process under this Section or the provisions of this Section shall not be construed as a waiver by Agency of (1) any rights, privileges, defenses, remedies or immunities available to Agency as an agency of the State of Texas or otherwise available to Agency; (2) Agency's termination rights; or (3) other termination provisions or expiration dates of this Agreement.

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

XVIII. Applicable Law and Conforming Amendments

Contractor shall comply with all laws, regulations, requirements and guidelines applicable to a contractor providing services to the State of Texas, as these laws, regulations, requirements and guidelines currently exist and as they are amended throughout the term of this Agreement. Agency reserves the right, in its sole discretion, to unilaterally amend this Agreement prior to award and throughout the term of this Agreement to incorporate any modifications necessary for Agency's or Contractor's compliance with all applicable state and federal laws, regulations, requirements and guidelines. Other than this provision, this Agreement may only be amended by the written agreement of the parties.

XIX. Additional Provisions

19.1 Time Limits

Time is of the essence in the performance of this Agreement and accordingly all time limits shall be strictly construed and rigidly enforced.

19.2 No Waiver

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

19.3 No Liability Upon Termination

If this Agreement is terminated for any reason, the parties and the State of Texas shall not be liable for any damages, claims, losses, expenses, costs or any other amounts arising from or related to any such termination.

19.4 Limitation on Authority; No Other Obligations

Contractor shall have no authority to act for or on behalf of Agency or the State of Texas except as expressly provided for in this Agreement; no other authority, power, use, or joint enterprise is granted or implied. Contractor may not incur any debts, obligations, expenses or liabilities of any kind on behalf of Agency.

19.5 No Other Benefits

Contractor shall have no exclusive rights or benefits other than those set forth herein.

19.6 Supporting Documents; Right to Audit; Independent Audits

Contractor shall maintain and retain supporting fiscal documents adequate to ensure that claims for contract funds are in accordance with applicable Agency and State of Texas requirements. Contractor shall maintain all such documents and other records relating to this Agreement and the State's property for a period of four (4) years after the date of submission of the final invoices or until a resolution of all billing questions, whichever is later. Contractor shall make available at reasonable times and upon reasonable notice, and for reasonable periods, all information related to the State's property, such as work papers, reports, books, data, files, software, records, and other supporting documents pertaining to this Agreement, for purposes of inspecting, monitoring, auditing, or evaluating by Agency, the State of Texas or their authorized representatives. Contractor shall cooperate with auditors and other authorized Agency and State of Texas representatives and shall provide them with prompt access to all of such State's property as requested by Agency or the State of Texas. By example and not as an exclusion to other breaches or failures, Contractor's failure to comply with this Section shall constitute a material breach of this Agreement and shall authorize Agency to immediately assess liquidated damages for such failure. For purposes of this Section, the "State's property" includes, but is not limited to, "Work" as defined in this Agreement. Agency may require, at Contractor's sole cost and expense, independent audits by a qualified certified public accounting firm of Contractor's books and records or the State's property. The independent auditor shall provide Agency with a copy of such audit at the same time it is provided to Contractor. Agency retains the right to issue a request for proposals for the services of an independent certified public accounting firm under this Agreement. In addition to and without limitation on the other audit provisions of this Agreement, pursuant to Section 2262.003, Texas Government Code, the state auditor may conduct an audit or investigation of the Contractor or any other entity or person receiving funds from the state directly under this Agreement or indirectly through a subcontract under this Agreement. The acceptance of funds by the Contractor or any other entity or person directly under this Agreement or indirectly through a subcontract under this Agreement acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. Under the direction of the legislative audit committee, the Consultant or other entity that is the subject of an audit or investigation by the state auditor must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit. This Agreement may be amended unilaterally by the Comptroller to comply with any rules and procedures of the state auditor in the implementation and enforcement of Section 2262.003. Under procedures provided by the state auditor on September 5, 2003, in addition to the above: (1) the Contractor understands that the acceptance of funds under this Agreement acts as acceptance of the authority of the state auditor to conduct an audit or investigation in connection with those funds; (2) the Contractor further agrees to cooperate fully with the state auditor in the conduct of the audit or investigation, including providing all records requested; (3) the Contractor shall ensure that this paragraph concerning the authority to audit funds received indirectly by subcontractors through the Contractor and the requirement to cooperate is included in any subcontract it awards; and (4) the state auditor shall at any time have access to and the rights to examine, audit, excerpt, and transcribe any pertinent books, documents, working papers, and records of the Contractor relating to this Agreement.

