

**STATE OF MINNESOTA
ENCUMBRANCE WORKSHEET**

For C & G Only:

AWARDEE INFORMATION		COMMERCE INFORMATION	
«TITLE» «ADDRESS_1» «CITY» «STATE» «ZIP» «FIRST_NAME» «M_2nd_NAME» «TITLE»		Minnesota Department of Commerce, State Energy Office 85 Seventh Place East Suite 500 Saint Paul, MN 55101 John Harvanko Director, Office of Energy Assistance Programs Phone: 651-284-3275 Email: john.harvanko@state.mn.us	
ENCUMBRANCE INFORMATION			
CFMS:		FY:	2013 & 2014
Obj Code:		Vendor ID:	
Com Code:	84101501	Federal ID:	
Type:	G	State ID:	
Original Setup		Amendment Notes	
Effective Date	10/01/13	Amend 1 End Date	
Expiration Date	09/30/14	Amend 2 End Date	
FY Funding Breakdown			
1 st FY	\$1.00	3 rd FY	\$
2 nd FY	\$	4 th FY	\$
ACCOUNTING DISTRIBUTION			
Original			
<u>Fields</u>	<u>Fund</u>	<u>Appr</u>	<u>Org</u>
Compensation			\$1.00
Travel			\$0.00
Total			\$1.00
Amendment #1			
<u>Fields</u>	<u>Fund</u>	<u>Appr</u>	<u>Org</u>
Compensation			
Travel			
Amendment Total			
Revised Agreement Total			
<u>Fields</u>	<u>Fund</u>	<u>Appr</u>	<u>Org</u>
Compensation			
Travel			
GRAND TOTAL			

STATE OF MINNESOTA
LOW INCOME HOME ENERGY ASSISTANCE PROGRAM
Federal Fiscal Year (FFY) 2014 GRANT CONTRACT

This grant contract is between the State of Minnesota, acting through its **Department of Commerce** ("State") and «AGENCY» ("Grantee") «ADDRESS_1» «CITY» «STATE» «ZIP».

Recitals

1. The State has been granted funds by the United States Department of Health and Human Services (USDHHS) Administration for Children and Families, CFDA #93.568. Funds must be expended in accordance with the Low-Income Home Energy Assistance Act of 1981 (Title XXVI of the Omnibus Budget Reconciliation Act of 1981, Public Law 97-35, as amended), the *Energy Assistance Program (EAP) State Plan, FFY2014 EAP Policy Manual* and the *EAP Local Plan*.
2. Under Minnesota Statutes section 216C.02, the State is empowered to enter into this grant contract.
3. The Grantee represents that it is duly qualified and agrees to perform all services described in this grant contract to the satisfaction of the State. Pursuant to Minnesota Statutes §16B.98 Subdivision 1, the Grantee agrees to minimize administrative costs as a condition of this grant.

Grant Contract

1. Term of Grant Contract

- 1.1 **Effective date: 10/01/2013**, or the date the State obtains all required signatures under Minnesota Statutes Section 16C.05, subdivision 2, whichever is later.
The Grantee must not begin work under this grant contract until this contract is fully executed and the State has issued and the Grantee has received a Notice of Funds Available (NFA) to the Grantee. Each NFA issued by the State will specify the time period during which the Grantee may perform work and incur eligible costs under this contract. Such time period specified in an NFA may begin on or after the effective date of this contract and may end on or before the expiration date of this contract.
- 1.2 **Expiration date: 09/30/2014**, or until all obligations have been satisfactorily fulfilled, whichever occurs first. The Grantee must complete all program and fiscal activity for this federal fiscal year no later than December 15, 2014. After December 15, 2014, fiscal activity for this Grant Contract is stopped.
- 1.3 **Survival of Terms.** The following clauses survive the expiration or cancellation of this grant contract: 4.3 Repayment; 8. Liability; 9. Reporting; 12. Audits; 13. Government Data Practices and Intellectual Property; 14.2 State Property; 17. Publicity and Endorsement; 19. Governing Law, Jurisdiction, and Venue; 20. Termination, Repayment and Cooperation; and 21. Disclosure of Grantee Tax identification Numbers.

2. Grantee's Duties

The Grantee will perform duties and expend funds in accordance with the terms and conditions set forth in the Minnesota Energy Assistance Program (EAP) State Plan for Federal Fiscal Year (FFY) 2014, the *FFY2014 Energy Assistance Program Policy Manual* and the Service Provider's *EAP Local Plan*, which are incorporated into this grant contract.

The Grantee will maintain access to and utilize the State's Electronic Household Energy Automated Technology™ (eHEAT) system through the Grantee's connection(s) to the Internet.

3. Time

The Grantee must comply with all the time requirements described in this grant contract. In the performance of this grant contract, time is of the essence.

