

G. Instructions for independent financial reports

The applicant shall provide an independent report by a qualified Independent Financial Analyst (such as a bank, investment bank, or other independent financial advisory firm). In the report, the Independent Financial Analyst shall describe qualifications and experience that establish the Analyst's competence to evaluate project financing for projects similar in scope and size to the Applicant's project. The Independent Financial Analyst shall provide a thorough, independent review of the Applicant's approach to project financing. The report shall include the opinion of the Independent Financial Analyst as to the Applicant's likelihood to achieve financial closure in accordance with the Applicant's financing plan.

Required Certification by Independent Financial Analyst:

The report shall be certified by the Independent Financial Analyst, who shall (a) acknowledge that the report has been prepared for submission to the Department of Energy as a part of an application by applicant for an investment credit, and (b) certify that the Independent Financial Analyst has no obligation to the applicant and has acted to the best of its ability as an independent expert.

At a minimum, the Independent Financial Analyst shall:

- Review the financial model.
- Review the project financial assumptions, including economic, capital costs, operating assumptions, and all project development costs.
- Review the financial calculations, including rates of return and coverage ratios.
- Confirm the calculation of the amount of the tax credit applied for.
- Review the project development cost budget.
- Review and comment on the source of funding and evidence of funding.
- Review and comment on project debt and equity sources.
- Confirm that the application includes the required financial reports and debt ratings.
- Describe and comment on the capabilities of the applicant to provide the required financing for the project, and the likelihood of obtaining financing from a source other than the applicant, if such financing is required by the project.

Qualifying Gasification Project Program

Notice 2006–25

SECTION 1. PURPOSE

This notice establishes the qualifying gasification project program under § 48B(d) of the Internal Revenue Code. The purpose of this program is to consider and award certifications for qualified investment eligible for credits under § 48B to qualifying gasification project sponsors.

SECTION 2. BACKGROUND

.01 Section 46 provides that the amount of the investment credit for any taxable year is the sum of the credits listed in § 46. Section 1307(a) of the Energy Policy Act

of 2005, Pub. L. 109–58, 119 Stat. 594 (August 8, 2005) (the “Act”), amended § 46 to add two new credits to that list: the qualifying advanced coal project credit and the qualifying gasification project credit.

.02 The qualifying gasification project credit is provided under § 48B, as added by § 1307(b) of the Act. Section 48B(a) provides that the qualifying gasification project credit for a taxable year is an amount equal to 20 percent of the qualified investment (as defined in § 48B(b)) for that taxable year in qualifying gasification projects. Pursuant to § 48B(d)(1), the aggregate amount of credits allocated to all qualifying gasification projects may not exceed \$350 million.

.03 The term “qualifying gasification project” is defined in § 48B(c)(1) as meaning any project that (A) employs gasification technology, (B) will be carried out by an eligible entity (as defined

in § 48B(c)(7)), and (C) includes a qualified investment of which an amount not to exceed \$650 million is certified under the qualifying gasification program as eligible for credit under § 48B. Pursuant to § 48B(c)(2), gasification technology is any process that converts a solid or liquid product from coal (as defined in § 48B(c)(6)), petroleum residue (as defined in § 48B(c)(8)), biomass (as defined in § 48B(c)(4)), or other materials that are recovered for their energy or feedstock value into a synthesis gas composed primarily of carbon monoxide and hydrogen for direct use or subsequent chemical or physical conversion.

.04 The qualifying gasification project credit generally is allowed in the taxable year in which the eligible property (as defined in § 48B(c)(3)) is placed in service by the taxpayer. Further, the at-risk rules in § 49 and the recapture and other special

rules in § 50 apply to the qualifying gasification project credit.

SECTION 3. QUALIFYING GASIFICATION PROJECT PROGRAM

Section 48B(d)(1) provides that the Secretary, in consultation with the Secretary of Energy, shall establish a qualifying gasification project program to consider and award certifications for qualified investment eligible for credits under § 48B to qualifying gasification project sponsors. The Treasury Department and the Internal Revenue Service are establishing the qualifying gasification project program under the rules set forth in sections 4 through 8 of this notice. Pursuant to § 48B(d)(2), certificates of eligibility may be issued under the program only during the 10-year period beginning on October 1, 2005.

SECTION 4. ESTABLISHMENT OF QUALIFYING GASIFICATION PROJECT PROGRAM

.01 *In General.* The Service will consider a project under the qualifying gasification project program only if the U.S. Department of Energy (“DOE”) provides a certification of feasibility and consistency with energy policy goals (“DOE certification”) for the project. Accordingly, for each qualifying gasification project, a taxpayer must submit: (1) an application for certification by the DOE (“application for DOE certification”), and (2) an application for certification under § 48B by the Service (“application for § 48B certification”). Both applications may be submitted only during the 3-year period beginning on February 21, 2006. Certifications will be issued and credits will be allocated to projects in annual allocation rounds. The initial allocation round will be conducted in 2006. If necessary, additional allocation rounds will be conducted in 2007 and 2008.

.02 *Program Specifications.*

(1) The Service will determine the amount of the qualifying gasification project credits allocated to a qualifying gasification project at the time the Service accepts the application for § 48B certification for that project in accordance with section 4.02(9) of this notice. The qualified investment in the project will be certified as eligible for the credit to the extent such investment does not exceed

the amount of the credit allocated to the project multiplied by five. See section 5 of this notice for the requirements applicable to the application for DOE certification and the application for § 48B certification.

