

EXHIBIT A

ENERGY CONSERVATION ASSISTANCE ACT LOAN AGREEMENT

This Loan Agreement (the “Agreement”) is entered into as of the date it is executed by both parties hereto, between the California Energy Resources Conservation and Development Commission (the “Commission”) and San Francisco Public Utilities Commission, a Public Utilities Commission (the “Borrower”) located in the county of San Francisco.

1. STATUTORY AUTHORITY AND LOAN

- A. Pursuant to the purposes authorized by section 25410, et seq., of the California Public Resources Code (the “Energy Conservation Assistance Act”), the Commission has approved the Borrower’s loan application dated December 23, 2010, which is not attached but is expressly incorporated by reference herein.
- B. Subject to the terms, covenants, conditions, and including Special Conditions (if applicable) contained herein, and the Budget Detail/Summary of Project Cost and Savings attached as Exhibit A Attachment A-1 hereto (the “Budget Detail/Summary of Project Cost and Savings”) to the extent it modifies the Borrower’s loan application, the Commission shall make a loan to the Borrower (the “Loan”) in the amount of three million dollars (\$3,000,000.00), evidenced by a Promissory Note (the “Promissory Note”) for loan number 002-10-ECC attached hereto as Exhibit B.

2. PURPOSE

The Borrower agrees to expend all funds disbursed pursuant to this Agreement only for the purposes and in the amounts set forth in the Attachment of this exhibit Budget Detail/Summary of Project Cost and Savings in Attachment A-1 (the “Project”). Any other use of funds disbursed hereunder shall require prior written approval by the Commission.

3. LOAN DISBURSEMENT SCHEDULE

- A. The Commission agrees to disburse funds to the Borrower upon the Borrower’s execution of the attached Promissory Note and any appropriate security instruments and required supplemental documents, including invoices as required in Section 3.B below.
- B. Loan funds shall be disbursed on a reimbursement basis based on invoices submitted by Borrower in a form approved by the Commission. Backup documentation for actual expenditures, including such items as timecards, vendor invoices, and proof of payment must be provided to substantiate the request. Commission staff will approve invoices only after verifying requested amounts against backup billings and determining that expenses are appropriate and used

for the authorized purposes of this Loan. For executed Agreements, invoices for expenses incurred during the Project Term are eligible for reimbursement.

- C. All invoices must be submitted within thirty (30) days after Project completion.
- D. The final ten percent (10%) of the Loan amount will be withheld as retention until the final report is received from the Borrower and the Commission's Project Manager determines the Project has been satisfactorily completed.

4. LOAN REPAYMENT AND INTEREST

All funds disbursed hereunder, together with all interest payable thereon, shall be repaid to the Commission in accordance with the terms of the Promissory Note. The Loan shall bear simple interest at the annual rate set forth in the attached Promissory Note on the principal balance of Loan funds disbursed to the Borrower. Payment of said interest shall be due at the time of semiannual scheduled Loan repayment installments to the Commission, and interest shall accrue from the time of disbursement of funds to the Borrower until receipt of full Loan repayment to the Commission.

5. TERM

- A. The effective date of this Agreement shall be the date on which it has been executed by both parties hereto. No work is authorized, or shall begin until the California Energy Commission signs the Agreement.
- B. The Borrower agrees to complete performance of its obligations under this Agreement within the applicable periods stated in this Agreement.

6. PREPAYMENT

The Borrower shall have the right to prepay all or any part of the amount of this Loan at any time without penalty.

7. PROMISSORY NOTE

In order to evidence its debt to the Commission hereunder, the Borrower agrees to, contemporaneously with the execution of this Agreement, execute and deliver to the Commission the Promissory Note (attached as Exhibit B hereto).

8. ACCOUNTS, AUDITS, AND RECORDS

- A. The Borrower agrees to establish on its books a separate account for this Loan. This account shall be maintained as long as the Loan obligation remains unsatisfied.
- B. The Borrower further agrees to maintain records that accurately and fully show the date, amount, purpose, and payee of all expenditures drawn on said account

for three (3) years after this Loan is repaid in full or three years after the federal grant term, whichever is later, unless the Commission requests a longer retention period.

