



ASSESSMENT REBATE AGREEMENT

This Assessment Rebate Agreement (hereinafter "Agreement") governs the performance, services and other activities required of the Propane Education & Research Council (hereinafter "Council") and state propane foundations and state Propane Education & Research Councils (hereinafter "Grantee") that receive funding under the Propane Education & Research Council's State Rebate Program. The Council and the Grantee are hereinafter referred to collectively as the "Parties," and individually as "Party." The term "Grantee" shall include within its definition all subgrantees, subcontractors, agents and their employees. ***Council offer and Grantee acceptance of funds under this program constitutes the parties' mutual acceptance of the terms of this Assessment Rebate Agreement.***

RECITALS

A. Pursuant to the Propane Education and Research Act of 1996 ("PERA"), Public Law 104-284 (15 U.S.C. 6401, *et seq.*), as amended, the Council is required to develop programs and complete projects for the purpose of enhancing consumer and employee safety and training on the use of propane; ensuring the performance of productive research focused on the development of clean and efficient propane utilization equipment; and informing and educating the public about safety and other issues associated with the use of propane.

B. The Council is further required to establish a program coordinating the operation of the Council with those

of any State propane education and research council created by State law or regulation, or similar entity. The Council has elected to establish an assessment rebate program under Section 6(e) of PERA.

C. In furtherance of the rebate program and consistent with the PERA requirement that such rebates be paid only for specific programs and projects approved by the Council, the Council desires to provide assessment rebate funding to the Grantee, and the Grantee desires to accept such funds from the Council, all in accordance with the terms and conditions contained in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and conditions set forth in this Agreement, the sufficiency of which is hereby acknowledged, the Council and the Grantee hereby agree as follows:

WITNESSETH:

Article 1 -- Scope of the Work.

The Grantee shall furnish and perform for the Council all of the research and other professional services required by the terms and conditions of this Agreement as well as the instructions, specifications, schedules, exhibits and other goods and/or services as set forth in the Council approved docket as referenced by the "Docket Number" included on the Council's check to Grantee incorporating this Agreement. All such exhibits, schedules and referenced documents are incorporated herein by reference and made a part of this Agreement. This Agreement, all schedules and exhibits hereto and all referenced documents and requirements are hereinafter also referred to collectively as the "Contract" or the "Contract Documents." All services, research and work-product required to be completed under this Contract and the Contract Documents (including work required by change orders) shall be referred to herein as the "Work." The Scope of Work is not intended to limit the Grantee's ability to incorporate unique or beneficial features into its Work. All proposed changes in the Scope of Work must be approved in writing by the Council.

Article 2 -- General Performance Obligations.

- 2.1. **Work and Capabilities.** In completing the Work required under this Contract and any change orders awarded, the Grantee shall provide all management, supervision, labor, administrative support, materials, supplies, equipment, tools, and transportation, and shall plan, schedule, coordinate and ensure effective and timely performance of all specified services within the fixed or other pricing of the Contract.

- 2.2. **Project Issues and Meetings.** The Council and the Grantee agree to promptly convene meetings or otherwise address all issues, questions or problems raised by either party concerning this Contract or the Work hereunder. The Grantee shall promptly notify the Council in writing of any such issues, delays or concerns involving this Contract or the Work, and shall make recommendations to the Council for addressing and resolving these issues.
- 2.3. **Data Collection, Analysis, Recommendations and Deliverables.** The Grantee shall be responsible for performing all research and obtaining all information required to successfully complete its Work in accordance with the Contract requirements. The Grantee's reports and other submissions that are required to be delivered under the Contract ("Deliverables") are to be prepared based on all information available in the relevant scientific communities as well as on appropriate research, surveys, conferences, and factual information from other data sources.
- 2.4. **Interactions and Proceedings.** The Grantee shall establish all necessary liaisons, coordination, and support with any agencies or representatives at the federal, state, regional, and local levels. The Grantee shall prepare and provide all information and submissions required for approvals by governmental authorities or others having jurisdiction over the Work.
- 2.5. **Permits and Notices.** The Grantee shall obtain all permits and licenses required as a matter of law or regulation and necessary for the proper completion of all Work under this Contract. The Grantee shall provide all notices required by law bearing on the performance of the Work.

Article 3 -- Assessment Rebate Payment.

In consideration of the performance of the Contract, the Council agrees to make payment to the Grantee as follows: The Council shall pay to the Grantee the amount specified in the Council approved docket for performing all Work required by this Contract. The Council shall make such payment to Grantee upon the award of this Contract.

Article 4 -- Contract Performance Period and Scheduling.

