

AGREEMENT

\_\_\_\_\_,  
located at \_\_\_\_\_,  
\_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, EIN  
\_\_\_\_\_, (“Taxpayer”) and the Commissioner of Internal Revenue

(“Commissioner”) make the following agreement:

**WHEREAS:**

1. On or before \_\_\_\_\_, Taxpayer submitted to the Internal Revenue Service (“IRS”), an application for certification under the qualifying advanced energy project program described in Notice 2009-72 (“Application for § 48C Certification”);

2. Taxpayer’s Application for § 48C Certification is for the qualifying advanced energy project (the “Project”) described below--

(1) The Project will be located at \_\_\_\_\_,  
\_\_\_\_\_, \_\_\_\_\_;

(2) The Project \_\_\_\_\_ a manufacturing facility for the production of \_\_\_\_\_.

3. On \_\_\_\_\_, the IRS accepted Taxpayer’s Application for § 48C Certification for the Project and allocated a qualifying advanced energy project credit under § 48C in the amount of \$ \_\_\_\_\_ to the Project.

**NOW IT IS HEREBY DETERMINED AND AGREED FOR FEDERAL INCOME TAX**

**PURPOSES THAT:**

1. The total amount of the qualifying advanced energy project credit to be claimed for the Project under § 48C(a) must not exceed \$\_\_\_\_\_.

2. If Taxpayer fails to satisfy the certification requirements under section 7.02 of Notice 2009-72 within the time specified in § 48C(d)(2)(B) (1 year from \_\_\_\_\_, or if the IRS does not issue a certification for the Project under Notice 2009-72, the qualifying advanced energy project credit in the amount of \$\_\_\_\_\_ allocated to the Project is fully forfeited.

3. Taxpayer will notify the IRS in writing to the address listed in section 6.04 of Notice 2009-72 when the Project is placed in service.

4. If the Project is not placed in service by Taxpayer within 3 years of the date of issuance of the certification as determined under section 7.03 of Notice 2009-72, the qualifying advanced energy project credit in the amount of \$\_\_\_\_\_ allocated to the Project is fully forfeited.

5. If the plans for the Project change in any significant respect from the plans set forth in the application for DOE recommendation (as defined in section 5.01 of Notice 2009-72) and the Application for § 48C Certification (as defined in section 5.01 of Notice 2009-72) and, under section 8.03 of Notice 2009-72, the acceptance of Taxpayer's Application for § 48C Certification on \_\_\_\_\_ is void, the qualifying advanced energy project credit in the amount of \$\_\_\_\_\_ allocated to the Project is fully forfeited.

6. Taxpayer will not claim the qualifying advanced energy project credit under

§ 48C for any qualified investment for which a credit is allowed under § 48, § 48A, or § 48B or for which a payment is received under § 1603 of the American Recovery and Reinvestment Act of 2009, Division B of Pub. L. 111-5, 123 Stat 115.

7. If Taxpayer elects to claim the qualifying advanced energy project credit on the qualified progress expenditures paid or incurred by Taxpayer during the taxable year(s) during which the Project is under construction and the Project ceases to be a qualifying advanced energy project (whether before, at the time, or after the Project is placed in service), rules similar to the recapture rules in § 50(a)(2)(A) through (D) apply.

8. Taxpayer reasserts that the following information is trade secret or proprietary information: All information in Taxpayer's application for DOE recommendation.

9. This agreement applies only to Taxpayer. Any successor in interest must execute a new agreement with the IRS. If the interest is acquired at or before the time the Project is placed in service and the successor in interest fails to execute a new agreement, the qualifying advanced energy project credit in the amount of \$\_\_\_\_\_ allocated to the Project is fully forfeited. If the interest is acquired after the time the Project is placed in service and the successor in interest fails to execute a new agreement, the Project ceases to be investment credit property and the recapture rules of § 50(a) apply.

**THIS AGREEMENT IS FINAL AND CONCLUSIVE EXCEPT:**

1. The matter it relates to may be reopened in the event of fraud, malfeasance, or misrepresentation of a material fact;

2. It is subject to the Internal Revenue Code sections that expressly provide that effect be given to their provisions notwithstanding any law or rule of law; and

3. If it relates to a tax period ending after the date of this Agreement, it is subject to any law enacted after such date, which applies to the tax period.

By signing, the parties certify that they have read and agreed to the terms of this Agreement.

**Taxpayer:**

\_\_\_\_\_, EIN \_\_\_\_\_

**By:** \_\_\_\_\_ **Date Signed:** \_\_\_\_\_

**Name:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Commissioner of Internal Revenue:**

**By:** \_\_\_\_\_ **Date Signed:** \_\_\_\_\_

Keith M. Jones

**Title:** Industry Director, Natural Resources and Construction