

**DELTA REGIONAL AUTHORITY**  
**236 SHARKEY AVENUE/ SUITE 400/ CLARKSDALE, MS 38614 / (662) 624-8600 / FAX: (662)**  
**624-8537**

November 6, 2009

Harold Perrin  
Mr. ~~Doug Foreman~~, Mayor  
City of Jonesboro  
Post Office Box 1485  
Jonesboro, Arkansas 72403

Re: AR-5465 – Site Improvements for Nordex USA, Inc. Location

Dear Mayor ~~Foreman~~ <sup>Perrin</sup>:

I am pleased to inform you that the Delta Regional Authority (DRA) has approved your application for grant assistance. We look forward to working in partnership with you in achieving your goals for Project #AR-5465 – Site Improvements for Nordex USA, Inc. Location. In order to complete the grant closing and before authorization to proceed, the following conditions must be met and documents executed. Once the conditions are met and the documents are received, a formal authorization to proceed will be given by letter under my signature. Specifically, please advise as to the following:

1. Please provide a resolution from the Grantee indicating that you have the authority to act on behalf of the Grantee to execute all grant documents to bind the Grantee.
2. Please provide commitment letters from all other funding sources indicating that the other funds set-forth in the application are committed. Please be advised that DRA reserves the right to withhold disbursement of this grant until these commitment letters are produced and to terminate this grant if any of the commitments do not materialize.
3. Please provide a copy of all contracts from the general and sub-contractors as they become available.
4. Please provide evidence that the Grantee does in fact own the real property in question.
5. Please provide a copy of all leases involved in the project.

The following documents are enclosed with this correspondence for your review, execution and return.

1. **Grantee's Affidavit.** By signing this Affidavit, you swear to and acknowledge various matters are true and correct. Please insure that you have the authority and power to certify as to each item.
2. **Grant Agreement.** This Agreement sets forth the conditions that apply to this project. Please review this document carefully as it contains the terms of the agreement between DRA and the grantee.

3. **Mediation and Arbitration Disclosures and Arbitration Agreement.** By executing these two documents, the parties agree to mediate and/or arbitrate any disputes or controversies between the parties.
4. **Notice of Basic Agency Transfer.** The administration of your grant will be transferred to a basic agency, the pertinent information which is listed therein. This document explains the responsibilities of the parties and how the transfer will take place.
5. **Affidavit and Acknowledgment.** By signing this Affidavit, you swear to and acknowledge that, among other things, the additional funding set forth in the application have been committed and are forth coming.
6. **Environmental Declaration and Indemnity.** By executing this document, you covenant and warrant various items regarding environmental issues including indemnifying DRA from any litigation or clean up costs involving this property. In addition, this document requires production of all environmental site assessments or audit reports completed regarding this project.
7. **Receipt of Forms and Policy.** By executing this document, the grantee agrees to timely provide quarterly reports by the 15<sup>th</sup> of the month following each calendar quarter.

An ACH Form and Request for Advance and Reimbursement form has been forwarded to the administering agency. A separate project account for DRA funds will be established at a bank of your choosing by the ACH Form. When you have a bill or invoice to be reimbursed or advanced, please forward the appropriate documentation to your administering agency who will assist in the completion of the Request for Advance and Reimbursement form. Expect you request to be filled within eight to ten days if all documentation is provided.

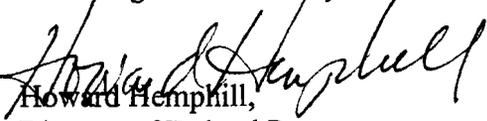
Quarterly reports based on a calendar year and a final report are required. Forms of each have been forwarded to your administering agency. Please assist your administering agency in each.

If you have questions or comments regarding these documents or the administration of your grant, please address them to Howard Hemphill, the Director of Federal Programs, at the above referenced address or by email at [hhemphill@dra.gov](mailto:hhemphill@dra.gov) or to your Project Coordinator, James Butler at [jbutler@dra.gov](mailto:jbutler@dra.gov).

For any legal questions or modifications to these documents, please contact Ted Connell at the Office of General Counsel, (662) 627-9641, or by email at [tconnell@merkel-cocke.com](mailto:tconnell@merkel-cocke.com). Otherwise, please return the requested documentation and execute the documents enclosed before a notary public, where applicable, and return to the above referenced address as soon as possible so that we can begin disbursements.

Thank you and good luck with your project.

Delta Regional Authority

  
Howard Hemphill,  
Director of Federal Programs

**GRANTEE'S AFFIDAVIT**

PERSONALLY APPEARED BEFORE ME, the undersigned authority in and for the aforesaid jurisdiction, the within named Doug Foreman, who after being duly sworn according to law, stated on oath that he is the Mayor of the City of Jonesboro, (hereinafter referred to as "Grantee"), and acknowledged that for and on its behalf, he signed, sealed and delivered the following Grantee's Affidavit on the day and year herein mentioned as its act and deed and that he acknowledges that for and on its behalf, he executed this Grantee's Affidavit stating that the following matters are true and correct, being first duly authorized so to do:

1. Grantee [i] is duly organized, validly existing, and in good standing in the state of its formation, [ii] is validly existing in good standing, and qualified to do business in the jurisdiction in which the Property is located, and [iii] has all requisite power and authority and the legal right to own, operate, and lease the Property, and to conduct the business in which it is currently engaged.

2. The individuals acting on behalf of Grantee in executing and delivering the Grant Documents are authorized to act for and to bind Grantee in connection therewith; all requisite consents or approvals to such authorization have been obtained and remain effective; and the Grant Documents are the legal, valid, and binding obligations of, and are enforceable against Grantee in accordance with their respective terms, except as enforceability may be limited by bankruptcy, reorganization, arrangement, or other similar laws effecting the rights of creditors generally, or principles of equity.

3. No litigation, arbitration, investigation, or administrative proceeding of or before any court, arbitrator, governmental authority, bureau, or agency is pending or threatened [i] by or against Grantee, [ii] with respect to or against the Property, [iii] with respect to the Grant Documents, or [iv] which could have a material adverse effect on the business, operations, property, or general condition of Grantee.