19.7 Debts or Delinquencies to State

Contractor acknowledges and agrees that, to the extent Contractor owes any debt or delinquent taxes to the State of Texas, any payments or other amounts Contractor is otherwise owed under or related to this Agreement may be applied by the Comptroller of Public Accounts toward any debt or delinquent taxes Contractor owes the State of Texas until the debt or delinquent taxes are paid in full. These provisions are effective at any time

Contractor owes any such debt or delinquency. Contractor shall comply with rules adopted by the Comptroller under §§403.055, 403.0551, 2252.903, Texas Government Code, and other applicable laws and regulations regarding satisfaction of debts or delinquencies to the State of Texas.

XX. Signatories

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

XXI. Merger

This Agreement contains the entire agreement between the parties relating to the rights granted and the obligations assumed in it. Any oral representations or modifications concerning this Agreement shall be of no force or effect unless contained in a subsequent writing, signed by both parties.

AGENCY:

Comptroller of Public Accounts

By

Martin A. Hubert
Deputy Comptroller

Date

CONTRACTOR:

Austin Energy

By

Roger Duncan
Interim General Manager

Date



STATEMENT OF SERVICES TO BE PERFORMED

- A. Contractor shall perform all of the services described in this Attachment A, or otherwise required by this Agreement, ("services"). These services include, but are not limited to, the furnishing of all personnel and the procurement of all equipment, supplies, and other items necessary to provide those services in compliance with this Agreement. Contractor shall provide all services in accordance with the Standards of Performance established by Agency for these services. Contractor shall review and implement Agency recommendations, as Agency adopts them from time to time, so that the services may be expeditiously and satisfactorily completed. Contractor shall meet with Agency at such times as Agency may reasonably request to discuss the progress of services and any other matters that may arise in regard to this Agreement.
- B. Contractor shall provide all of the following services:
1. Purchase and install six small scale solar energy systems for Texas Independent School Districts (ISDs) in the Contractor's service area.
 2. Purchase and install data acquisition systems.
 3. Document the installation process and include it as a learning tool for the community outreach and educational component.
 4. Implement renewable energy education outreach plan and training for each school district.
 5. Assist the selected ISDs in the development and implementation of a community outreach program that describes the economics and environmental benefits of renewable energy and its improving technologies.
 6. Prepare and submit brief monthly reports.
 7. Prepare and submit final project report.

ATTACHMENT A (continued) Contract No. _____

STATEMENT OF SERVICES TO BE PERFORMED

- C. Contractor shall provide the following services during the period of this Agreement and all services reasonably related to them. Agency may request additional records, information or reports related to the services hereinafter described and funded by Agency pursuant to Attachment B. These services are as follows:

The minimum deliverables are summarized in the following chart:

| Deliverables and Milestones | Schedule |
|--|--------------------------|
| 1. Design, purchase, and install six solar energy systems in Austin Energy's service area. | January 2008 - June 2009 |
| 2. Purchase and install a web capable data acquisition system on each installation. | January 2008 - June 2009 |
| 3. Document the installation process and develop site tour survey to include as a tool in the renewable energy education component. | January 2008 - June 2009 |
| 4. Prepare and distribute a pre and post installation survey to assist in determining the district's knowledge of solar energy systems and other renewable energy resources. | March 2008 - June 2009 |
| 5. Provide existing renewable energy educational materials to each school district and conduct training sessions on the materials. | March 2008 - June 2009 |
| 6. Provide on-site operation and maintenance training for school staff. | March 2008 - June 2009 |
| 7. Assist ISD in identifying community outreach partners, develop procedures for ISD to conduct tours and visitor logs of the solar energy system. | January 2008 - June 2009 |
| 8. Prepare and submit a monthly progress report by electronic mail. | Monthly |
| 9. Prepare a final report summarizing installed project cost, survey results, and evaluations of the benefits received by students and faculty. | August 2009 |