(2) The certification for a project cannot apply to more than \$650 million of the qualified investment in the project. Thus, the maximum amount of qualifying gasification project credits that will be allocated to a project is \$130 million.

(3) The aggregate credit of \$350 million will be allocated as follows in the initial round of allocations conducted in 2006:

(a) The aggregate credit will be allocated first to the projects that have carbon capture capability (as defined in § 48B(c)(5)), use renewable fuel, or have project teams with experience that demonstrates successful and reliable operations of the gasification technology on the domestic fuels identified in § 48B(c)(2).

(b) If the requested allocation of credits for these priority projects exceeds the aggregate credit of \$350 million, the credit will be allocated to the priority projects providing the highest ratio of the total amount of synthesis gas to be supplied by the project (“nameplate capacity”) to requested allocation of credits.

(c) If the requested allocation of credits for the priority projects does not exceed the aggregate credit of \$350 million, the remaining amount of the credit will be allocated to the nonpriority projects providing the highest ratio of nameplate capacity to requested allocation of credits.

(4) If the aggregate credit of \$350 million is not fully allocated in the initial round of allocations in 2006, similar allocation rounds will be conducted in 2007 and 2008 until the aggregate credit of \$350 million is fully allocated. Generally, the results of each year will be announced.

(5) If the same project would otherwise be allocated credits under both the qualifying gasification project program under this notice and the qualifying advanced coal project program under Notice 2006–24, 2006–11 I.R.B. 595, the following rules apply:

(a) If the project is allocated the full amount of the qualifying advanced coal project credit requested by the taxpayer, no qualifying gasification project credit will be allocated to the project;

(b) If the project is allocated the full amount of the qualifying gasification

project credit requested by the taxpayer, no qualifying advanced coal project credit will be allocated to the project;

(c) If the project is allocated less than the full amount of the qualifying advanced coal project credit requested by the taxpayer, the qualifying gasification project credit may be allocated to the project with respect to the qualified investment under § 48B for which a qualifying advanced coal project credit is not allowed under § 48A; and

(d) If the project is allocated less than the full amount of the qualifying gasification project credit requested by the taxpayer, the qualifying advanced coal project credit may be allocated to the project with respect to the qualified investment under § 48A for which a qualifying gasification project credit is not allowed under § 48B.

(6) For each allocation round, there will be an annual application period during which a taxpayer may file its application for § 48B certification. The Service will consider a project in an allocation round only if the application for § 48B certification for the project is submitted during the application period for that round and the DOE provides the DOE certification for the project before the end of that application period.

(7) For the initial allocation round conducted in 2006, the application period begins on February 21, 2006, and ends on October 2, 2006. Any completed application for § 48B certification received by the Service before October 3, 2006, will be deemed to be submitted by the taxpayer on October 2, 2006. For 2007, the application period begins on October 3, 2006, and ends on October 1, 2007, and any completed application for § 48B certification received by the Service after October 2, 2006, and before October 2, 2007, will be deemed to be submitted by the taxpayer on October 1, 2007. For 2008, the application period begins on October 2, 2007, and ends on October 1, 2008, and any completed application for § 48B certification received by the Service after October 1, 2007, and before October 2, 2008, will be deemed to be submitted by the taxpayer on October 1, 2008. For purposes of this notice, an application that is submitted by U.S. mail will be treated as received by the Service on the date of the postmark and an application submitted by a private delivery service will be treated as received by the Service

on the date recorded or the date marked in accordance with § 7502(f)(2)(C).

(8) See section 5.02 of this notice and Appendix B to this notice for the information to be submitted to the DOE in an application for DOE certification. Appendix B to this notice also provides the instructions and address for filing the application for DOE certification. The DOE will determine the feasibility of the project and its consistency with energy policy goals and, if the project is determined to be feasible and consistent with energy policy goals, will provide a DOE certification for the project to the Service. If an application for DOE certification is postmarked on or before June 30 of a calendar year, the DOE will determine the feasibility of the project and its consistency with energy policy goals and (for projects determined to be feasible and consistent) provide the DOE certification by October 1 of that calendar year.

(9) By November 30 of the calendar year in which an application for § 48B certification is deemed to be submitted (as determined under section 4.02(7) of this notice), the Service will accept or reject the taxpayer's application for § 48B certification and will notify the taxpayer, by letter, of its decision.

(10) A taxpayer that receives an acceptance letter under section 4.02(9) of this notice has 7 years from the date of the acceptance letter to place the project in service and if the project is not placed in service by the end of that period then the acceptance letter is void.

(11) If the taxpayer's application for § 48B certification is accepted, the acceptance letter will state the amount of the credit allocated to the project and the amount of qualified investment that is certified as eligible for the credit. If a credit is allocated to a taxpayer's project, the taxpayer will be required to execute a closing agreement in the form set forth in Appendix A to this notice. By January 31 of the following year, the taxpayer must execute and return the closing agreement to the Service at the appropriate address listed in section 5.04 of this notice or listed in later guidance published in the Internal Revenue Bulletin. The Service will execute and return the closing agreement to the taxpayer by March 31 of such following year. The executed closing agreement

applies only to the accepted taxpayer. Accordingly, any successor in interest must execute a new closing agreement with the Service. If the successor in interest does not execute a new closing agreement, the following rules apply:

(a) In the case of an interest acquired at or before the time the qualifying gasification project is placed in service, any credit allocated to the project will be fully forfeited (and rules similar to the recapture rules of § 50(a) apply with respect to qualified progress expenditures); and

(b) In the case of an interest acquired after the qualifying gasification project is placed in service, the project ceases to be investment credit property and the recapture rules of § 50(a) (and similar rules with respect to qualified progress expenditures) apply.