4. The closing of the Grant pursuant to the Grant Agreement and other documents does not violate, conflict with, or result in a default or breach of any law or regulation, order, injunction or decree of any court or governmental instrumentality, or of any agreement or instrumentality, or of any agreement or instrument to which Grantee is a party or is subject or any law or regulation of DRA.

WITNESS MY SIGNATURE on this the 24 day of November, 2009.

City of Jonesboro, Grantee

By: Doug Foreman  
~~Doug Foreman~~ Harold Perrin  
Mayor

STATE OF AR  
COUNTY OF Craighead

SWORN TO AND SUBSCRIBED BEFORE ME on this the 24<sup>th</sup> day of  
Nov., 2009.

Chrystal Leigh Glisson  
NOTARY PUBLIC

My Commission Expires:

11-20-13



**Grant Agreement between the Delta Regional Authority and  
City of Jonesboro for Project # AR-5465**

**Project Name:** Site Improvements for Nordex USA, Inc. Location

**State:** Arkansas

**Federal Agency or Other Recognized Service (EIN #):** 71-6013749

**Grant Amount:** \$500,000.00

**The Following Conditions Apply to all DRA Projects**

- Order of Precedence:** This Agreement is subject to the provisions of the Delta Regional Authority Act, the Delta Regional Authority Code, Administrative Requirements for Grants Awarded by the Delta Regional Authority and this Agreement as well as incorporated supplements, if any. Any conflict among these provisions shall be resolved giving precedence to these authorities in the order which they are listed in. The grantee acknowledges that no such provisions or any interpretations thereof shall be deemed to diminish the rights of DRA. DRA may at its option exhaust its remedies hereunder and under other documents, either concurrently or independently, and in such order as it may determine.
- Deadline:** The Authority may revoke or revise its approval of any project if work intended to be assisted is not underway within 18 months after the date of this Agreement.
- Grantee's Compliance to all laws and regulations:** The grantee shall comply fully with all laws and regulations. Specifically, the grantee shall protect his or her employees under all such laws, and regulations including, but not limited to, Executive Order 11246, Sections 503 and 504 of the Rehabilitation Act of 1973, Title VI and VII of the Civil Rights Act of 1963, The Family and Medical Leave of 1993, and applicable workers' compensation laws of the grantee's state.
- DRA Under Run Policy:** If the project contains only DRA funds, (and a non-federal share, where applicable), the DRA funds shall be returned to the DRA in the event of an under run. If the project contains both DRA funds and another agency funds, the funds shall be returned proportionately.
- Additional Funds:** It is understood that if the grantee receives additional funding from any new source towards the eligible cost of this project after DRA approval, these funding sources shall not be used to reduce the amount of local funds pledged. If new funds are available to this project, the DRA and the basic federal agency, if any, should be notified immediately as the DRA reserves the right to reconsider the level of its funding approval should this occur. In affirming this award, the grantee certifies that the additional funds are committed and available as needed for the project and that the additional

Additional Funds Cont.:	funds will not affect ownership of, or title to, the project facilities. If the additional funds are de-committed for whatever reason, DRA reserves the right to demand return of all grant proceeds.
Change in Scope:	It is understood that a change in scope should not be implemented without prior written approval from DRA and the basic federal agency, if any. A change of scope includes, but is not limited to, the project design, the type of project to be completed, capacity of the system, size of project, the number and/or type of customers served or equipment items or other property purchased.
Close Working Relationship with Administering Agency:	Pursuant to the Delta Regional Authority Act, it is expressly understood that the intent of this Agreement is that the grantee must work in conjunction and closely with the administering agency, if any, and follow bidding and contract award procedures to insure that all pertinent federal laws are complied with. Coordination with the administering agency begins with the filing of an application and continues throughout the project until completed.
Restrictions on Assistance:	DRA funds should not be used for any form of assistance to relocate industries within the Delta Region; recruitment activities which place a Delta state in competition with another Delta state; and projects to promote unfair competition between businesses within the Delta Region.
Project Account:	All DRA funds must be placed in a separate project account in the grantee's name with copies of all bank statements produced to DRA with the quarterly reports.
Bonding or Insurance:	The Grantee must provide evidence of adequate insurance and fidelity or employee dishonesty bond coverage.
Audit:	Audit requirements only apply to the year(s) in which the Agency grant funds are expended. Grantees expending \$500,000 or more of Federal assistance per year must submit an audit in accordance with the requirements of OMB circular A-133 as codified in 7 CFR 3052. Grantees that expend less than \$500,000 a year in a Federal award are exempt from Federal audit requirements for that year except as noted in 7 CFR 3052.215(a), but the records must be available for review or audit by appropriate officials of the DRA, administering agency, pass-through entity, and General Accounting Office.
Interest:	The Grantee will remit interest earned on grant funds deposited in an interest bearing account in accordance with 7 CFR Parts 3015 and 3016 and 3019 to DRA.