ATTACHMENT B Contract No. _____

BUDGET

| | |
|---|----------------------------|
| <u>Equipment</u> ¹ | \$ 75,000.00 |
| <u>Subcontract</u> | \$ 25,000.00 |
| <u>Total Direct Costs</u> | <u>\$100,000.00</u> |
| <u>Contractor Provided Match</u> | \$ 50,000.00 |

¹ Contractor shall not purchase any equipment or computer software for its performance under this Agreement, other than what is included in this contract, without prior written approval from Agency. For this purpose, equipment is defined as tangible personal property having a useful life of more than one year and an acquisition cost of five hundred dollars (\$500.00) or more per unit. Title to and control over equipment or license of any software so purchased for Contractor's performance under this Agreement shall remain with Contractor so long as it is being used for the purpose for which it was intended under the terms of this Agreement.

U.S. DEPARTMENT OF ENERGY
Assurance of Compliance
Nondiscrimination in State Assisted Programs

OMB Burden Disclosure Statement

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

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

Applicability and Period of Obligation

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

Employment Practices

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

Subrecipient Assurance

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

Data Collection and Access to Records

The Applicant agrees to compile and maintain information pertaining to programs or activities developed as a result of the Applicant's receipt of Federal assistance from the Department of Energy. Such information shall include, but is not limited to the following: (1) the manner in which services are or will be provided and related data necessary for determining whether any persons are or will be denied such services on the basis of prohibited discrimination; (2) the population

eligible to be serviced by race, color, national origin, sex, and disability; (3) data regarding covered employment, including use or planned use of bilingual public contact employees serving beneficiaries of the program where necessary to permit effective participation by beneficiaries unable to speak or understand English; (4) the location of existing or proposed facilities connected with the program and related information adequate for determining whether the location has or will have the effect of unnecessarily denying access to any person on the basis of prohibited discrimination; (5) the present or proposed membership by race, color, national origin, sex, and disability, in any planning or advisory body which is an integral part of the program; and (6) any additional written data determined by the Department of Energy to be relevant to the obligation to assure compliance by recipients with laws cited in the first paragraph of this assurance.

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

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

Applicant Certification

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

Designated Responsible Employee

Leslie Libby, Solar PV Project Manager

Name and Title (Printed or Typed)

(512) 482-5390

Telephone Number


Signature

1/23/08
Date

Contractor

Austin Energy

Name of Organization

721 Barton Springs Road Austin, TX 78704

Address

(512) 482-5390

Telephone Number

Authorized Official:

Roger Duncan, Interim General Manager

Name and Title (Printed or Typed)

(512) 482-5390

Telephone Number


Signature

1/24/08
Date



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

OMB Control No.
1910-0400

U.S. DEPARTMENT OF ENERGY

Assurance of Compliance

Nondiscrimination in State Assisted Programs

OMB Burden Disclosure Statement

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

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

Applicability and Period of Obligation

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

Employment Practices

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

Subrecipient Assurance

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

Data Collection and Access to Records

The Applicant agrees to compile and maintain information pertaining to programs or activities developed as a result of the Applicant's receipt of Federal assistance from the Department of Energy. Such information shall include, but is not limited to the following: (1) the manner in which services are or will be provided and related data necessary for determining whether any persons are or will be denied such services on the basis of prohibited discrimination; (2) the population

eligible to be serviced by race, color, national origin, sex, and disability; (3) data regarding covered employment, including use or planned use of bilingual public contact employees serving beneficiaries of the program where necessary to permit effective participation by beneficiaries unable to speak or understand English; (4) the location of existing or proposed facilities connected with the program and related information adequate for determining whether the location has or will have the effect of unnecessarily denying access to any person on the basis of prohibited discrimination; (5) the present or proposed membership by race, color, national origin, sex, and disability, in any planning or advisory body which is an integral part of the program; and (6) any additional written data determined by the Department of Energy to be relevant to the obligation to assure compliance by recipients with laws cited in the first paragraph of this assurance.