SECTION 5. APPLICATIONS FOR CERTIFICATIONS

.01 *In General.* An application for § 48B certification and a separate application for DOE certification must be submitted for each qualifying gasification project. If an application for DOE certification does not include all of the information required by section 5.02 of this notice and meet the requirements in sections 6.01 and 6.02 of this notice, the DOE may decline to accept the application. If an application for § 48B certification does not include all of the information listed in section 5.03 of this notice and meet the requirements in sections 6.01 and 6.02 of this notice, the application will not be accepted by the Service.

.02 *Information Required in the Application for DOE Certification.* An application for DOE certification must include all of the information requested in Appendix B to this notice and all of the following:

- (1) The name, address, and taxpayer identification number of the taxpayer;
- (2) The name and telephone number of a contact person;
- (3) The name and address (or other unique identifying designation) of the qualifying gasification project;
- (4) A statement specifying the projected placed-in-service date of the qualifying gasification project;
- (5) The estimated total cost of the project and the estimated total qualified

investment in the eligible property that will be part of the project;

(6) The amount of the qualifying gasification project credit requested for the project. The amount requested must not exceed \$130 million (the maximum amount permitted under § 48B(a) and (c)(1)(C));

(7) If the taxpayer is or will be requesting an amount of the qualifying advanced coal project credit under § 48A for the same project, a statement specifying the credit the taxpayer prefers to receive;

(8) The amount of synthesis gas to be supplied by the qualifying gasification project (nameplate capacity). The synthesis gas must be composed primarily of carbon monoxide and hydrogen for direct use or subsequent chemical or physical conversion; and

(9) Documentation or other evidence establishing that the taxpayer is financially viable without the receipt of additional federal funding associated with the qualifying gasification project.

.03 *Information Required in the Application for § 48B Certification.* An application for § 48B certification must include all of the following:

- (1) The name, address, and taxpayer identification number of the taxpayer;
- (2) The name and telephone number of a contact person. If necessary, attach any required power of attorney, preferably on Form 2848, *Power of Attorney and Declaration of Representative*; and
- (3) A paper copy of the completed application for DOE certification submitted with respect to the project in accordance with section 5.02 of this notice.

.04 *Instructions and Address for Filing § 48B Application.* Applications for § 48B certification should be marked: SECTION 48B APPLICATION FOR CERTIFICATION. There is no user fee for these applications.

(1) Applications submitted by U.S. mail must be sent to:

Internal Revenue Service
Attn: CC:PSI:6, Room 5313
P.O. Box 7604
Ben Franklin Station
Washington, DC 20044

Applications submitted by a private delivery service must be sent to:

Internal Revenue Service
Attn: CC:PSI:6, Room 5313
1111 Constitution Ave., N.W.
Washington, DC 20224

(2) Applications may also be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to:

Courier's Desk
Internal Revenue Service
Attn: CC:PSI:6, Room 5313
1111 Constitution Avenue, N.W.
Washington, DC 20224

SECTION 6. OTHER REQUIREMENTS

.01 *Signature.* Each submission under section 5 of this notice must be signed and dated by the taxpayer. A stamped signature or faxed signature is not permitted.

.02 *Penalties of Perjury Statement.*

(1) Each submission under section 5 of this notice must be accompanied by the following declaration: "Under penalties of perjury, I declare that I have examined this submission, including accompanying documents, and, to the best of my knowledge and belief, all of the facts contained herein are true, correct, and complete."

(2) The declaration must be signed and dated by the taxpayer. The person signing for the taxpayer must have personal knowledge of the facts. A stamped signature or faxed signature is not permitted.

.03 *Effect of an Acceptance or Allocation.* An acceptance or allocation by the Service under this notice is not a determination that a project qualifies for the qualifying gasification project credit under § 48B. The Service may, upon examination (and after any appropriate consultation with DOE), determine that the project does not qualify for this credit.

.04 *No Right to a Conference or Appeal.* A taxpayer does not have a right to a conference relating to any matters under this notice. Further, a taxpayer does not have a right to appeal the decisions made under this notice (including the acceptance or rejection of the application for DOE or § 48B certification or the amount of credit allocated to the project) to an Associate Chief Counsel or any other official of the Service.

SECTION 7. REVIEW AND REDISTRIBUTION

.01 *In General.* Section 48B(d)(1) provides for the review and redistribution of credits allocated under the qualifying gasification project program under rules similar to the rules of § 48A(d)(4).

.02 *Review and Redistribution of Credits.*

(1) *In general.* If, after the allocation round in 2008, the aggregate credit of \$350 million is not fully subscribed (*i.e.*, the aggregate credit is not fully allocated), an additional program for applications for certification to allocate the remaining credits will be conducted. Future guidance will prescribe the procedures applicable to applications for certification with respect to the remaining credits.