- Quarterly Report:** Quarterly reports are due to the DRA on the 15<sup>th</sup> of the month following each calendar quarter, executed by the proper signatory. It is the responsibility of the grantee, not the administering agency, to write a complete report and timely send the same to the DRA central office. A delinquent quarterly report will result in the withholding of funding requests.
- Final Report:** Within one month after the period of performance, the grantee shall prepare and submit to DRA for approval a final report of all work accomplished under this grant including recommendations and conclusions based on the experience and results obtained. After DRA's review of the final report, DRA will either return to the grantee the approved report with such comments, including any requirements, suggestions, or modifications as deemed necessary, or require resubmission of the final report if deemed necessary, in which case the grantee shall within 15 days submit another final report for review and comment.
- Budget:** Costs will be determined in general accord with the budget produced in the grantee's application subject to the terms of this Agreement and to pertinent DRA Code provisions.
- Hold Harmless:** Grantee will carry out the program under this Agreement as an independent contractor and not as an agent of the Authority. Grantee assumes sole and complete responsibility for the conduct of the program in such a manner as to assure the safety and welfare of all persons participating in or any way involved in, affected by, any activities conducted under this Agreement. The Authority, by its provision of funds for this project, undertakes no responsibility in this regard. Grantee shall indemnify and save harmless the Authority, its agents, officers and employees, from and against any and all claims, demands, suits, judgments, settlements, etc., for sums of money for or on account of personal injuries, property damage, or loss of life or property of any persons arising from or in any way connected with the performance of the project covered by this Agreement. Further, the grantee expressly releases the DRA from any liability for any losses or damages suffered by grantee, directly or indirectly, from or in any way connected with the performance of this Agreement.
- Subcontracting:** The grantee shall not enter into subcontracts for any of the work contemplated under this Agreement without obtaining the prior written approval from the Authority, and subject to the conditions and provisions as the Authority may deem necessary, to protect the interests of the Authority. Provided, however, that notwithstanding the foregoing unless otherwise provided herein, such prior written approval shall not be required for the purchase by the grantee of articles, supplies, equipment and services which are both necessary for and merely incidental to the performance of the work required under this Agreement. Provided, further, however, that no

Subcontracting Cont.:	provision of this article and no such approval by the Authority of any subcontract shall be deemed in any event or in any manner to provide for the incurrence of any obligation by the Authority in addition to the total amount and the Authority shall not be responsible for the fulfillment of the grantee's obligations to the subcontractors. Provided, further, that no subcontracting shall be deemed to relieve the grantee of any obligations under this Agreement.
Project Personnel:	The Authority reserves the right to approve or disapprove the selection or continued participation of any personnel supported with the funds made available under this Agreement.
Suspension/ Termination/ Collection:	The DRA shall have the right, upon written notice to the grantee, to suspend or terminate this Agreement for cause, whenever the Federal Co-Chairman determines there is reasonable basis to believe there has been malfeasance, embezzlement, misappropriation, unauthorized application of federal funds or material false statement in the conduct of this Agreement or any other DRA grant agreement and begin collection proceedings by unilateral election. This Grant Agreement may also be terminated and/or suspended for a violation of any law, rule, and/or regulation of DRA or other applicable laws.
Termination for Convenience:	The DRA may, by written notice to the grantee, terminate this Agreement in whole or in part for convenience of the Authority, whenever the DRA determines that such action is in its best interest. If this Agreement is so terminated, the rights, duties and obligations of the parties, including compensation of the grantee, shall be in accordance with Part 49 of the Federal Acquisition Regulation in effect on the date of this Agreement and such regulations are incorporated by reference as part of this Agreement.
Cornerstone, Plaque or Sign:	Any facility constructed in whole or in part by the funds provided under the DRA shall include a cornerstone, plaque or sign appropriately acknowledging the assistance provided through the DRA program; provided that such an item not be required if it would be prohibited as an eligible project cost under the basic federal program through which the DRA assistance is provided.
Operation and Maintenance Agreement:	If the grantee will not operate and maintain the project, then prior to the initial disbursement, the grantee shall provide to the Authority an executed copy of an agreement with the party responsible for the operation and maintenance of the project. Such agreement must be consistent with the Authority policies including, but not limited to, non-discrimination, environmental requirements, an adequate consideration. The agreement must also set forth that prior to occupancy, the occupant of any part of the land acquired or approved by this project must furnish to the grantee, for transmittal to DRA, properly executed DRA forms evidencing assurance of

Operation and Maintenance Agreement Cont.:	compliance with all applicable requirements.
Project Start and Ending Dates:	The project start date shall be the date of the execution of this Agreement. The project end date shall be determined by the dates set forth in Section 13 of the Standard Form 424. All requests for extension of the Project End Date must be requested in writing with an explanation of the need of the extension.
Financial Procedure:	The grant proceeds will be administered in accordance with generally accepted financial accounting procedures and standards. Should the grantee fail to follow such procedures and standards, DRA reserves the right to collect, suspend, terminate, and/or collect said funds as referenced herein.
Certification Regarding Lobbying:	The grantee certifies that no federal appropriated funds have been paid, or will be paid, by or on behalf of the grantee to any person or any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress, in connection with the awarding of this grant and the entering into of any and all agreements to effectuate this transaction. The grantee further agrees to comply with applicable statutory provisions prohibiting use of Federal assistance funds activities designed to influence any legislation or appropriations except through proper, official channels.
Return of Grant Proceeds:	The grantee acknowledges that all grant proceeds, until they are spent for the purposes of the grant and in accordance with the grant application and this Agreement, shall remain the property of DRA and, if not expended for the purposes of the grant and in accordance with the grant application and this Agreement, will be returned to DRA within 30 days after the final date on which the grant proceeds were scheduled to be spent under the terms of the grant application and this Agreement.
Licenses and Permits:	The grantee and its employees, agents, and advisors, and not DRA, are responsible for obtaining necessary licenses and permits, if any, for insuring that all aspects of the project comply with all applicable statutes, regulations, ordinance, and codes, and for all costs of the project in excess of the amount of the approved grant.
Notices:	Any notice shall be conclusively deemed to have been received by a party hereto and be effective on the earlier of the day on which delivered to such party or on the third business day after the day on which mailed, addressed to such party. Such notice to DRA shall be sent to its central office address of 236 Sharkey Avenue, Suite 400, Clarksdale, Mississippi 38614. Any notice to the grantee shall be sent to the address set forth in the grant application.

**Waiver/Cumulative Remedies:** Neither any failure nor any delay on the part of DRA or any administering agencies in exercising any right, power or privilege hereunder or under the laws of the applicable jurisdiction shall operate as a waiver thereof, nor shall a single or partial exercise thereof preclude any other or further exercise of any other right, power or privilege. No modification, amendment or waiver of any provision of this Agreement or other documents, nor consent to any departure by the grantee or any other person therefrom shall in any event be effective unless the same shall be in writing and signed by DRA and then such waiver or consent shall be effective only in the specific instance and for the specific purpose which given. No notice to or demand on the grantee or any other person in any case shall entitle such person to any other or further notice or demand in the same, similar, or other circumstances. Any remedies herein provided are cumulative and not exclusive of any remedies provided by law or of any remedies provided by any other document.