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

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

Applicant Certification

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

Designated Responsible Employee

Name and Title (Printed or Typed)

Telephone Number

Signature

Date

Contractor

Name of Organization

Telephone Number

Address

Authorized Official:

Roger Duncan, Interim General Manager

Name and Title (Printed or Typed)

512 482 5390

Telephone Number

[Signature]

Signature

1/21/08

Date



ATTACHMENT D Contract No. _____
**Certification Regarding Debarment, Suspension, Ineligibility,
and Voluntary Exclusion-Lower Tier Covered Transactions**

Instructions for Certification

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

Austin Energy
Organization Name

Roger Duncan, Interim General Manager
Name and Title of Authorized Representative


Signature

1/21/08
Date



ATTACHMENT E Contract No. _____
CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER
RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Energy determines to award the covered transaction, grant, or cooperative agreement.

1. LOBBYING

The undersigned certifies, to the best of his or her knowledge and belief, that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- (3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to

file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

- (1) The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:
 - (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
 - (b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
 - (c) Are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and
 - (d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.
- (2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

3. DRUG-FREE WORKPLACE

This certification is required by the Drug-Free Workplace Act of 1988 (Pub. L. 100-690, Title V, Subtitle D) and is implemented through additions to the Debarment and Suspension regulations, published in the Federal Register on January 31, 1989, and May 25, 1990.

ALTERNATE I

(GRANTEES OTHER THAN INDIVIDUALS)

(1) The grantee certifies that it will or will continue to provide a drug-free workplace by:

- (a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;
- (b) Establishing an ongoing drug-free awareness program to inform employees about:
 - (1) The dangers of drug abuse in the workplace;
 - (2) The grantee's policy of maintaining a drug-free workplace;
 - (3) Any available drug counseling, rehabilitation, and employee assistance programs; and
 - (4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;
- (c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);
- (d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:
 - (1) Abide by the terms of the statement; and
 - (2) Notify the employer in writing, of his or her conviction for a violation of criminal drug statute occurring in the work-place not later than five calendar days after such conviction;
- (e) Notifying the agency, in writing, within ten calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to energy grant officer or other designee on whose grant activity the

convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

- (f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:
 - (1) Taking appropriate actions against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or
 - (2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State or local health, law enforcement, or other appropriate agency;
- (g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

(2) The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance:

(Street address, city, county, state, zip code)

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

ALTERNATE II (GRANTEES WHO ARE INDIVIDUALS)

- (1) The grantee certifies that, as a condition of the grant, he or she will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substances in conducting any activity with the grant.
- (2) If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, he or she will report the conviction, in writing, within 10 calendar days of the conviction, to every grant officer or other designee, unless the Federal agency designates a central point for the receipt of such notices. When notice is made to such a central point, it shall

include the identification number(s) of each affected grant.

municipality, and the net earning of which are devoted exclusively to charitable, educational, or recreational purposes.

4. LOBBYING DISCLOSURE ACT OF 1995, SIMPSON-CRAIG AMENDMENT

Applicant organization which are described in section 501 (c)(4) of the Internal Revenue Code of 1986 and engage in lobbying activities after December 31, 1995, shall not be eligible for the receipt of Federal funds constituting an award, grant, or loan. Section 501(c)(4) of the Internal Revenue Code of 1986 covers:

Civic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare, or local associations of employees, the membership of which is limited to the employees of a designated persons or person in a particular

As set forth in the Lobbying Disclosure Act of 1995 (Public Law 104-65, December 19, 1995), as amended ["Simpson-Craig Amendment," see Section 129 of The Balanced Budget Downpayment Act, I (Public Law 104-99, January 26, 1996)], lobbying activities is defined broadly. (See section 3 of the Act.)