- C. The Borrower further agrees to utilize a voucher system by which all expenditures from said account will be authorized and authenticated.
- D. The Borrower further agrees to allow the Commission or any other agency of the State of California (the "State") or the Federal Government, or their designated representatives, on written request, to have reasonable access to, and the right of inspection of, all records that pertain to said account or the Project. The Borrower also agrees to submit to an independent audit, if requested by the Commission, at the expense of the Borrower. Borrower agrees to maintain all such records for a minimum of three years after this Loan is repaid in full or three years after the federal grant term, whichever is later, unless the Commission notifies the Borrower, prior to the expiration of such three-year period, that a longer period of record retention is necessary.

9. SOURCE OF REPAYMENT; OPERATION OF PROJECT

- A. Semiannual payments due to the Commission under this Agreement shall be made from savings in energy costs or other legally available funds as the Borrower chooses. If the Borrower is a county, city, town, township, board of education, or school district, the Borrower agrees that the amount of the semiannual Loan repayment shall not be raised by the levy of additional taxes and shall not be an obligation against tax revenues, but shall be obtained either from savings in energy costs resulting from the subject energy conservation projects or other legally available funds as the Borrower chooses.
- B. Energy cost savings as determined by the Commission are based on energy usage and serving utility rate schedules at the time of the issuance of this Loan, except as specified in Special Conditions, if any, as detailed in this Agreement, and the information and data contained in the Borrower's loan application and technical study. The following will not affect the Commission's initial finding of energy cost savings, and are not a basis for claiming a lack of energy savings: a) changes in energy use and/or rate schedules which occur after issuance of the Loan, except as specified in Special Conditions, if any, as detailed in this Agreement, b) deviations in the project work scope from what was approved by the Energy Commission, c) changes in the Borrower's facility and/or equipment which occur after the issuance of the loan, including, but not limited to maintenance, operations, schedules, employees and facility alterations and expansions, d) deviations, omissions or errors found in the loan application and technical study after the loan award. The Borrower is responsible for ensuring the accuracy of the information contained in its loan application and technical study. In the event annual energy cost savings resulting from the Project, as determined by the Commission, fail to equal or exceed the amount due under this Agreement, this

Agreement may be renegotiated to assure that the repayment amount does not exceed the actual energy savings or avoided costs resulting from the Project, and the Promissory Note will be revised accordingly. In no event, however, will the number of semiannual installments payable hereunder and under the Promissory Note exceed thirty.

- C. The Borrower shall obtain and maintain in its records any and all permits and licenses required to install or operate the Project and shall comply with all local, state, and federal laws, rules and codes concerning the Project. The Borrower shall maintain the Project in good working order for the duration of the Loan and shall insure that staff members are provided appropriate training on the operation and maintenance of the Project. The Borrower shall maintain insurance on the Project and, in the event of any casualty loss covered by such insurance policy, apply the proceeds to the repair of the Project or, with the approval of the Commission, may use the insurance proceeds to install alternate projects to generate alternative energy cost savings to repay the Loan.
- D. The Borrower agrees to provide the Commission with information necessary for administration of the Program for three years following completion of the Project or three years after the federal grant term, whichever is later, unless the Commission requests a longer retention period. The needed information includes the following, at a minimum, (1) the annual computation, required by Section 25414 of the Energy Conservation Assistance Act, of energy cost savings for the most recent fiscal year, calculated in the manner and provided in the format prescribed by the Commission and (2) any information or change in assumptions or operations which might affect the Commission's initial determination of energy savings.
- E. The Borrower authorizes any official or agent of the Commission, the State, or the Federal Government to conduct physical inspections of the Project before the commencement; during construction, installation and implementation of the Project; and at any time prior to the complete repayment of the Loan. In each contract entered into with suppliers of goods and services to install, conduct, or operate the Project, including management services, the Borrower shall include terms which allow any officer or agent of the Commission, the State, or the Federal Government access to the Project site and to any books, documents, or records directly relevant to the Project.
- F. If, prior to final repayment of the Loan, the Borrower sells the equipment or material installed with the proceeds of the Loan or sells the building, facility or system in which the Project has been implemented, then the Borrower shall apply the sale proceeds to repay any remaining balance due under this Agreement in full at the time of such sale. The Borrower shall notify the Commission within five business days of the date on which the Borrower enters into an agreement to