**General Procedures:** All DRA grants shall be administered as follows: grants to state and local governments, in accord with OMB Circulars A-102 and A-87; grants to hospitals and other non-profit organizations, in accord with OMB Circulars A-110 and A-122; grants to higher educational institutions, in accord with OMB Circular A-110 and A-21; and other Federal regulations as applicable. The General Provisions hereof shall be applicable to DRA, its employees, representatives, agents, successors and/or assigns. The documentation in support of each action in the accounting records shall be filed in such a manner that it can be readily located. Grantee shall maintain custody of time records, payrolls, and any other records as appropriate to substantiate all services reported to DRA and/or the administering agency, if any.

**Contracting Procedures:** In contracting for services and/or purchasing equipment under this Agreement, grantee shall assure that (1) all contracting shall be at prices and on terms most advantageous to the grantee and to the project; and (2) all interested parties shall have a full and fair chance at doing business with the grantee. Grantee shall arrange for all contracting through competitive bidding, or, if permitted by state law, other negotiating and contracting procedures that will assure compliance with (1) and (2) above.

**Coordination and Non-Duplication:** In carrying out the project under this Agreement, grantee shall assure that the planning, design work and implementation of activities are coordinated with the activities conducted by the grantee under other related DRA grants, if any, and shall assure that there shall be no duplication of effort or funding under this Agreement of any work or payments under those grants.

**Compliance with Applicable laws:** Grantee shall assure that all provisions of applicable federal, state, and local laws shall be complied with in the conduct of activities under this Grant Agreement. The DRA reserves the right to suspend or terminate this

Compliance with Applicable laws Cont.:	Agreement in the event that applicable federal, state, and local laws and regulations are not complied with. Such right shall not be exclusive and does not affect rights and remedies provided elsewhere by law, regulation, or agreement.
Progress Payments:	Grantee may receive progress payments on the basis of worked performed. DRA and the administering agency, if any, must concur as to the reasonableness of costs upon review of the submitted Form SF 270 (Request for Advance or Reimbursement). DRA and/or the administering agency, if any, reserves the right to determine that the requirements of this Agreement are being met before making such payments.
Advance Payments:	Grantee may receive advances of funds, in amounts sufficient to meet scheduled payroll costs and other related costs, including payments to subcontractors on the following basis: (a) grantee's certification that a firm commitment has been obtained from each employee appointed under this Agreement, or that firm, formal subcontracts have been executed which will require payments for goods and services to be delivered during the period for which advance is sought; (b) upon submission of Form SF 270 (Request for Advance or Reimbursement) and on the basis of the costs estimates approved by the DRA and/or administering agency, if any; and (c) grantee's certification that any previous advance has been exhausted (if previous advance has not been exhausted, this remainder must be used to meet scheduled expenses payable during the next period).
Disbursements:	All disbursements shall be for obligations incurred, after the effective date, in the performance of this Agreement, and shall be supported by contracts, invoices, vouchers and other data, as appropriate, evidencing the disbursements. DRA will make disbursements in proportion to DRA's percentage of the project budget.
EIN and DRA Project Numbers:	All payment requests must show the nine digit taxpayer identification numbers assigned by the Internal Revenue Service and the project number assigned to this project by DRA.
Rebates and Discharges from Liability:	Grantee agrees that any refunds, rebates or credits, or other amounts (including interest earned thereon) received by the grantee shall be paid to DRA to the extent that they are properly allocable to costs for which the grantee has been reimbursed. Grantee will, when requested, assign such amounts to DRA and execute such releases as may be appropriate to discharge the Authority, its officers and agents from liabilities arising out of this Agreement.
Official not to Benefit:	No member or delegate to Congress, or resident Commissioner, shall be admitted to any part of this Agreement, or any benefit that may arise therefrom; but this provision shall not be construed to extend to this

Official not to Benefit Cont.:	Agreement if made with an incorporated entity for its general benefit.
Covenant Against Contingent Fees:	The grantee warrants that no person or selling agency has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees of bona fide established commercial or selling agencies maintained by the grantee for the purpose of securing business. For breach or violation of this warranty the Authority shall have the right to annul this Agreement without liability or in its discretion to deduct from the grant amount or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.
Certification Regarding Debarment:	Grantee certifies that it is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any federal department or agency.
Fraud:	The grantee certifies that it has not within a three year period preceding the submission of the grant application been convicted of or had a civil judgment rendered against it for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public, whether it be federal, state, or local, transaction or contract under a public transaction or violated federal or state anti-trust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property.
Indicted:	The grantee certifies that it is not presently indicted for or otherwise criminally or civilly charged by a government entity, whether federal, state, or local, with commission of any offenses.
Termination of Public Transaction:	The grantee certifies that it is not within a three year period preceding this grant application had one or more public transactions, federal, state, or local, terminated for cause or default.
Conflicts of Interests:	The grantee certifies that it has not violated the provisions of 7 U.S.C. 2009aa(1)(i) dealing with the conflicts of interest statute of the Delta Regional Authority Act.
Certification Regarding Drug-Free Work Place:	The grantee certifies that it will provide a drug free workplace.
Errors and Omissions/ Compliance Agreement:	The grantee agrees to fully cooperate and adjust for clerical errors or omissions in executing any of the documents in connection with this grant within 30 days from the date of mailing said request.