The undersigned certifies, to the best of his or her knowledge and belief, that: it IS NOT an organization described in section 501 (c)(4) of the Internal Revenue Code of 1986: OR that it IS an organization described in section 501 (c)(4) of the Internal Revenue Code of 1986, which, after December 31, 1995, HAS NOT engaged in any lobbying activities as defined in the Lobbying Disclosure Act of 1995, as amended.

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

Austin Energy

Name of Applicant

Pre/Award Number and/or Project Name

Roger Duncan, Interim General Manager

Printed Name and Title of Authorized Representative


Signature

6/21/08
Date



ATTACHMENT G Contract No. _____
ASSURANCES -- NON-CONSTRUCTION PROGRAMS
OMB Approval No. 0348-0040

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant, I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.
2. Will give the awarding agency, the Comptroller, the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.
7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.
9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction sub-agreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93- 234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is \$10,000 or more.
11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in flood plains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).
12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.
13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469 a-1 et seq.)
14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.
15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.
16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.
17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.
18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.


Signature of Authorized Certifying Official

Interim General Manager
Title

Austin Energy
Applicant Organization

1/21/08
Date Submitted

ATTACHMENT H Contract No. _____
Intellectual Property Provisions

AUTHORIZATION AND CONSENT (41 CFR 9-9.102-1)

The Government hereby gives its authorization and consent (without prejudice to any rights of indemnification) for all use and manufacture, in the performance of this grant or any part hereof or any amendment hereto or any subcontract hereunder (including all lower-tier subcontracts hereunder), of any invention described in and covered by a patent of the United States.

- (a) embodied in the structure or composition of any article, the delivery of which is accepted by the Government under this grant, or
- (b) utilized in the machinery, tools, or methods, the use of which necessarily results from compliance by the Grantee or the using subcontractor with
 - (i) specifications or written provisions now or hereafter forming a part of this grant, or
 - (ii) specific written instructions given by the Contracting Officer directing the manner of performance.

The entire liability to the Government for infringement of a patent of the United States shall be determined solely by the provisions of the indemnity clauses, if any, included in this grant or any subcontract hereunder (including all lower-tier subcontracts hereunder), and the Government assumes liability for all other infringement to the extent of the authorization and consent herein above granted.

PATENT INDEMNITY (41 CFR 9-9.103-1)

If the amount of this contract is in excess of \$10,000 the contractor shall indemnify the Government and its officers, agents, and employees against liability, including costs, for infringement of any United States letters patent (except U.S. letters patent issued upon an application which is now or may hereafter be kept secret or otherwise withheld from issue by order of the Government) arising out of the manufacture or delivery of supplies or out of construction, alteration, modification, or repair of real property (hereinafter referred to as "construction work") under this contract, or out of the use or disposal by or for the account of the Government of such supplies or construction work. The foregoing indemnity shall not apply unless the contractor shall have been informed as soon as practicable by the Government of the suit or action alleging such infringement, and shall have been given such opportunity as is afforded by applicable laws, rules, or regulations to participate in the defense thereof; and further, such indemnity shall not apply to: (a) an infringement resulting from compliance with specific written instructions of the Contracting Officer directing a change in the supplies to be delivered or in the materials or equipment to be used, or directing a manner of performance of the contract not normally used by the contractor; (b) an infringement resulting from addition to or change in, such supplies or components furnished or construction work performed which addition or change was made subsequent to delivery or performance by the contractor; or (c) a claimed infringement which is settled without the consent of the contractor, unless required by final decree of a court of competent jurisdiction.

NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT (41 CFR 9-9.104(b))

The provisions of this clause shall be applicable only if the amount of this grant exceeds \$10,000.

- (a) The Grantee shall report to the Contracting Officer, promptly and in reasonable written detail, each notice of claim of patent or copyright infringement based on the performance of this grant of which the Grantee has knowledge.
- (b) In the event of any claim or suit against the Government on account of any alleged patent or copyright infringement arising out of the performance of this grant or out of the use of any supplies furnished or work or services performed hereunder, the Grantee shall furnish to the Government, when requested by the Contracting Officer, all evidence and information in possession of the Grantee pertaining to such suit or claim. Such evidence and information shall be furnished at the expense of the Government except where the Grantee has agreed to indemnify the Government.
- (c) This clause shall be included in all contracts and subgrants under this grant.