effect such transaction. The Borrower shall repay the Commission within 30 calendar days of receiving an invoice from the Commission for the balance due.

- G. Borrower shall not place any liens or encumbrances on the Project until the Loan is fully repaid.
- H. In accordance with Section 25415 of the Energy Conservation Assistance Act, the Borrower covenants to take such action as may be necessary to include all payments due hereunder in its annual budget and to make the necessary annual appropriations for all such payments. The obligation of the Borrower to make such payments shall be limited to the savings realized by the Borrower as a result of implementing the Project funded by the Loan.

10. DEFAULT

- A. The Borrower's failure to comply with any of the terms of this Agreement shall constitute a breach of this Agreement and an Event of Default. In such case, the Commission may declare this Agreement to have been breached and be released from any further performance hereunder.
- B. In the event of any default or breach of this Agreement by the Borrower, the Commission, without limiting any of its other legal rights or remedies, may to the extent permitted by law, declare the Promissory Note evidencing this Loan to be immediately due and payable.

11. TERMINATION

This Agreement may be terminated for any reason set forth below.

- A. With Cause

In the event of any breach by the Borrower of the conditions set forth in this Agreement, the Energy Commission may, without prejudice to any of its legal remedies, terminate this Agreement for cause upon five (5) days written notice to the Borrower. "Cause" includes without limitation:

- 1) Failure to perform or breach of any of the terms or covenants at the time and in the manner provided in this Agreement; or
- 2) Significant change in Energy Commission or federal policy such that the work or product being funded would not be supported by the Energy Commission or Federal Government; or
- 3) Reorganization to a business entity unsatisfactory to the Energy Commission.

B. Without Cause

The Energy Commission may, at its option, terminate this Agreement without cause in whole or in part, upon giving thirty (30) days advance notice in writing to the Borrower.

12. REPORTING

- A. Progress reports are due until Project completion.
- B. A final report is due no later than 60 days after Project completion.
- C. The Commission will not process an invoice unless the Borrower's report submittals are up to date.
- D. If requested by the Commission, Borrower shall submit, within ten (10) days after the Commission's written request, a status report on its activities to date, pursuant to this Agreement.
- E. Reports shall be in a format as determined by the Commission.
- F. The Borrower shall submit reports regarding energy savings as described in Section 9.D above.

13. GENERAL TERMS

- A. Indemnification by the Borrower. The Borrower agrees to indemnify, defend, and save harmless the Commission, the State, the Federal Government, and their officers, agents, and employees from any and all claims, losses, or costs (including reasonable attorney fees) arising out of, resulting from, or in any way connected with the Loan or this Agreement, or the financing or the operation of the facilities financed with the Loan.
- B. Ownership of Equipment and Material. All equipment and material acquired under this Agreement shall become the property of the Borrower at time of purchase. The Borrower shall obtain and maintain in its records a written waiver of all claims, other than those previously made in writing and still unsettled, from each contractor who supplies goods and services, including management services, in connection with the Project. All equipment purchased with Loan funds shall be subject to the equipment provisions of 10 Code of Federal Regulations (CFR) Part 600, which is incorporated by reference in Exhibit D.
- C. Independent Capacity. The Borrower, and the agents and employees of the Borrower, in the performance of this Agreement, shall act in an independent capacity and not as officers or employees or agents of the Commission, the State of California, or the Federal Government.