(2) *Reduction or forfeiture of allocated credits.* Under the closing agreement set forth in Appendix A to this notice, the qualifying gasification project credits allocated under section 4 of this notice will be reduced or forfeited in certain situations. A taxpayer must notify the Service of the amount of any reduction or forfeiture required under the closing agreement. This notification must be sent to the appropriate address listed in section 5.04 of this notice or listed in later guidance published in the Internal Revenue Bulletin.

The amount of any reduction or forfeiture of the allocated credits will be returned and included in the aggregate credit remaining to be allocated in the allocation round following the reduction or forfeiture. If the reduction or forfeiture occurs after the allocation round in 2008, future guidance will prescribe procedures applicable to applications for certification with respect to the returned credits.

SECTION 8. QUALIFIED PROGRESS EXPENDITURES

.01 Section 48B(b)(3) provides that rules similar to the rules of § 46(c)(4) and (d) (as in effect on the day before the enactment of the Revenue Reconciliation Act of 1990) shall apply for purposes of § 48B. Former §§ 46(c)(4) and 46(d) provided the rules for claiming the investment credit on qualified progress expenditures (as defined in former § 46(d)(3)) made by a taxpayer during the taxable year for

the construction of progress expenditure property (as defined in former § 46(d)(2)).

.02 In the case of self-constructed property (as defined in former § 46(d)(5)(A)), former § 46(d)(3)(A) defined qualified progress expenditures to mean the amount that is properly chargeable (during the taxable year) to capital account with respect to that property. With respect to a qualifying gasification project that is self-constructed property, amounts paid or incurred are chargeable to capital account at the time and to the extent they are properly includible in computing basis under the taxpayer's method of accounting (for example, after applying the requirements of § 461, including the economic performance requirement of § 461(h)).

.03 To claim the qualifying gasification project credit on the qualified progress expenditures paid or incurred by a taxpayer during the taxable year for construction of a qualifying gasification project, the taxpayer must make an election under the rules set forth in § 1.46-5(o) of the Income Tax Regulations. The taxpayer may not make the qualified progress expenditures election for a qualifying gasification project until the taxpayer has received an acceptance letter for the project under section 4.02(9) of this notice.

.04 If a taxpayer makes the qualified progress expenditures election pursuant to section 8.03 of this notice, rules similar to the recapture rules in § 50(a)(2)(A)-(D) apply. In addition to the cessation events listed in § 50(a)(2)(A), examples of other events that will cause the project to cease being a qualifying gasification project are:

(1) Failure to place the project in service within 7 years from the date of the acceptance letter under section 4.02(9) of this notice; or

(2) In the case of a project that was entitled to priority for carbon capture capability, failure to provide that priority benefit on the date the project is placed in service.

SECTION 9. EFFECTIVE DATE

This notice is effective February 21, 2006.

SECTION 10. PAPERWORK REDUCTION ACT

The collection of information contained in this notice has been reviewed and approved by the Office of Management and

Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545-2002.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

The collections of information in this notice are in sections 4, 5, 6, 7, and Appendix B of this notice. This information is required to obtain an allocation of qualifying gasification project credits. This information will be used by the Service to verify that the taxpayer is eligible for the qualifying gasification project credits. The

collection of information is required to obtain a benefit. The likely respondents are business or other for-profit institutions.

The estimated total annual reporting burden is 1,700 hours.

The estimated annual burden per respondent varies from 50 to 125 hours, depending on individual circumstances, with an estimated average of 85 hours. The estimated number of respondents is 20.

The estimated annual frequency of responses is on occasion.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue

law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

SECTION 11. DRAFTING INFORMATION

The principal author of this notice is Jennifer Bernardini of the Office of Associate Chief Counsel (Passthroughs & Special Industries). For further information regarding this notice, contact Douglas H. Kim at (202) 622-3110 (not a toll-free call).

APPENDIX A
CLOSING AGREEMENT

Under § 7121 of the Internal Revenue Code, [insert taxpayer's name, address, and identifying number] ("Taxpayer") and the Commissioner of Internal Revenue ("Commissioner") make the following closing agreement:

WHEREAS:

1. On or before October [insert date and year], Taxpayer submitted to the Internal Revenue Service ("IRS"), an application for certification under the qualifying gasification project program described in Notice 2006-25 ("Application for § 48B Certification");

2. Taxpayer's Application for § 48B Certification is for the qualifying gasification project (the "Project") described below—

(1) The Project will be located at [insert address or other identifying designation];

(2) The Project will supply [insert number] mcf of synthesis gas that is composed primarily of carbon monoxide and hydrogen for direct use or subsequent chemical or physical conversion;

(3) The fuels identified in § 48B(c)(2) will at all times cumulatively comprise at least 90 percent of the total fuels (fuels identified in § 48B(c)(2) and any other fuel input) required by the Project for the production of chemical feedstocks, liquid transportation fuels, or co-production of electricity;

[If the Project is a priority project, insert:

(4) The Project is entitled to priority under Notice 2006-25 [insert either: "for carbon capture capability (as defined in § 48B(c)(5)) or use of renewable fuels"; "because the project team has experience that demonstrates successful and reliable operations of the gasification technology on domestic fuels identified in § 48B(c)(2)"; or "both for carbon capture capability (as defined in § 48B(c)(5)) or use of renewable fuels and because the project team has experience that demonstrates successful and reliable operations of the gasification technology on domestic fuels identified in § 48B(c)(2)"];] and

3. On or before November 30, [insert year], the IRS accepted Taxpayer's Application for § 48B Certification for the Project and allocated a qualifying gasification project credit under § 48B in the amount of \$[insert number] to the Project.

