

PARTICIPATION AGREEMENT

THIS AGREEMENT is made and entered into by and between _____ (hereafter “Company”) and the Delta Regional Authority (hereafter “DRA”).

W I T N E S S E T H

WHEREAS, _____ (hereafter “Grantee”) filed an Application for a grant with DRA entitled _____ bearing reference number _____ in the amount of \$ _____ on or about _____; and

WHEREAS, the Company will directly benefit from this Grant; and

WHEREAS, the Application includes and requires Job Creation from the Company which is a significant factor in the awarding of this Grant; and

WHEREAS, the Federal government is results oriented which led to the Office of Management and Budget announcement of the President's Management Agenda in the summer of 2001, that includes an aggressive strategy for improving the management of the Federal government; and

WHEREAS, DRA’s federal grants program attempts to achieve desirable and measurable results at an acceptable cost in order to comply with the President's Management Agenda and in doing so, requires the Company to achieve Job Creation goals set-forth in the Application or face penalties; and

NOW THEREFORE, in consideration of the foregoing, of mutual promises of the parties hereto and of other good and valuable consideration, the receipt and sufficiency of which hereby are acknowledged, the Company and DRA hereby agree to the following:

1. Definitions.

- a. Application – The documents, forms, certifications, engineering reports, company financial statements, and other information submitted by the Grantee to DRA regarding the Project.
- b. Capital Expenditures – The funds expended by the Company (or lessor) for new real and personal property improvements related to the Project.
- c. Current Employees or Current Employment – The number of Full-time, Permanent Employees of the Company at this location, at the time this Agreement is signed by the Company.
- d. Financial Statements – Current and/or projected balance sheets, profit and loss, cash flow and other financial information about the Company at this location. Such projections must be consistent with those

- submitted to lenders, stockholders, partners, or other parties having an interest in the Company.
- e. Full-Time, Year-Round Employee – An employee of the Company at this location who works a minimum of 1,800 hours per year for the Company.
 - f. Grant Agreement – An agreement between the Grantee and DRA defining the conditions of this Project.
 - g. Grant – The grant funded by DRA bearing the reference number above.
 - h. Grantee – The public or non-profit entity that submitted an application to DRA for funding.
 - i. New Jobs – The number of new Full-Time, Year-Round Employees of the Company at this location who will be added after DRA’s conditional approval of the Application due to the Project within two years of the date of DRA’s conditional approval of the Application. The number of “New Jobs” is the addition at the Project location over Current Employment, and net of decreased employment at other locations of the Company of related companies in the state where the Project is.
 - j. Project – The construction, reconstruction, purchase, and/or installation of buildings, machinery, equipment, utilities, streets, furniture, and other real estate or personal property improvements to be located at the site indicated in the Application, whether owned or leased by the Company or Grantee, as detailed in the Application.
 - k. Retained Jobs – The number of current Full-Time, Year-Round Employees of the Company who would have been terminated if the Project had not been undertaken. In the event less than 100% of the employees of the entire facility would be terminated, the specific employees who would be retained have been named, and a direct relationship has been established between their proposed termination and the Project.
 - l. Unforeseen Economic Events – The Company’s actual sales volume at this location was significantly less than was projected by the Company prior to the Commencement of the Project due to factors beyond the Company’s control.
2. Accuracy – The Company has reviewed the entire contents of the Application including all attachments, except for information that pertains to other companies that may be included, and hereby certifies that all information that relates to the Company is true and accurate, and can be verified upon request by proper official of DRA or the Applicant.
 3. Access to Records – The Company agrees to provide reasonable access to company records by proper officials of DRA and the Applicant in order to verify information submitted in this Application and requirements set forth in this Agreement. “Reasonable access” shall be considered access at the

Company's normal business hours with at least three days notice by DRA or the Applicant.