The Work to be performed under this Contract shall begin on the "Project Start Date" specified in the Council approved docket and shall be finally completed by the "Project End Date" specified in the Council approved docket, plus any applicable extension of time granted by the Council. Prior to the award of this Contract, the Grantee shall submit for the Council's approval a schedule for the performance of the Grantee's Work. The schedule shall also breakdown the Grantee's Work effort into significant activities and Deliverables and corresponding pricing which shall in total equal the total amount of this Contract ("Work Schedule"). The Work Schedule may also include dates for the Grantee's submission to the Council of a final report on the Work performed under this Contract ("Final Report"), and a meeting for review of and discussion on the Final Report and Deliverables. Unless otherwise stated within the Work Schedule: the Final Report is due to the Council within 30 days of the Completion Date; and, a meeting date and location for review of and discussion on the Final Report and Deliverables shall be determined at the sole discretion of the Council.

Article 5 -- Final Reporting Requirement.

The Final Report submitted by the Grantee to the Council shall include a complete description of the Work or project completed under the Contract and a full explanation and accounting of the Grantee's use of funding for the Work. The Final report shall include one (1) copy of any written materials, audiotapes, videotapes, CD-ROM's, DVD's or other deliverables produced as part of the Work under this Contract, provided that one copy any such written materials also shall be provided in an electronic format capable of being read by Microsoft Office™ and/or Adobe Acrobat Reader software.

Article 6 -- Final Review and Acceptance.

Upon receipt of the final Contract Deliverables, including the Final Report on the Work and written notice from the Grantee that the Work is complete, within a reasonable time the Council shall review the Work and determine if all Work is fully performed and acceptable and that all terms and conditions of the Contract have been satisfied. The Grantee shall make any reasonable corrections to the Work requested by the Council. Upon making such determination, the Council shall issue to the Grantee a letter certifying completion of the Contract Work and pay the Grantee the balance, if any, due under this Contract.

Article 7 -- Proceeds from Sale, License or Other Use of the Work.

The parties shall attach as a separate Schedule the terms of any Contract by the Council and the Grantee on the sharing or distribution formula for proceeds derived from the sale, license or other use of the Work or any embodiment or manifestation of the Work.

Article 8 -- Status and Responsibility of the Grantee.

It is understood and agreed that the Grantee and any of its subgrantees, subcontractors, agents, and representatives will perform the Work required by this Contract as independent contractors and that during the performance of this Contract, such entities and individuals will not be considered employees of the Council within the meaning or the application of any federal, state or local laws or regulations including, but not limited to, laws or regulations covering unemployment insurance, old age benefits, worker's compensation, industrial accident, labor or taxes of any kind. Such entities and individuals shall be deemed under the employment and ultimate control, management and supervision of Grantee and shall not be considered the Council employees within the meaning or application of Grantee's fringe benefit programs for purposes of vacations, holidays, pension, group life insurance, accidental death, medical, hospitalization and surgical benefits.

Article 9 -- Compliance with Law.

The Grantee shall perform all Work in strict compliance with all federal, state and local laws, rules, regulations, standards, codes and other governmental requirements that are applicable to the performance of the Work on the effective date of this Contract and throughout Contract performance. The Grantee also shall perform all Work in strict compliance with the by-laws and Policies, Rules and Procedures approved by the Council and in force on the effective date of this Contract and throughout Contract Performance.

Article 10 -- Changes in the Work and Grantee Claims.

The Council's Authorized Representative may at any time initiate changes in the Work that alter, add to or delete Work required under this Contract ("Change") by issuing a document entitled "Council Change Proposal." If such a Change affects the cost or the time required for completion of the Work, then the Contract Price and Contract Performance Period shall be increased or decreased by an amount/duration that is reasonable, appropriate and agreed to by the parties. Where the Parties cannot agree on the appropriate adjustment in the Contract Price or Performance Period, the adjustment shall be based solely on the costs reasonably and necessarily incurred or eliminated in connection with the Change, Change Proposal or Claim plus reasonable profit and overhead.

Article 11 -- The Council's Right to Terminate Contract for Cause.

The Council may terminate or cancel this Contract in whole or in part for cause, if: (a) Grantee's performance does not conform in all material respects to the terms of this Contract; or (b) Grantee repeatedly fails to timely and satisfactorily provide its Deliverables or services to the Council. Where a basis for termination exists, the Council will give the Grantee written notice, specifying the cause(s) for such dissatisfaction. If the deficiencies are not corrected to the satisfaction of the Council within ten (10) days of the date contained on the Council's written notice, or such other time period set forth in the Council's notice, the Grantee will be given written notice of the Council's termination of this Contract for cause and the Grantee's decertification as a recipient of Grant funds. Provided the Council chooses to pursue and complete the Work that is the subject of this Grant following termination, the Grantee shall be entitled to retain the Grant funds previously paid for Work actually performed, accepted and approved by the Council prior to the effective date of termination and decertification, less any damages or loss the Council may have incurred. Where the Council chooses not to pursue further the Work that is the subject of this Grant, the Grantee shall be obligated to return to the Council all funds previously paid to the Grantee under this Contract. The Grantee shall not be entitled to recover lost profits on uncompleted Work, nor shall the Grantee be entitled to recover any damages (consequential or otherwise), compensation or indemnity of any kind as a consequence of such termination.