- Basic Agency:** If the servicing of this grant is transferred to a Basic Agency, the grantee shall be responsible for all fees, expenses, or other charges for such servicing which will be paid from the grant funds by DRA.
- Percentage Payments:** If the project budget is funded by any other source towards the eligible cost of this project, DRA shall only pay a percentage of the bill, contract, invoice, or voucher presented. This amount shall be equal to the percentage of DRA's funds to the overall project.
- Free and Clear of Liens:** The grantee will keep the project free and clear of any liens, adverse claims, security interest, other charges and/or encumbrances.
- Certifications Regarding Real Property:** The grantee certifies that real property involved in this project, if any, is in compliance with all zoning, subdivision, land use, redevelopment, energy, environmental protection, and planning and building laws, rules, and regulations, and other government requirements or restrictions applicable to construction, current and intended operation, current and intended use, maintenance, and/or occupancy of the Property. The grantee further certifies that all licenses, permits, certificates, and other consents required for occupancy of the real property in its current and intended operations have been obtained and are in good standing.
- Illegal Aliens:** The grantee certifies that it is not in violation of the Federal Immigration and Nationality Act set-forth in 8 U.S.C. 1324 whereby it is unlawful to hire an alien, to recruit an alien, or to refer an illegal alien for a fee, knowing the illegal alien is unauthorized to work in the United States. The grantee further certifies that it has complied with all employment eligibility verification requirements, which include examination of identity documents and completion of Form I-9 for every employee hired.
- Conveyance:** The grantee represents and warrants that it shall not convey, transfer or assign any/or all of its interest in and to the project.

The grantee affirms this grant and the statements and documents produced in the accompanying grant application. By executing this Grant Agreement with DRA, the grantee adopts and ratifies all statements, representations, warranties, covenants, and materials it has submitted to DRA, consents to the grant, and agrees to all terms and conditions of this Grant Agreement.

**PLEASE SIGN AND DATE IN BLUE INK.**

DELTA REGIONAL AUTHORITY

\_\_\_\_\_  
HOWARD HEMPHILL  
Director of Federal Programs

\_\_\_\_\_  
Date

CITY OF JONESBORO

\_\_\_\_\_  
~~DOUG FOREMAN~~ HAROLD PERRIN  
Mayor

*November 24 2009*  
\_\_\_\_\_  
Date

## **ARBITRATION AGREEMENT**

This Agreement is entered into on the date hereafter stated by and between Delta Regional Authority ("DRA"), its successors, agents and/or assigns, and ("GRANTEE").

1. Part of Transaction. This document ("Agreement") is a part of the agreement and transaction between DRA and GRANTEE described above. That agreement and transaction, as well as all past and future agreements and transactions between the parties, their employees, officers, directors, agents, parent companies, subsidiary companies, sister companies, and any other affiliated entities or persons, are hereinafter collectively defined as the "Transaction". This Agreement is incorporated into each document executed in connection with the Transaction. In the event of a conflict between the provisions of this Agreement and other documents executed in connection with the Transaction, the provisions of this Agreement shall control.

2. Consideration. The consideration for this agreement is the consideration given and received in the Transaction, and the mutual benefits to be derived by DRA and GRANTEE from the convenient, expeditious, economical, and private procedures for resolving disputes between them and other entities or persons covered by this Agreement.

3. Dispute Resolution. Any claim, dispute or controversy between GRANTEE and DRA, including DRA's employees, officers, directors, agents, parent companies, subsidiary companies, sister companies, successors, assigns, other affiliated entities or persons (collectively, "Covered Persons"), (whether in contract, tort, or otherwise, whether preexisting, present or future, and including statutory, common law, intentional tort or equitable claims), arising from or relating to any matter, including, but not limited to, the Transaction, any past or future interactions, business or dealings between the parties or between GRANTEE and the Covered Persons or any application, advertisements, promotions, or oral or written statements related to the Transaction, any goods or services furnished in connection with the Transaction or the terms of financing, the relationships with respect to the Transaction (including to the full extent permitted by applicable law, relationships and dealings with third parties who are not signatories to the Transaction or this Agreement) or the validity, enforceability or scope of this Agreement (collectively, "Claim"), shall be resolved, upon the unilateral or joint election of GRANTEE or DRA or said Covered Persons, respectively, by binding arbitration, as hereinafter provided, pursuant to the Rules of the National Arbitration Forum ("NAF") in affect at the time the Claim is asserted. A party who has asserted a Claim in a lawsuit in court may elect arbitration with respect to any Claim(s) subsequently asserted in the lawsuit by any other party or parties. The Rules of NAF may be obtained by calling 1-800-474-2371 or by going to the NAF Website at [www.arb-forum.com](http://www.arb-forum.com), and all Claims shall be filed at any NAF office (provided, however, that if for any reason NAF is unwilling or unable or ceases to serve as arbitration administrator, an equivalent national arbitration organization utilizing a similar code of procedure will be substituted by the parties hereto).

#### 4. Arbitration.

(a) Any Claim shall, at the request of the GRANTEE, DRA or any Covered Persons, whether made before or after institution of legal proceedings, be determined by binding arbitration. The Transaction involves interstate commerce, and the arbitration is subject to and shall be conducted in accordance with the United States Arbitration Act, 9 U.S.C. §1, et. seq., as amended, notwithstanding any choice of law provision in this Agreement or any other documents executed in connection with the Transaction, and under the Rules of NAF. The Arbitrator shall have authority to award damages and grant such other relief he deems appropriate. The Arbitrator shall give effect to applicable law, including statutes of limitations in determining any Claim. Any controversy concerning whether an issue is arbitrable shall be determined by the Arbitrator. However, GRANTEE, DRA or any Covered Persons may institute a lawsuit for the purpose of compelling the other parties to any Claim to arbitrate in accordance with this Agreement. Judgment upon the arbitration award may be entered in any court having jurisdiction. The Arbitrator(s) shall be chosen no later than 30 days after filing of the Claim with NAF. The arbitration procedures shall be concluded, and the Arbitrator's award issued, no later than six (6) months after selection of the Arbitrator.

(b) The institution and maintenance of an action for judicial relief or pursuit of a provisional and ancillary remedy shall not constitute a waiver of the right of any party, including the plaintiff to submit the Controversy or claim to arbitration if any other party Contests such action. No provision of this Agreement shall limit the right of any party to this Agreement to exercise self-help remedies such as setoff, to foreclose against or sell any real or personal property, collateral or security, or obtaining provisional or ancillary remedies for a court of competent jurisdiction before, after, or during pendency of any arbitration or other proceedings. The exercise of a remedy does not waive the right of either party to resort to arbitration.