NOW IT IS HEREBY DETERMINED AND AGREED FOR FEDERAL INCOME TAX PURPOSES THAT:

1. The total amount of the qualifying gasification project credit to be claimed for the Project under § 48B(a) must not exceed \$[insert the number in WHEREAS clause #3].

2. If the Project is not placed in service by Taxpayer within 7 years of [insert date of acceptance letter issued under section 4.02(9) of Notice 2006-25], the qualifying gasification project credit in the amount of \$[insert the number in WHEREAS clause #3] allocated to the Project is fully forfeited.

3. If the Project does not supply synthesis gas in the amount of [insert the number in WHEREAS clause #2(2)] on the date the Project is placed in service, the qualifying gasification project credit in the amount of \$[insert the number in WHEREAS clause #3] allocated to the Project is reduced proportionately.

[If the Project is not a priority project for carbon capture capability, for use of renewable fuels, or because the project team has experience that demonstrates successful and reliable operations of the gasification technology on domestic fuels identified in § 48B(c)(2), insert:

4. (1) If the Project fails to use gasification technology as defined in § 48B(c)(2) or is not carried out by an eligible entity as defined in § 48B(c)(7), the qualifying gasification project credit in the amount of \$[insert the number in WHEREAS clause #3] allocated to the Project is fully forfeited.

(2) If, at any time, the fuels identified in § 48B(c)(2) with respect to the gasification technology for the Project do not cumulatively comprise at least 90 percent of the total fuels (fuels identified in § 48B(c)(2) and any other fuel input) required by the Project for the production of chemical feedstocks, liquid transportation fuels, or co-production of electricity, the Project ceases to be investment credit property and the recapture rules of § 50(a) apply.]

[If the Project is a priority project for carbon capture capability, for use of renewable fuels, or because the project team has experience that demonstrates successful and reliable operations of the gasification technology on domestic fuels identified in § 48B(c)(2), insert:

4. (1) If the Project fails to use gasification technology as defined in § 48B(c)(2) or is not carried out by an eligible entity as defined in § 48B(c)(7), the qualifying gasification project credit in the amount of \$[insert the number in WHEREAS clause #3] allocated to the Project is fully forfeited.

(2) If, at any time, the fuels identified in § 48B(c)(2) with respect to the gasification technology for the Project do not cumulatively comprise at least 90 percent of the total fuels (fuels identified in § 48B(c)(2) and any other fuel input) required by the Project for the production of chemical feedstocks, liquid transportation fuels, or co-production of electricity, the Project ceases to be investment credit property and the recapture rules of § 50(a) apply.

(3) If the Project fails to provide [insert priority benefits in WHEREAS clause #2(4)] on the date the Project is placed in service, the qualifying gasification project credit in the amount of \$[insert the number in WHEREAS clause #3] allocated to the Project is fully forfeited.]

5. Taxpayer will not claim the qualifying advanced coal project credit under § 48A for any qualified investment for which the qualifying gasification project credit is allowed under § 48B.

6. If Taxpayer elects to claim the qualifying gasification project credit on the qualified progress expenditures paid or incurred by Taxpayer during the taxable year for construction of a qualifying gasification project, rules similar to the recapture rules in § 50(a)(2)(A) through (D) apply.

7. This agreement applies only to Taxpayer. Any successor in interest must execute a new closing 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 closing agreement, the qualifying gasification project credit in the amount of \$[insert the number in WHEREAS clause #3] 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 closing 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 (including any stated exception for § 7122) notwithstanding any law or rule of law; and
3. If it relates to a tax period ending after the date of this Closing 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 Closing Agreement.

Taxpayer: [insert name and identifying number]

By: _____ **Date Signed:** _____
[insert name]

Title: [insert title]
[insert taxpayer's name]

Commissioner of Internal Revenue

By: _____ **Date Signed:** _____
[insert name]

Title: Associate Chief Counsel, Passthroughs and Special Industries, CC:PSI

I have examined the specific matters involved and recommend the acceptance of the proposed agreement.

(Receiving Officer) _____

(Title) _____

Date Signed _____

I have reviewed the specific matters involved and recommend the acceptance of the proposed agreement.

(Reviewing Officer) _____

(Title) _____

Date Signed _____

APPENDIX B
APPLICATION FOR DOE CERTIFICATION
REQUEST FOR SUPPLEMENTAL APPLICATION INFORMATION FOR DOE

Pursuant to Notice 2006–25 establishing the Qualifying Gasification Project Program, the Internal Revenue Service (“IRS”) will certify that the investment in a project is eligible for a credit under § 48B of the Internal Revenue Code only if, among other things, the IRS receives from the Department of Energy (“DOE”) a certification of feasibility and consistency with energy policy goals (“DOE certification”) for the project. This DOE certification shall assure that the applications selected meet the requirements of § 48B and the intent of § 48B to provide credits to projects that are both technically and economically feasible.

The IRS and DOE seek to certify applications that demonstrate a high likelihood of being successfully implemented by the applicants. To qualify, projects must be economically feasible and use the appropriate gasification technology.