REPORTING OF ROYALTIES (41 CFR 9-9.110)

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

RIGHTS IN TECHNICAL DATA (SHORT FORM)

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

(b) Allocation of Rights.

(1) The Government shall have:

- (i) Unlimited rights in technical data first produced or specifically used in the performance of this grant;
- (ii) The right of the Contracting Officer or his representatives to inspect, at all reasonable times up to three years after final payment under this grant, all technical data first produced or specifically used in the grant (for which inspection the Grantee or its contractor or subgrantee shall afford proper facilities to DOE); and
- (iii) The right to have any technical data first produced or specifically used in the performance of this grant delivered to the Government as the Contracting Officer may from time-to-time direct during the progress of the work, or in any event as the Contracting Officer shall direct upon completion or termination of this grant.

(2) The Grantee shall have:

The right to use for its private purposes, subject to patent, security or other provisions of this grant, technical data it first produces in the performance of this grant provided the date requirements of this grant have been met as of the date of the private use of such data. The Grantee agrees that to the extent it receives or is given access to proprietary data or other technical, business or financial data in the form of recorded information from DOE or a DOE contractor or subcontractor, the Grantee shall treat such data in accordance with any restrictive legend contained thereon, unless use is specially authorized by prior written approval of the Contracting Officer.

(c) Copyrighted Material.

(1) The Grantee agrees to, and does hereby grant to the Government, and to others acting on its behalf:

- (i) A royalty-free, nonexclusive, irrevocable, worldwide license for Governmental purposes to reproduce, distribute, display, and perform all copyrighted material first produced or composed in the performance of this grant by the Grantee, its employees or any individual or concern specifically employed or assigned to originate and prepare such material and to prepare derivative works based thereon; and
- (ii) A license as aforesaid under any and all copyrighted or copyrighted work not first produced or composed by the Grantee in the performance of this grant but which is incorporated in the material furnished under the grant, provided that such license shall be only to the extent the Grantee now has, or prior to completion or close-out of the grant, may acquire the right to grant such license without becoming liable to pay compensation to others solely because of such grant.

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

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

It is agreed that as a condition of award of this grant or modification and notwithstanding the conditions of any notice appearing on the proposal(s), the Government shall have the right to use, duplicate, and disclose and have others to do so for any purpose whatsoever, the technical data contained in the proposal(s) upon which the grant or modification is based.

Austin Energy

Organization Name

Roger Duncan, Interim General Manager

Name and Title of Authorized Representative




Signature

1/21/08
Date

Nondisclosure Agreement


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

1. The Confidential Information may be used by Contractor only to assist Contractor in connection with its engagement with Comptroller.
2. Contractor shall not, at any time, use the Confidential Information in any fashion, form, or manner except in its capacity as independent contractor to Comptroller.
3. Contractor shall maintain the confidentiality of any and all deliverables resulting from the Agreement in the same manner that it protects the confidentiality of its own proprietary products of like kind.
4. The Confidential Information may not be copied or reproduced without Comptroller's written consent.
5. All Confidential materials made available to Contractor, including copies thereof, must be returned to Comptroller upon the first to occur of; (a) completion of the project, or (b) request by Comptroller.
6. The foregoing must not prohibit or limit Contractor use of the information (including, but not limited to, ideas, concepts, know-how, techniques and methodologies) (a) previously known to it, (b) independently developed by it, (c) acquired by it from a third party, or (d) which is or becomes part of the public domain through no breach to Contractor of this agreement.
7. This agreement shall become effective as of the date Confidential Information is first made available to Contractor and must survive the Agreement and be a continuing requirement.

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

Austin Energy
Organization Name

Roger Duncan, Interim General Manager
Name and Title of Authorized Representative


Signature

1/21/08
Date