(c) In the event of a conflict between the provisions of this Agreement and the Rules of NAF, the provisions of this Agreement shall control. No class action arbitration maybe originated or had under this Agreement and, except as provided in paragraph 3 above, there shall be no joinder of multiple party plaintiff, except for joinder of all parties covered by this Agreement.

5. Administrative Fees and Expenses. Upon request, DRA will advance the first Five Hundred Dollars (\$500.00) of the filing and hearing fees charged by NAF for any Claim filed by any GRANTEE or any Covered Person against DRA. The Arbitrator will determine who will ultimately be responsible for paying any filing, hearing or other administrative fees in connection with the arbitration. Unless inconsistent with applicable law, each party to an arbitration shall bear the expense of their respective attorneys', experts' and witness fees and expenses, regardless of which party prevails in the arbitration.

6. Selection of Arbitrators. On claims of \$100,000 or less, including counterclaims, an Arbitrator shall be selected from a panel of nine (9) arbitrators

submitted by NAF, by DRA and GRANTEE either agreeing on the Arbitrator or striking persons from the panel until one person is left, that person being the Arbitrator. On claims in excess of \$100,000, including counterclaims, three Arbitrators shall be selected from a panel of fifteen (15) arbitrators submitted by NAP by DRA and GRANTEE either agreeing on the Arbitrators or striking persons from the panel until three (3) persons are left, those persons being the Arbitrators. The determination of whom shall make the final strike and the resolution of any disputes concerning selection, including, if necessary, the appointment of the Arbitrator(s), shall be done by NAF.

7. Discovery. The Arbitrator shall have the power to authorize reasonable discovery and to issue any necessary orders and subpoenas. All discovery shall be expedited to the maximum extent practicable. In no event shall the Arbitrator allow discovery which would result in this matter not being concluded and an award issued in the time specified herein.

8. Location. The arbitration sessions shall be held at a location mutually acceptable to the parties to the arbitration. If the parties to the arbitration cannot agree on the location, the location shall be selected by NAF.

9. Confidentiality. To the extent permitted by applicable law, all proceedings pursuant to or in connection with this Agreement shall be kept strictly confidential, except for disclosures of information required in the ordinary course of the business of DRA and GRANTEE or by applicable law or regulation. This provision shall not exempt from discovery or use in any other or future proceeding any evidence otherwise discoverable, merely because it is presented in, referred to, or discussed in the course of, or in connection with, proceedings pursuant to this Agreement.

10. Severability. If any provision of this Agreement is found to be unenforceable, the remaining provisions shall be enforced to the extent permitted by applicable law and in lieu of any such unenforceable provision, there shall be substituted in its place a provision as similar in substance and effect as is capable of being enforced.

11. Successors and Assigns. This Agreement shall be binding upon, and shall enure to the benefit of, the parties, the Covered Persons, any co-signors, endorsers, guarantors or other obligors to the Transaction and their respective successors and assigns, including to the full extent permitted by applicable law, third parties who may not be signatories to the Transaction or this Agreement, such as DRA's employees, officers, directors, agents, parent companies, subsidiary companies, sister companies, other affiliated entities or persons.

12. Entire Agreement. This Agreement constitutes the entire agreement of the parties with respect to its subject matter and supersedes all prior discussions, arrangements, negotiations, and other communications, if any, on dispute resolution. The undersigned agrees that this Agreement may not be amended or modified in any respect except in writing.

THE UNDERSIGNED HAVE READ AND UNDERSTAND THE FOREGOING ARBITRATION AGREEMENT AND BY SIGNING BELOW DO KNOWINGLY, INTELLIGENTLY AND VOLUNTARILY WAIVE ANY CONSTITUTIONAL OR OTHER RIGHT TO A JURY TRIAL AND ANY BENEFITS THAT MIGHT BE DERIVED FROM A JURY TRIAL.

Delta Regional Authority, Grantor

City of Jonesboro, Grantee

By: \_\_\_\_\_  
Howard Hemphill,  
Director of Federal Programs

By: \_\_\_\_\_  
~~Doug Foreman, Harold Perrin,~~  
Mayor

Date: \_\_\_\_\_

Date: November 24 2009

**MEDIATION AND ARBITRATION DISCLOSURES**

**Harold Perrin**

The following disclosures have been made to the undersigned, ~~Doug Foreman~~, by and on behalf of the City of Jonesboro, (the "Grantee"), in connection with a transaction between the Grantee and Delta Regional Authority, it successors, agents and/or assigns, (the "DRA") which transaction is described in an Arbitration Agreement between DRA and Grantee dated this date.

1. The DRA and Grantee each have the right to request Mediation. Mediation is a procedure in which the DRA and Grantee select an impartial third party to serve as mediator to assist us in attempting to voluntarily reach a resolution of our dispute relating to the transaction which is described in the Mediation and Arbitration agreement between us. There are administrative and mediator fees which must be paid by the parties in accordance with the provisions of the Mediation and Arbitration agreement.
2. The DRA and Grantee each have the right to request Arbitration. Arbitration is a procedure in which the DRA and Grantee select an Arbitrator(s) who will hear our presentation and render a final and binding decision. There are administrative and arbitration fees which must be paid by the parties in accordance with the provisions of the Mediation and Arbitration Agreement.
3. Arbitration is final and binding on the parties and subject to only very limited review by a court.
4. Except as to provisional remedies, self-help and foreclosure, the parties are waiving their right to litigate in court, including their right to a jury trial, because they have given each party the right to demand arbitration.
5. Pre-arbitration discovery is generally more limited and different from court proceedings.
6. Arbitrators' awards are not required to include factual findings or legal reasoning and any party's right to appeal or to seek modification of rulings by arbitrators is strictly limited.