This request for submission of supplemental application information:

1. Describes the information to be provided by the applicant seeking a DOE certification, and
2. Lists the evaluation criteria, and Program Policy Factors to be used by DOE in the evaluation of applications.

In conducting this evaluation, the DOE may utilize assistance and advice from qualified personnel from other Federal agencies and/or non-conflicted contractors. DOE will obtain assurances in advance from all evaluators that application information shall be kept confidential and used only for evaluation purposes. DOE reserves the right to request clarifications and/or supplemental information from some or all applicants through written submissions and/or oral presentations.

Notice is given that DOE may determine whether or not to provide a DOE certification to the IRS at any time after the application has been received, without further exchanges or discussions. Therefore, all applicants are advised to submit their most complete and responsive application.

Applications will not be returned.

SUBMISSION INFORMATION FOR DOE CERTIFICATION APPLICATION

A. General

This request, together with the information in sections 5.02, 6.01, and 6.02 of Notice 2006–25 includes all the information needed to complete an application for DOE certification. All applications shall be prepared in accordance with this request in order to provide a standard basis for evaluation and to ensure that each application will be uniform as to format and sequence.

Each application should clearly demonstrate the applicant’s capability, knowledge, and experience in regard to the requirements described herein.

Applicants should fully address the requirements of Notice 2006–25 and this request and **not** rely on the presumed background knowledge of reviewers. DOE may reject an application that does not follow the instructions regarding the organization and content of the application when the nature of the deviation and/or omission precludes meaningful review of the application.

B. Unnecessarily Elaborate Applications

Unnecessarily elaborate brochures or other presentations beyond those sufficient to present a complete and effective application are not desired. Elaborate art work, graphics and pictures are neither required nor encouraged.

C. Application Submission for DOE Certification

The application submission to DOE must include the information and documentation required by sections 5.02, 6.01, and 6.02 of Notice 2006–25.

A project will not be considered in the allocation round conducted in a calendar year unless the application for DOE certification of the project is postmarked by June 30 of that calendar year. Two paper copies and one electronic version on a floppy disc or a CD of the Application must be submitted to:

Melissa Robe
National Energy Technology Laboratory
3610 Collins Ferry Road
Morgantown, WV 26507

Note that under section 5 of Notice 2006–25, one paper copy must be sent to the IRS as part of the application for IRS certification. The project will not be considered in the allocation round conducted in a calendar year unless the application is submitted to the IRS by the date specified for that calendar year in section 4.02(7) of Notice 2006–25.

THE INFORMATION REQUIRED BY THIS REQUEST MUST BE SUBMITTED USING THE FORMAT AND THE HEADINGS OF THE PROJECT INFORMATION MEMORANDUM AS DESCRIBED BELOW.

To aid in evaluation, applications shall be clearly and concisely written and logically assembled. All pages of each part shall be appropriately numbered and identified with the name of the applicant and the date.

The application, including the Project Information Memorandum, **MUST** be formatted in one of the following software applications:

Microsoft Word™ 2002 or later edition

Microsoft Excel™ 2002 or later edition

Adobe Acrobat™ PDF 6.0 or later edition

Financial models should be submitted using the Excel™ spreadsheet and must include calculation formulas and assumptions.

The applicant is responsible for the integrity and structure of the electronic files. The DOE will not be responsible for reformatting, restructuring or converting any files submitted under this announcement.

The Project Information Memorandum, *excluding Appendices*, shall not exceed seventy-five (75) pages. Pages in excess of the page limitation will not be considered for evaluation. All text shall be typed, single spaced, using 12 point font, 1 inch margins, and unreduced 8-1/2-inch by 11-inch pages. Illustrations and charts shall be legible with all text in legible font. Pages shall be sequentially numbered. Except as otherwise noted herein the page guidelines previously set forth constitute a limitation on the total amount of material that may be submitted for evaluation. No material may be incorporated in any application by reference as a means to circumvent the page limitation.

D. Form of Project Information Memorandum

PROJECT INFORMATION MEMORANDUM

I. SUMMARY AND INTRODUCTION

- Description of the Project
- Financing and Ownership Structure
- Describe the main parties to the project, including background, ownership and related experience
- Current Project Status and Schedule to Beginning of Construction

II. TECHNOLOGY AND TECHNICAL INFORMATION

Provide a description of the proposed technology, including sufficient supporting information (such as process flow diagrams, equipment descriptions, information on each major process unit and the total plant, compositions of major streams, and the technical plan for achieving the goals proposed for the project) as would be needed to allow DOE to confirm that the technical requirements of § 48B could, in principle, be met. Specifically, the applicant should:

- Provide evidence sufficient to demonstrate that the proposed technology will employ gasification technology as defined in § 48B(c)(2).
- Present information sufficient to justify the total amount of synthesis gas (as defined in § 48B(c)(2)) to be produced by the project (nameplate capacity).
- Provide evidence sufficient to ensure that fuels defined in § 48B(c)(2) will comprise at least 90 percent of the total fuel input (fuels defined in § 48B(c)(2) and any other fuel input) for the project.
- Identify the domestic industry for which the proposed project is intended to be used.