4. New Job Creation Project (If Applicable) – The Company will create, at a minimum, _____ New Jobs in addition to the Current Employment of _____. The Company will maintain, at a minimum, _____ Full-Time, Year-Round Employees at this location for a period of five years from the completion of the project.
5. Proposed Capital Expenditures – The Company certifies that the proposed Capital Expenditures for the Company's Project, as identified in the Application, has not yet begun, and will not begin until DRA has conditionally approved the Application. The Company also certifies that it will expend, at a minimum, \$ _____ in Capital Expenditures for the Project, and provide upon request paid invoices and other allowable documentation dated after DRA's conditional approval of the Application substantiating said expenditures to the Grantee and DRA.
6. DRA/Civil Rights – The Company agrees to comply with Equal Employment Opportunity and civil rights laws and procedures as applicable to the DRA program, which, among other requirements, requires non-discrimination in employment.
7. Default and Remedies – If for any reason whatsoever, the Company does not adhere to the commitments as contemplated by this Agreement, the Company shall reimburse DRA the amount contemplated by the Grant Agreement, plus 10% interest accrued from the time DRA funds were first received by the Grantee, plus any expenses associated with the collection of funds. In the event of partial New Job Creation or Retained Jobs, reimbursement shall be computed on a prorated basis dependent on actual performance as follows:
 - a. New Job Creation – For every New Job less than the number stated in Item 4 of this Agreement within two years after the date of DRA's conditional approval and sustained for five years after the date of DRA's conditional approval, the Company agrees to provide as penalties to DRA, within sixty (60) days written notice by DRA, an amount equal to the grant divided by the number of New Jobs plus 10% interest compounded annually accrued from the date DRA funds were first received by the Grantee, plus any expenses associated with the collection of funds from the Company due to this penalty.
 - b. Retained Jobs – For every Full-Time, Year-Round Employee less than the number indicated in Item 4 of this Agreement not maintained for a period of five years from the date of DRA's conditional approval, the Company agrees to provide as penalties to DRA, within sixty (60) days written notice by DRA, an amount equal to the grant divided by the number of employees to be maintained, plus 10% interest

compounded annually accrued from the date DRA funds were first received by the Grantee, plus any expenses associated with the collection of funds from the Company due to this penalty.

- c. Reduction of Penalties – DRA, at its sole discretion, may reduce or waive the penalties specified in this Section of this Agreement in the event the Company experiences Unforeseen Economic Events as defined in paragraph 1. (l), as determined by DRA. This information must reflect the activity only at the facility referred to in the Application, and not include other sites, subsidiaries, or parent company. In the event the Company elects not to submit the current and projected financial information in the application, DRA is not obligated to determine if a reduction in penalties would be warranted.
- 8. Certification – The Company certifies that but for the proposed DRA assistance described in the Application, the Company’s project will not be done at the proposed site, and the New or Retained Jobs would not occur.
- 9. Hold Harmless – The Company shall fully and completely indemnify, defend, and hold harmless DRA and its officers, directors, employees, board and agents against any liability, judgment, loss, costs, claim damages (including consequential damage) or expenses (including attorneys’ fees and disbursements, settlement costs, consultant fees, and investigation fees) to which any of them may become subject insofar as they may arise out of or based upon this Agreement or any agreement or document executed by the Company and DRA as part of the transaction described herein. The Company shall be given the full opportunity, at the expense of the Company, to defend against any such third party claim or demand.
- 10. Disputes -- In the event of a dispute between the parties arising out of or related to this Agreement, the aggrieved party shall notify the other party of the dispute within a reasonable time after such dispute arises. If the parties cannot thereafter resolve the dispute, each party shall nominate a senior officer of its management to meet to resolve the dispute by direct negotiation or mediation. Should such negotiation or mediation fail to resolve the dispute, either party must then pursue resolution by binding arbitration in accordance with the rules of the American Arbitration Association.

Delta Regional Authority, Grantor

Company

By: _____
Howard Hemphill
Director of Federal Programs

By: _____
President

Date: _____

Date: _____

STATE OF _____
COUNTY OF _____

Personally appeared before me, the undersigned notary public in and for the jurisdiction aforesaid, the within named _____, to me known, who acknowledged that he is _____ of _____, and that for and on behalf of said _____ and as its act and deed, he signed and delivered the foregoing Agreement as of the date therein mentioned with action execution on the date of this acknowledgment, after having been first duly authorized so to do.

GIVEN under my hand and official seal on this, the ____ day of _____, 2006.

Notary Public

My Commission Expires:

CERTIFIED RESOLUTION

I, _____, do hereby certify that I am a duly elected and qualified _____ of _____ organized and existing under the laws of the State of _____, and that the following is a true and correct copy of a certain resolution duly adopted at a meeting of the Board of Directors thereof convened and held in accordance with law and the by-laws of said corporation on the ____ day of _____, 200_, and that such resolution is now in full force and effect:

"BE IT RESOLVED, that _____, hereby authorizes _____ to execute the Participation Agreement with the Delta Regional Authority for a project to be located in _____, _____. hereby recognizes that the Agreement includes obligations of the corporation and financial penalties for non-compliance of such obligations."

IN WITNESS WHEREOF, I have hereunto affixed my name as _____, this ____ day of _____, 200_.

BY: _____

TITLE: _____