4. Consideration, Payment, Federal Funds, Repayment and Program Income

- 4.1 **Consideration.** The State will pay for all services performed by the Grantee under this grant contract as follows:
The Grantee will be paid for eligible costs actually and necessarily incurred in the performance of its duties. As funds become available to the State for the purposes of this grant contract, the State will issue to the Grantee NFAs specifying the amount of funding available to the Grantee under this contract. The NFA is incorporated

into this contract. The Grantee will expend funds only within the cost categories and amounts specified in NFA(s) and in eHEAT.

4.2. Payment

4.2.1 **Invoices.** The State will promptly pay the Grantee after the Grantee presents an itemized cash request (invoice) in a form prescribed by the State and the State's Authorized Representative accepts the invoiced services. Invoices must be submitted as frequently as necessary to effectively manage cash to ensure that the timing and amount of cash received is as close as is administratively feasible to the actual disbursement of program costs. The amount of money on hand must not exceed the amount needed for 3 days' business activity, which complies with Section 5 of the Cash Management Improvement Act of 1990 and OMB Common Rule A122 Payment (b) Basic Standard.

4.2.2 **Federal funds.** Payments under this grant contract will be made, in whole or in part, from federal funds obtained by the State through the USDHHS under the Low-Income Home Energy Assistance Act of 1981, as amended, 42 USC 8621 to 8629, CFDA Number 93.568 (Acts). The Grantee is responsible for compliance with all federal laws, rules and requirements imposed on these funds and accept full financial responsibility for any requirements imposed by the Grantee's failure to comply with federal laws, rules or requirements. In addition to the Acts, applicable federal laws, rules, and requirements may include, but are not limited to:

4.2.2.1 OMB Circulars Numbers A-21 (2 CFR 220), A-87 (2 CFR 225), A-110 (2 CFR 215), A-122 (2 CFR 230) and A-133;

4.2.2.2 OMB Common Rule as codified at 29 CFR 97;

4.2.2.3 ASMB C-10 (Implementation Guide for OMB Circular A-87);

4.2.2.4 Non-discrimination requirements under the Civil Rights Act of 1964 (42 USC 2000d) as amended by the Equal Employment Opportunity Act of 1972, the Rehabilitation Act of 1973 (29 USC 794), the Age Discrimination Act of 1975 (42 USC 794), and the Americans with Disabilities Act of 1990 (42 USC 12101);

4.2.2.5 President's Executive Order 12549 and the implementation regulation Non-procurement, Debarment and Suspension, Notice and Final Rule and Interim Final Rule found at 53 FR 19189, May 26, 1988, as amended at 60 FR 33041, June 26, 1995, including Appendix B, "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transactions";

4.2.2.6 New Restrictions on Lobbying, 45 FR 93, Subpart A, Revised 10/1/1999;

4.2.2.7 Political Activity provisions of Title 5 of the United States Code;

4.2.2.8 Drug-Free Workplace Act of 1988; and

4.2.2.9 Fair Labor Standards Act.

4.3 Repayment. The Grantee will repay the State any funds paid to the Grantee by the State for costs which:

4.3.1 The State determines are not eligible under this contract;

4.3.2 The Grantee has been or will be compensated by another entity;

4.3.3 The Grantee's records do not clearly substantiate as eligible under this contract; or

4.3.4 Are identified as a financial audit exception;

4.3.5 The State assesses administrative fines for late reports as specified in the *FFY2014 Energy Assistance Program Policy Manual*,

4.4 Program Income. All interest or other income earned by the Grantee on funds advanced to the Grantee by the State will be considered program income and must be reported to the State. Program income may only be expended for activities and costs that are eligible under this grant contract.

5. Conditions of Payment

All services provided by the Grantee under this grant contract must be performed to the State's satisfaction, as determined at the sole discretion of the State's Authorized Representative and in accordance with all applicable federal, state, and local laws, ordinances, rules, and regulations. The Grantee will not receive payment for work found by the State to be unsatisfactory or performed in violation of federal, state, or local law.

6. Authorized Representative

The State's Authorized Representative is **John M. Harvanko**, Director, Office of Energy Assistance Programs, **651-539-1805**, john.harvanko@state.mn.us, or his successor, and has the responsibility to monitor the Grantee's

performance and the authority to accept the services provided under this grant contract. If the services are satisfactory, the State's Authorized Representative will certify acceptance on each invoice submitted for payment. The Grantee's Authorized Representative is «FIRST_NAME» «M_2nd_NAME», «TITLE», «ADDRESS_1», «CITY», «STATE» «ZIP» «Telephone_Number», «Email_» or their successor. If the Grantee's Authorized Representative changes at any time during this grant contract, the Grantee must immediately notify the State.