Article 12 -- Warranty and Quality.

The Grantee warrants that all Work, services, products and materials shall: conform to the Scope of Work agreed to by the Grantee and the Council; meet industry standards of professional quality for Work of the

same or a similar nature; effectively satisfy their intended purpose; effectively accomplish and satisfy the requirements and intent of PERA, as amended, the Council and the Council's by-laws, policies, rules and procedures; and comply with all applicable laws and regulations. If any Work performed including Work product is defective or otherwise not in conformity with the requirements of this Contract, the Council, in addition to its other rights, may reject the same for full reimbursement of funds expended by the Council or require proper correction, replacement or completion thereof at the Grantee's expense.

Article 13 -- Indemnity by the Grantee.

The Grantee agrees to indemnify, defend and hold harmless the Council, its directors, officers, agents, staff, and employees (all such parties are hereinafter referred to collectively as the "Indemnified Parties") from and against any and all liability, claims, lawsuits, losses, demands, damages, costs, and expenses (including reasonable attorney's fees and court costs), arising directly or indirectly out of the Grantee's performance under the Contract; Grantee's Work; or the design, manufacture, sale or use of any embodiment or manifestation of the Work or Contract performance. The Grantee's duty of indemnity shall apply regardless of whether any and all such liability, claims, lawsuits, losses, demands, damages, costs, and expenses (including attorney's fees and court costs) arise in part from the negligence of any of the Indemnified Parties.

Article 14 -- Flow Down Obligation.

The Grantee agrees to be responsible for any failure by its subgrantees, subcontractors, agents and employees to comply with the terms and conditions of this Contract. Nothing herein shall be deemed to create a contractual relationship between the Council and any such subgrantee or other third party or provide a basis for any claim by such subgrantee or third party against the Council. All of the Grantee's subgrantees, subcontractors and their employees shall be apprised of the terms and conditions of this Contract and shall be held liable, accountable for and subject to these terms and conditions in their own subcontract work and contracts to the same extent that the Grantee is or would be liable, accountable for and subject to these terms and conditions in its Contract Work.

Article 15 -- Disputes.

Claims, disputes or other matters in question between the parties to this Contract that cannot be resolved by good faith negotiations shall be subject to mediation, and if necessary, arbitration. A demand for mediation shall be made within thirty (30) days after one party has notified the other party in writing of its belief that a dispute cannot be resolved by negotiation. After the expiration of the thirty (30) day period, the parties may nevertheless agree in writing to submit the dispute to mediation. Any mediation shall be held in accordance with the Mediation Rules of the American Arbitration Association in effect when the dispute arises, unless the parties mutually agree otherwise. The mediation shall take place at a mutually convenient location in Washington, D.C. Demand for mediation shall be filed in writing with the other party to this Contract and with the American Arbitration Association. Any dispute or difference arising out of or in connection with this Contract which cannot be amicably settled by mediation within sixty (60) days after a demand for mediation is issued, shall be finally settled by arbitration under the Rules of Commercial Arbitration of the American Arbitration Association. The Parties may extend the time for mediating any dispute by written Contract. The arbitration shall take place at a mutually convenient location in Washington, D.C. The resulting decision of the arbitrators shall be final and binding on the parties. Judgment upon any award rendered by the arbitrators may be entered in any court having jurisdiction thereof. In no event shall the demand for mediation or arbitration be made after the date when institution of legal or equitable proceedings based upon such claim, dispute or other matter in question would be barred by the applicable statute of limitations.

Article 16 -- Publications.

The Grantee shall have the right to publish in scientific or other journals, or to present at professional conferences or other meetings, the results of research conducted under this Contract provided however, that the Council is acknowledged in such publication or presentation as a sponsor of the Work and provided that the publication or presentation is not used as a marketing or promotional piece by or for the benefit of the Grantee. The Grantee shall acknowledge the Council as a sponsor of other Work performed under this Contract. The Council will provide the Grantee with the means or method to identify the Council as a sponsor of the Work.

Article 17 -- Ownership of the Work.