- D. Assignment. Without the written consent of the Commission, this Agreement is not assignable or transferable by the Borrower either in whole or in part. The Commission may assign its rights under this Agreement for security purposes, and in such event the assignee of this Loan Agreement, including the bond trustee of any bonds which may be secured by repayment of this Loan, shall be entitled to enforce the provisions hereof and shall be a third party beneficiary of this Agreement.
- E. Time of the Essence. Time is of the essence in this Agreement. Borrower is required to take timely actions which, taken collectively, move to completion of the purpose for which this Loan was awarded. The Commission Project Manager will periodically evaluate the progress toward completion. If the Commission Project Manager determines that the Borrower is not progressing toward completion within one (1) year after the effective date of this Agreement, the Commission Project Manager may, without penalty or prejudice to any of the Commission's other remedies, terminate this Agreement.
- F. Amendment. No amendment or variation of the terms of this Agreement shall be valid unless made in writing and signed by the parties hereto, and no oral understanding or agreement not incorporated herein shall be binding on any of the parties hereto. The Borrower acknowledges that provisions included in this Agreement pursuant to Federal or State law, regulation, or policy are subject to change. The Borrower agrees to comply with any amendments that the Commission makes to this Agreement to comply with Federal or State law, regulation, or policy. The Commission's Project Manager may approve changes to this Agreement that are not significant, including changes required to comply with Federal or State law, regulation, or policy. These changes shall be documented in a letter of agreement signed by the authorized representatives of the Commission and the Borrower.
- G. Severability. In the event that any provision of this Agreement is unenforceable or held to be unenforceable, then the parties agree that all other provisions of this Agreement have force and effect and shall not be affected thereby.
- H. Governing Law and Venue. This Agreement is governed by and shall be interpreted in accordance with the laws of the State of California. Venue shall be in Sacramento County.

Non-discrimination. During the performance of this Agreement, the Borrower and its contractors and subcontractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (cancer), age (over 40), marital status, and family care leave. The Borrower and its contractors and subcontractors shall insure that the evaluation and treatment of their

employees and applicants for employment are free from such discrimination and harassment. The Borrower and its contractors and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code Section 12990 (a-f) et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this agreement by reference and made a part hereof as if set forth in full. The Borrower and its contractors and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement. The Borrower and its contractors shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under this Agreement.

- I. Incorporation of Energy Conservation Assistance Act. The Energy Conservation Assistance Act, together with any applicable rules, regulations or procedures authorized by such statute, is incorporated by reference in this Agreement.
- J. Borrower Authorization. The Borrower certifies that it has full power and authority to enter into this Agreement, and this Agreement has been duly authorized, executed and delivered by the Borrower. The Borrower acknowledges that the resolution of its governing body or other official action authorizing it to enter into this Agreement also authorizes such further acts as are necessary, including execution of the Promissory Note, to implement and further the intent of this Agreement.
- K. Prevailing Wage. The Borrower shall comply with Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 of the Labor Code relating to the payment of prevailing wage for work performed on the Project financed in whole or in part with the proceeds of the Loan.

14. NOTICE

Any notice required to be given to the Commission hereunder shall be sent to the Commission at 1516 Ninth Street, MS-1, Sacramento, California 95814, attention Grants and Loans Office Manager, or at such other address as the Commission may designate in writing to the Borrower. Any notice required to be given to the Borrower hereunder shall be sent to the address shown below the Borrower's execution of this Agreement, or at such other address as the Borrower shall designate in writing to the Commission. Notice to either party may be given using the following delivery methods: U.S. mail, overnight mail, or personal delivery, providing evidence of receipt, to the respective parties identified in this Agreement. Delivery by fax or e-mail is not considered notice for the purposes of this Agreement. Notice shall be effective when received, unless a legal holiday for the State commences on the date of the attempted delivery in which case the effective date shall be postponed 24 hours, or whenever the next business day occurs.