7. Assignment, Amendments, Waiver, and Grant Contract Complete

- 7.1 **Assignment.** The Grantee may neither assign nor transfer any rights or obligations under this grant contract without the prior consent of the State and a fully executed Assignment Agreement, executed and approved by the same parties who executed and approved this grant contract, or their successors in office.
- 7.2 **Amendments.** Any amendment to this grant contract must be in writing and will not be effective until it has been executed and approved by the same parties who executed and approved the original grant contract, or their successors in office.
- 7.3 **Waiver.** If the State fails to enforce any provision of this grant contract, that failure does not waive the provision or its right to enforce it.
- 7.4 **Grant Contract Complete.** This grant contract contains all negotiations and agreements between the State and the Grantee. No other understanding regarding this grant contract, whether written or oral, may be used to bind either party.

8. Liability

The Grantee must indemnify, save, and hold the State, its agents, and employees harmless from any claims or causes of action, including attorney's fees incurred by the State, arising from the performance of this grant contract by the Grantee or the Grantee's agents or employees. This clause will not be construed to bar any legal remedies the Grantee may have for the State's failure to fulfill its obligations under this grant contract.

9. Reporting

The Grantee will provide all reports as may be required by the State from time to time, including but not limited to:

- 9.1 A detailed Local Plan
- 9.2 Monthly Financial Status Report (FSR), in a form prescribed by the State, as prescribed in the *FFY2014 Energy Assistance Program Policy Manual*,
- 9.3 Final Financial Status Report and other closeout documents, in a form prescribed by the State, no later than 30 days following the expiration of this grant contract, including a listing of un-liquidated obligations of grant funds, if any.
- 9.4 Leveraging Report specified in the *FFY2014 Energy Assistance Program Policy Manual*,
- 9.5 A copy of the Service Provider's fiscal audit.
- 9.6 Incident reports specified in the *FFY2014 Energy Assistance Program Policy Manual*,
- 9.7 Program audit disclosure letter specified in the *FFY 2014 Energy Assistance Policy Manual*
- 9.8 Requested responses to monitoring findings.

10. Monitoring and Corrective Action

- 10.1 **Monitoring.** The Grantee will allow the State access to its business site(s) and will secure written permission from its sub-grantees to allow the State access to sub-grantees' sites and records for the purpose of monitoring Grantee performance, compliance with contract requirements. The Grantee will cooperate with the State in the performance of such monitoring activities.
- 10.2 **Corrective Action.** If the State finds that the Grantee's performance is deficient or has not complied with contract requirements, the Grantee will implement any corrective action determined by the State. Failure to implement corrective action may void this contract.

11. Financial Records

The Grantee will use such fiscal, audit and accounting procedures as may be necessary to assure and promote sound financial management, including effective internal controls, and will maintain business records in conformance with generally accepted accounting and auditing principles, to fully evidence its costs and expenses.

12. Audits

- 12.1 **State Audits.** Under Minn. Stat. § 16C.05, Subd.5, the Grantee's books, records, documents, and accounting procedures and practices of the Grantee or other party relevant to this grant agreement or transaction are subject to examination by the State and/or the State Auditor or Legislative Auditor, as appropriate, for a minimum of six years from the end of this grant agreement, receipt and approval of all final reports, or the required period of time to satisfy all state and program retention requirements, whichever is later.
- 12.2 **Federal Audits.** The Grantee's books, financial records, programmatic records, documents, and accounting procedures and practices relevant to this grant contract are subject to examination by the USDHHS and the Comptroller General of the United States, or their designated representatives, for the greater of a period three years after the expiration date of this contract or on completion of a federal audit if one is commenced within three years after the expiration date.
- 12.3 **Single Audit.** The Grantee must comply with the financial and compliance audits requirements of the Single Audit Act Amendments of 1996 and OMB circular No. A-133, "Audit of States, Local Governments and Non-Profit Organizations."
- 12.4 **Program Specific Audit.** In addition to Clause 12.3, the Grantee must, upon request from the State, conduct a program specific audit of the Grantee's Low-Income Home Energy Assistance Program using the guidelines set forth in CFDA 93.568 and OMB Circular A-133 Compliance Supplement, "Audit of States, Local Governments and Non-Profit Organizations."