- Identify the specific products and quantities produced by the proposed project, providing sufficient evidence to support claims.
- Provide information and data, including examples of prior similar projects completed by applicant, EPC contractor, and suppliers of major subsystems or equipment, which support the capabilities of the applicant to construct and operate the facility.
- Provide evidence that indicates, for projects using nonrenewable fuels, the gasification technology design reflects reasonable consideration for, and is capable of, accommodating equipment necessary to capture carbon dioxide for later use or sequestration. Include the project status and relevant information from ongoing engineering activities. Also include in an appendix any engineering report or reports used by the applicant to develop the project and to estimate costs and operating performance.

III. SITE CONTROL AND OWNERSHIP

- Provide evidence that the applicant owns or controls a site in the United States of sufficient size to allow the proposed project to be constructed and operated on a long-term basis.
- Describe the current infrastructure at the site available to meet the needs of the project.
- Provide information supporting applicant's conclusion that the proposed site can fully meet all environmental, feedstock supply, water supply, transportation, and public policy requirements.

IV. UTILIZATION OF PROJECT OUTPUT

- Provide evidence that a market exists for the products of the proposed project as evidenced by contracts or written statements of intent from potential customers.
- Describe any sales arrangements that exist or that may be contemplated and summaries of their key terms and conditions.
- Include as an appendix any independent Market Study that has been done in connection with this project, or if no independent market study has been completed, provide a copy of the applicant-prepared market study.

V. PROJECT ECONOMICS

Describe the project economics and provide satisfactory evidence of economic feasibility as demonstrated through the financial forecast and the underlying project assumptions.

Discuss the market potential for the proposed technology beyond the project proposed by the applicant.

Show calculation for the amount of tax credit applied for based on allowable cost.

VI. PROJECT DEVELOPMENT AND FINANCIAL PLAN

Provide the total project budget and major plant costs, *e.g.*, development, operating, capital, construction, and financing costs. Describe the overall approach to project development and financing sufficient to demonstrate project viability. Provide a complete explanation of the source and amount of project equity. Provide a complete explanation of the source and amount of project debt. Provide the audited financial statements for the applicant for the most recently ended three fiscal years, and the unaudited quarterly interim financial statements for the current fiscal year. Applicant should demonstrate that the award recipient is financially viable without the receipt of additional federal funding associated with the proposed project.

For internally financed projects, provide evidence that the applicant has sufficient assets to fund the project with its own resources. Identify any internal approvals required to commit such assets. Include in an appendix copies of any board resolution or other approval authorizing the applicant to commit funds and proceed with the project.

For projects financed through debt instruments either unsecured or secured by assets other than the project, provide evidence that the applicant has sufficient creditworthiness to obtain such financing along with a discussion of the status of such instruments. Identify any internal approvals required to commit the applicant to pursue such financing. Include in an appendix, copies of any board resolution or other approval authorizing the applicant to commit to such financing.

For projects financed through investor equity contributions, discuss the source and status of each contribution. Discuss each investor's financial capability to meet its commitments. Include in an appendix, copies of any executed investment agreements.

If financing through a public offering or private placement of either debt or equity is planned for the project, provide the expected debt rating for the issue and an explanation of applicant's justification for the rating. Describe the status of any discussions with prospective investment bankers or other financial advisors.

For projects employing nonrecourse debt financing, provide a complete discussion of the approach to, and status of, such financing.

In an appendix, provide (1) an Excel based financial model of the project, with formulas, so that review of the model calculations and assumptions may be facilitated; provide *pro-forma* project financial, economic, capital cost, and operating assumptions, including details of all project capital costs, development costs, interest during construction, transmission interconnection costs, other operating expenses, and all other costs and expenses, and (2) a report of an independent financial analyst in accordance with the instructions in Section G of this Appendix B.

VII. PROJECT CONTRACT STRUCTURE

Describe the current status of each of the agreements set forth below. Include as an appendix copies of the contracts or summaries of the key provisions of each of the following agreements:

- Raw Material Input Supply: describe the source and price of raw material inputs for the project. Include as an appendix any studies of price and amount of raw materials that have been prepared. Include a summary of any supply contracts and a copy of the contracts.
- Transportation: explain the arrangements for transporting project inputs and outputs, including costs.
- Operations & Maintenance Agreement: include a summary of the terms and conditions of the contract and a copy of the contract.
- Shareholders Agreement: summarize key terms and include the agreement as an appendix.
- Engineering, Procurement and Construction Agreement: describe the key terms of the existing or expected EPC contract arrangement, including firm price, liquidated damages, hold-backs, performance guarantees, etc.
- Water Supply Agreement: confirm the amount, source, and cost of water supply.

VIII. PERMITS INCLUDING ENVIRONMENTAL AUTHORIZATIONS

- Provide a complete list of all federal, state, and local permits, including environmental authorizations or reviews, necessary to commence construction of the project.
- Explain what actions have been taken to date to satisfy the required authorizations and reviews, and the status of each.
- Provide a description of the applicant's plan to obtain and complete all necessary permits, and environmental authorizations and reviews.

IX. PROJECT SCHEDULE

- Provide an overall project schedule which includes technical, business, financial, permitting and other factors to substantiate that the project will meet the 7 year requirement for placing the plant in service.