THE UNDERSIGNED HAVE READ AND UNDERSTAND THAT THIS DOCUMENT DISCLOSES THE PARTIES ARE ENTERING INTO AN ARBITRATION AGREEMENT AND BY SIGNING THE SAME DO KNOWINGLY, INTELLIGENTLY AND VOLUNTARILY WAIVE ANY CONSTITUTIONAL OR OTHER RIGHT TO A JURY TRIAL AND ANY BENEFITS THAT MIGHT BE DERIVED FROM A JURY TRIAL.

Delta Regional Authority, Grantor

City of Jonesboro, Grantee *A*

By: \_\_\_\_\_  
Howard Hemphill,  
Director of Federal Programs

By: \_\_\_\_\_  
~~Doug Foreman~~, **Harold Perrin**,  
Mayor

Date: \_\_\_\_\_

Date: *November 24 2009*

**GRANTOR/GRANTEE NOTICE OF TRANSFER OF SERVICING OF GRANT**

**Re: DRA Contract No.:** AR-5465  
**Project Title:** Site Improvements for Nordex USA, Inc. Location  
**Grantee:** City of Jonesboro  
**Basic Agency:** The East Planning and Development District  
**Total Award:** \$500,000.00

The servicing of the above-referenced Grant will be transferred effective November of 2009. Prior to this date, all draw requests should be made to the Delta Regional Authority ("DRA"). After this date, any draw request should be made to The East Planning and Development District (the "Basic Agency") under the terms of the Grant and Memorandum of Agreement. After this date, the Grantee's communications should be made directly to the Basic Agency.

The Basic Agency shall be responsible for any and all draw request, monitoring and enforcement of the terms and conditions of the Grant and other related documents. In addition, the Grantee shall be responsible for complying with any and all terms and conditions required by the Basic Agency. The DRA reserves the right to revoke the duties and responsibilities of the Basic Agency and require that the servicing of the Grant be returned to DRA. In the event of such revocation, the Grantee shall be immediately notified.

To answer any questions or inquiries relating to the transfer of servicing, you may contact the DRA by calling Mr. Howard Hemphill, Director of Federal Programs of DRA, at (662) 624-8600. To answer any questions or inquiries relating to the transfer of servicing or servicing in general, please contact the Basic Agency. The name, address and telephone number of the Basic Agency is as follows:

The East Planning and Development District  
Post Office Box 1403  
Jonesboro, Arkansas 72403  
Telephone: (870)932-3957  
Fax: (870)932-0135  
Attention: Janet Lee

The transfer of the servicing of the Grant does not affect any representation, warranties, terms or conditions of the Grantee set forth in the Grant Agreement and/or other documents signed in connection with the Grant.

By executing this document, the undersigned certifies he has read and understands the notice.

Grantee: City of Jonesboro

By: [Signature]  
Name: Doug Foreman Harold Perrin  
Title: Mayor  
Date: November 24 2009

**AFFIDAVIT AND  
ACKNOWLEDGMENT**

**AR-5465 – Site Improvements for Nordex USA. Inc. Location**

**Harold Perrin**

The undersigned, ~~Doug Foreman~~, Mayor of the City of Jonesboro, Grantee, being duly sworn, deposes and says:

1. The Grant Proposal submitted by the Grantee and approved by the Grantor was conditioned upon the applicant providing from other funding sources.
2. The Grantee represented and warranted in its Grant Proposal that certain additional funds would be provided from additional funding sources in order to complete the Project.
3. At the time of closing of the Grant, the additional funds to complete the Project had not been received.
4. The Grantee understands, acknowledges and agrees that all of the Grant proceeds for the Grantor shall be returned to the Grantor upon expiration of the completion date unless the additional sources of funding have been received by the Grantee at that time, all at the discretion of the Grantor.
5. The Grantee is authorized and empowered to execute this Affidavit and Acknowledgment.
6. The Grantee has not sold, assigned, pledged, transferred, deposited under any agreement, hypothecated the original or any interest therein, or signed any power of attorney or other authorization respecting the Project.
7. Grantee understands this Affidavit and Acknowledgment is made and executed for the purpose of inducing the Grantor to close the Grant.

WITNESS MY SIGNATURE on this the 24 day of November, 2009.

City of Jonesboro, Grantee

By: \_\_\_\_\_

~~Harold Perrin~~ ~~Doug Foreman~~, Mayor

STATE OF AR  
COUNTY OF Craighead

SWORN TO AND SUBSCRIBED BEFORE ME on this the 24<sup>th</sup> day of Nov.,  
2009.

Chrystal Leigh Glisson  
NOTARY PUBLIC

My Commission Expires:

11-20-13



## ENVIRONMENTAL DECLARATION AND INDEMNITY

FOR AND IN CONSIDERATION of the Grant provided to the City of Jonesboro (the "Grantee") by Delta Regional Authority, its successors and assigns ("DRA"), and other good and valuable consideration, the receipt and sufficiency all of which is hereby acknowledged, the undersigned Grantee, being the owner, operator and/or occupier of the real property described in the accompanying grant application ("Property"), hereby declares, covenants, represents, and warrants unto DRA as follows:

1. Grantee represents and covenants that, except as disclosed by Grantee to DRA in writing on or prior to the date of this agreement, (i) the Property has at all time during Grantee's ownership, occupancy and control thereof and is presently free of contamination from any substance or material presently identified to be toxic or hazardous according to any applicable federal, state or local statute, rule or regulation (collectively, the "Law"), including without limitation, any asbestos, PCB, radioactive substance, methane, volatile hydrocarbons, industrial solvents or any other material or substance which has in the past or could presently or at any time in the future cause or constitute a health, safety or other environmental hazard to any person or property; (ii) Grantee has not caused or suffered to occur, and Grantee will not hereafter cause or suffer to occur, a discharge, spillage, uncontrolled loss, seepage or filtration of oil or petroleum or chemical liquids or solids, liquid or gaseous products or hazardous waste (a "spill"), or hazardous substance at, upon, under or within the Property or any contiguous real estate; (iii) neither Grantee nor any other party has been, is or will be involved in operations at or near the Property which could lead to the imposition on Grantee or any other owner of the Property of liability or the creation of a lien on the Property, under the Law or under any similar applicable laws or regulations; and (iv) Grantee has not permitted and will not permit any tenant or occupant of the Property to engage in any activity that could lead to the imposition of liability on such tenant or occupant, Grantee or any other owner of any of the Property, or the creation of a lien on the Property, under the Law or any similar applicable laws or regulations; and (v) no friable asbestos, or any substance containing asbestos deemed hazardous by federal or state regulations on the date of this Agreement, has been installed in or on the Property. The terms "hazardous substance" and "release" as used in the Agreement shall have the meaning specified in CERCLA, and the terms "solid waste" and "disposal" (or "disposed") shall have the meanings specified in RCRA; provided, in the event that the applicable laws of the applicable jurisdiction establish a meaning for "hazardous substance," "release," "solid waste," or "disposal" which is broader than that specified in either CERCLA or RCRA, such broader meanings shall apply.