The Council shall have the option to retain the sole and exclusive right, title and interest in and to the Work (or part thereof) and any invention or development of a product, device, process, or method, whether protectable by patent, trademark, copyright or otherwise that may arise from performance under the Contract. Grantee acknowledges that the Work performed under the Contract is a "work for hire" and agrees to take all action necessary to ensure that the Council has all right, title and interest in and to all of the intellectual property rights related to the Work and any results or inventions arising out of the Work, including assigning to the Council all rights it may hold. Grantee acknowledges that the results of the Work and Contract performance and any inventions, products or services arising from the Contract will be made available to all members of the propane gas industry on equal terms and in no event may such results or inventions be restricted to any group of industry members or may pricing of the product discriminate among distinct groups of industry members. To the extent the Council seeks to retain intellectual property rights, the Council shall be responsible for the preparation, filing, and prosecution of all patent, trademark and copyright applications covering any invention, product or service arising out of the Work, as well as all costs and fees associated therewith. The Grantee and its employees shall assist the Council in the preparation, filing and prosecution of such applications. Regardless of whether the Council retains the ownership rights in the Work, the Council shall have an irrevocable license to use the Work or work product produced under this Contract in connection with the Work of other Council Grantees and in the Council's activities, including but not limited to the right to use and disseminate the Work or work product on the Council's Internet web page.

Article 18 -- Force Majeure.

"Force majeure" shall be any cause beyond the control of the Council and the Grantee which they could not have reasonably foreseen and guarded against. Force majeure includes, but is not limited to, acts of God, labor disputes, financial crises, fires, riots, civil commotions or civil unrest, incendiarism, interference by civil or governmental authorities, and acts of war. If the Grantee is delayed, disrupted or interfered with or suffers damage or loss of any kind during the progress of the Work as a result of a force majeure event, the Grantee may submit a Claim and its sole and exclusive remedy against the Council shall be the award of relief extending the Contract Performance Period for a reasonable time. Under no circumstances shall the Grantee be entitled to recover consequential or punitive damages from the Council.

Article 19 -- Notice and Authorized Representative.

Written notice shall be deemed to have been duly served when received by hand delivery or when sent and received by certified or registered mail, in each case to: (1) the "Grantee Senior Counsel/Senior Administrator" at the address set forth in the Council approved docket; (2) to the Authorized Representatives for the Grantee at the address set forth in the Council approved docket; and (3) to the following Authorized Representatives for the Council. Each party shall advise the other in writing of any applicable address change.

Council's Authorized Representative

Name: T. E. Perkins, Jr.
Address: 1140 Connecticut Ave., NW #1075
Washington, DC 20036
Phone: 202-452-8975
Fax: 202-452-9054

Grantee's Authorized Representative

(As stated in the **Council Approved Docket**)

Article 20 -- Governing Law.

This Contract, including all performance requirements and disputes hereunder, shall be governed by and construed in accordance with the laws of the District of Columbia.

Article 21 -- Entirety Clause/Severability.

The terms and conditions of this Contract constitute the sole, exclusive and entire Contract between the Council and the Grantee. Any modifications must be set forth in writing and signed by the Council's and the Grantee's duly Authorized Representative.

Article 22 -- Waiver.

No waiver shall be deemed to have been made by either Party unless expressed in writing and signed by the waiving Party.

Article 23 -- Miscellaneous Provisions.

- 23.1. **Access to Records.** In connection with the Work performed, Payment Requests, Changes, Claims, and terminations, the Grantee shall grant the Council access to and permit copies to be made of Grantee's books and records, including records of reimbursable and other expenses.
- 23.2. **Taxes.** The Contract Price includes and the Grantee shall pay all sales, consumer, use and other similar taxes required by law, all as part of the Contract Price.
- 23.3. **Inspection and Testing of Work.** The Council and its representatives shall at all times have access to and the right to review and inspect the Work. Such reviews, inspections or verbal approval of the Work are not to be interpreted as the Council's acceptance of the Work or a waiver of Contract requirements.
- 23.4. **Assignment.** The Grantee shall not assign or sublet this Contract in whole or in part without the Council's written prior approval. Nor shall the Grantee assign any monies due or to become due hereunder without the prior written consent of the Council. Upon thirty (30) days' notice to Grantee, the Council may assign this Contract to another individual or entity.
- 23.5. **Use of the Council's Name.** The Grantee shall not use or publish the Council's name in connection with any statement, information, or document disseminated to the public without first obtaining the Council's written permission, which shall not be unreasonably denied.
- 23.6. **Relationship.** Nothing herein contained shall be construed to imply a joint venture, partnership or principal-agent relationship between the Council and the Grantee, and neither Party shall have the right, power or authority to obligate or bind the other in any manner whatsoever, except as otherwise agreed to in writing.

The parties, by the offer and acceptance of funding under this program, have entered into this Contract on the dates set forth on the date of Council's check to Grantee. The date of the deposit by Grantee of funding under this Contract shall be the effective date of this Contract.