APPENDICES

- Independent Financial Report.
- Copy of internal or external engineering reports.
- Copy of site plan, together with evidence that applicant owns or controls a site. Examples of evidence would include a deed, or an executed contract to purchase or lease the site.
- Information supporting applicant's conclusion that the site is fully acceptable as the project site with respect to environment, raw material supply, water supply, and public policy reasons.
- Project Market Study.
- Financial Model of project.
- Audited financial statements for the applicant for the most recently ended three fiscal years, and the unaudited quarterly interim financial statements for the current fiscal year.
- Project contracts or summary of thereof.
- If no contract currently exists, provide a summary of the expected terms and conditions.
- List of all federal, state, and local permits, including environmental authorizations or reviews, necessary to commence construction.
- Copies of any contract or written statements from customers of intent to purchase project products.

If an appendix listed above is not provided, include in its place a complete explanation of the reasons for the omission.

E. Evaluation Criteria:

Industrial Gasification Projects: will be evaluated on whether they meet all the requirements of § 48B.

Technical: will be evaluated on whether the applicant has demonstrated the capability to accomplish the technical objectives.

Site: will be evaluated on the basis that the site requirement for ownership or control has been met, and that the site is suitable for the proposed project.

Economic: will be evaluated on whether the project has demonstrated economic feasibility, taking into consideration the submitted financial and project development and structural information and financial plan.

Schedule: will be evaluated on the applicant's ability to meet the 7 year placed-in-service requirement.

F. Program Policy Factors to be used by DOE in the evaluation of applications and a description of how they will be applied.

These factors, while not indicators of the applicant's merit, *e.g.*, technical excellence, cost, applicant's ability, etc., may be essential to the process of selecting the application(s) that, individually or collectively, will best achieve the objectives of the authorizing legislation. Such factors are often beyond the control of the applicant. Applicants should recognize that some very good applications may not receive selection for certification because they do not fit within a mix of projects and technologies that maximize the probability of achieving the overall objective of deployment of industrial gasification technology. Therefore, the following Program Policy Factors may be used individually or collectively by DOE following application of evaluation criteria to determine which of the applications shall receive certification by DOE.

- Diversity of technology approaches and methods
- Geographic distribution of potential markets
- Presentation of unique environmental, economic, or performance benefits

G. Instructions for independent financial reports

The applicant shall provide an independent report by a qualified Independent Financial Analyst (such as a bank, investment bank, or other independent financial advisory firm). In the report, the Independent Financial Analyst shall describe qualifications and experience that establish the Analyst's competence to evaluate project financing for projects similar in scope and size to the Applicant's project. The Independent Financial Analyst shall provide a thorough, independent review of the Applicant's approach to project financing. The report shall include the opinion of the Independent Financial Analyst as to the Applicant's likelihood to achieve financial closure in accordance with the Applicant's financing plan.

Required Certification by Independent Financial Analyst:

The report shall be certified by the Independent Financial Analyst, who shall (a) acknowledge that the report has been prepared for submission to the Department of Energy as a part of an application by applicant for an investment credit, and (b) certify that the Independent Financial Analyst has no obligation to the applicant and has acted to the best of its ability as an independent expert.

At a minimum, the Independent Financial Analyst shall:

- Review the financial model.
- Review the project financial assumptions, including economic, capital costs, operating assumptions, and all project development costs.
- Review the financial calculations, including rates of return and coverage ratios.
- Confirm the calculation of the amount of the tax credit applied for.
- Review the project development cost budget.
- Review and comment on the source of funding and evidence of funding.
- Review and comment on project debt and equity sources.
- Confirm that the application includes the required financial reports and debt ratings.
- Describe and comment on the capabilities of the applicant to provide the required financing for the project, and the likelihood of obtaining financing from a source other than the applicant, if such financing is required by the project.

Credit for Nonbusiness Energy Property

Notice 2006-26

SECTION 1. PURPOSE

This notice sets forth interim guidance, pending the issuance of regulations, relating to the credit for nonbusiness energy property under § 25C of the Internal Revenue Code. Specifically, this notice provides procedures that manufacturers may follow to certify property as either an Eligible Building Envelope Component or Qualified Energy Property, as well as guidance regarding the conditions under which taxpayers seeking to claim the § 25C credit may rely on a manufacturer's certification (or, in the case of certain windows, an Energy Star label). The Internal Revenue

Service and the Treasury Department expect that the regulations will incorporate the rules set forth in this notice.

SECTION 2. BACKGROUND

.01 Section 1333 of the Energy Policy Act of 2005, Pub. L. No. 109-58, 119 Stat. 594 (2005), added § 25C to the Internal Revenue Code. Section 25C provides a credit against tax for the taxable year in an amount equal to the sum of—

(1) Ten percent of the amount paid or incurred by the taxpayer for qualified energy efficiency improvements (that is, property described in section 4.01 of this notice) installed during the taxable year; and

(2) The amount of expenditures for residential energy property (that is, property described in section 5.01 of this notice) paid or incurred by the taxpayer during the taxable year.

.02 Under § 25C(b), the maximum amount of the credit allowable to a taxpayer under § 25C(a) for all taxable years is \$500 (\$200 in the case of amounts paid or incurred for exterior windows (including storm windows and skylights)). In addition, the maximum amount of credit allowed is—

(1) \$50 for any advanced main air circulating fan;

(2) \$150 for any qualified natural gas, propane, or oil furnace or hot water boiler; and

(3) \$300 for any item of energy-efficient building property (that is, property described in section 5.01(1)–(7) of this notice).

.03 Section 25C(g) and § 1333(c) of the Energy Policy Act provide that the credit applies to property placed in service after December 31, 2005, and before January 1, 2008.