2. Grantee shall comply strictly and in all respects with the requirements of the Law and related regulations and with all similar applicable laws and regulations and shall notify DRA promptly in the event of any spill or hazardous substance upon the Property, and shall promptly forward to DRA copies of all orders, notices, permits, applications or other communications and reports in connection with any such spill or

hazardous substance or any other matters relating to the Law or related regulations or any similar applicable laws or regulations, as they may affect the Property.

3. Grantee, promptly upon the written request of DRA from time to time, shall provide DRA with an environmental site assessment or environmental audit report, or an update or such an assessment or report, all in scope, form and content satisfactory to DRA.

4. In consideration of the grant, Grantee shall indemnify DRA and hold DRA and its directors, officers, agents and employees harmless from and against all claims, demands, causes of action, loss, liability, damage, costs and expense, including, without limitation, attorneys' fees, costs of suit and fees of expert witnesses, suffered or incurred by DRA, whether as holder of a mortgage, as mortgagee in possession or as successor in interest to Grantee as owner of the Property by virtue of a foreclosure or acceptance of a deed in lieu of foreclosure (i) under or on account of the Law or related regulations or any similar applicable laws or regulations, including the assertion of any lien thereunder; (ii) with respect to any spill or hazardous substance affecting the Property whether or not the same originates or emanates from the Property or any such contiguous real estate, including any loss or value of the Property as a result of a spill or hazardous substance; and (iii) with respect to any other matter affecting the Property within the jurisdiction of the U.S. Environmental Protection Agency or any similar state or local agency. The foregoing indemnity shall further apply to any residual contamination on or under the Property, or affecting any natural resources, and to any contamination of the Property or natural resources arising in connection with the generation, use, handling, storage, transport or disposal of any such hazardous substances or solid wastes, and irrespective of whether any of such activities were or will be undertaken in accordance with applicable laws, regulations, codes and ordinances. Without prejudice to the survival of any other agreements of Grantee hereunder, this indemnity shall survive the closing of the Grant and shall continue thereafter in full force and effect.

5. In the event of any spill or hazardous substance affecting the Property, whether or not the same originates or emanates from the Property or any such contiguous real estate, and/or if Grantee shall fail to comply with any of the requirements of the Law or related regulations or any other environmental law or regulation, DRA may at its election, but without the obligation so to do, give such notices and/or cause such work to be performed at the Property and/or take any and all other actions as DRA shall deem necessary or advisable in order to remedy said spill or hazardous substance or cure said failure of compliance and any amounts paid as a result thereof, together with interest thereon at the legal rate from the date of payment by DRA shall be due and payable by Grantee to DRA within fifteen (15) business days of demand therefore, and until paid shall be added to and become a part of the indebtedness and shall have the benefit of any lien hereby created as a part thereof.

6. Grantee shall permit any officer, employee or agent of DRA to visit and inspect the Property, examine the books of record and accounts of Grantee, take copies

and extracts therefrom, and discuss the application of any Applicable Environmental Laws to the Property with Grantee's officers, consultants and employees, all at such reasonable times and on reasonable notice and as often as DRA may reasonably desire. In addition to this right of inspection, Grantee hereby grants to DRA an easement upon personal servitude of right of use of the Property for environmental inspection. As used in this section, the term "environmental inspection" shall mean any visitation to or inspection of the Property (including obtaining underground soil samples), or interview with Grantee or its consultants or employees, to determine the continuing accuracy of the environmental representations state in this Agreement. DRA may exercise this right of use at any time during normal business hours of Grantee. The easement shall continue until termination of the transaction provided in the grant, and shall automatically be transferred with any transfer of rights under the grant.

Witness the signature of Grantee on this the 24 of November, 2009.

City of Jonesboro, Grantee

By: [Signature]  
~~Doug Foreman, Harold Perrin~~  
Mayor

STATE OF AR  
COUNTY OF Craighead

SWORN TO AND SUBSCRIBED BEFORE ME on this the 24<sup>th</sup> day of Nov, 2009.

Chrystal Leigh Glisson  
NOTARY PUBLIC

My Commission Expires:

11-20-13



## RECEIPT OF FORMS AND POLICY

Grantee hereby acknowledges receipt of Delta Regional Authority forms and policy used for disbursement of grant funds, quarterly reports, and the final report.

Delta Regional Authority grants administration requirements use Office of Management and Budget Circulars applicable to the grantee type of entity.

### RECEIVED:

1. Office of Management and Budget – Grants Management Attachment –  
Which Circular do I follow:
2. ACH payment enrollment form
3. Request for Advance or Reimbursement sf 270
4. Delta Regional Authority worksheet for reimbursement request
5. Quarterly Financial Status, Project Performance Report Requirements including quarterly Project Performance activity Report Format, and Financial Status Report SF 269
6. Guidelines for compiling Final Reports
7. Final Report – Sample format

**\*Quarterly Reports are due the 15<sup>th</sup> of the month following each calendar quarter. It is the responsibility of the grantee to write a complete report and send it to the Delta Regional Authority office on time.**

I acknowledge that I have received and understand the requirements of these listed forms.

City of Jonesboro, Grantee

By:   
Harold Perrin ~~Doug Foreman~~, Mayor