13. Government Data Practices and Intellectual Property

- 13.1.1. **Minnesota Government Data Practices Act.** The Grantee and State must comply with the Minnesota Government Data Practices Act ("MGDPA"), Minn. Stat. Ch. 13, as it applies to all data provided by the State under this grant contract, and as it applies to all data created, collected, received, stored, used, maintained, or disseminated by the Grantee under this grant contract. The civil remedies of Minn. Stat. §13.08 apply to the release of the data referred to in this clause by either the Grantee or the State. If the Grantee receives a request to release the data referred to in this Clause, the Grantee must immediately notify the State. The State will give the Grantee instructions concerning the release of the data to the requesting party before the data is released. The Grantee's response to the request shall comply with applicable law. The Grantee shall notify its program applicants and sub-grantees that it will provide applicant and sub-grantee data to the State, and that the State may share applicant and sub-grantee data with other agencies for the purpose of eligibility and program evaluation.
- 13.1.2. **Private Data on Individuals.** Under Minn. Stat. §216C.266, data on individuals collected, maintained or created because the individual applies for benefits or services provided by the energy assistance or weatherization programs is private data on individuals. In accordance with the MGDPA, the Grantee must not disseminate or use private data on individuals for purposes other than those stated to the individual at the time of collection unless the individual subject or subjects of the data have given their informed consent. This prohibition of dissemination of private data includes but is not limited to the disclosure or use of information regarding an applicant's eligibility for benefits under the energy assistance or weatherization programs to identify individuals who may be eligible for other benefits or programs unless the individuals are informed of that use at the time the information is collected or unless they subsequently give their informed consent.
- 13.2. **Intellectual Property Rights**
- 13.2.1. **Intellectual Property Rights.** The State owns all rights, title, and interest in all of the intellectual property rights, including copyrights, patents, trade secrets, trademarks, and service marks in the Works and Documents *created and paid for under this contract*. Works means all inventions, improvements, discoveries (whether or not patentable), databases, computer programs, reports, notes, studies, photographs, negatives, designs, drawings, specifications, materials, tapes, and disks conceived, reduced to practice, created or originated by the Grantee, its employees, agents, and sub-grantees, either individually or jointly with others in the performance of this contract. Works includes "Documents." Documents are the originals of any databases, computer programs, reports, notes, studies, photographs, negatives, designs, drawings, specifications, materials, tapes, disks, or other materials, whether in tangible or electronic forms, prepared by the Grantee, its employees, agents, or sub-grantees, in the performance of this contract. The Documents will be the exclusive property of the State and all such Documents must be immediately returned to the

State by the Grantee upon completion or cancellation of this contract. To the extent possible, those Works eligible for copyright protection under the United States Copyright Act will be deemed to be “works made for hire.” The Grantee assigns all right, title, and interest it may have in the Works and the Documents to the State. The Grantee must, at the request of the State, execute all papers and perform all other acts necessary to transfer or record the State’s ownership interest in the Works and Documents.

13.2.2. **Obligations**

13.2.2.1. **Notification.** Whenever any invention, improvement, or discovery (whether or not patentable) is made or conceived for the first time or actually or constructively reduced to practice by the Grantee, including its employees and sub-grantees, in the performance of this contract, the Grantee will immediately give the State’s Authorized Representative written notice thereof and must promptly furnish the Authorized Representative with complete information and/or disclosure thereon.

13.2.2.2. **Representation.** The Grantee must perform all acts and take all steps necessary to ensure that all intellectual property rights in the Works and Documents are the sole property of the State and that neither Grantee nor its employees’ agents, or sub-grantees retain any interest in and to the Works and Documents. The Grantee represents and warrants that the Works and Documents do not and will not infringe upon any intellectual property rights of other persons or entities. Notwithstanding Clause 8, the Grantee will indemnify; defend, to the extent permitted by the Attorney General; and hold harmless the State, at the Grantee’s expense, from any action or claim brought against the State to the extent that it is based on a claim that all or part of the Works or Documents infringe upon the intellectual property rights of others. The Grantee will be responsible for payment of any and all such claims, demands, obligations, liabilities, costs, and damages, including but not limited to, attorney fees. If such a claim or action arises, or in the Grantee’s or the State’s opinion is likely to arise, the Grantee must, at the State’s discretion, either procure for the State the right or license to use the intellectual property rights at issue or replace or modify the allegedly infringing Works or Documents as necessary and appropriate to obviate the infringement claim. This remedy of the State will be in addition to and not exclusive of other remedies provided by law.

14. Personal Property, State Property and Exception

14.1 **Personal Property.** Any purchase of non-expendable personal property that has a useful life greater than one year and a per unit cost of Five Thousand dollars (\$5,000.00) or greater must have prior written approval of the State.

14.2 **State Property.** Non-expendable personal property that has a useful life greater than one year that is purchased with funds provided under this grant contract shall be the property of the State. Such property in the possession of the Grantee may be subject to an annual inventory audit. The Grantee will deliver such property to the State within thirty days after the expiration or termination of this contract, if requested in writing by the State.

15. Workers’ Compensation

The Grantee certifies that it is in compliance with Minn. Stat. § 176.181, subd. 2, pertaining to workers’ compensation insurance coverage. The Grantee’s employees and agents will not be considered State employees. Any claims that may arise under the Minnesota Workers’ Compensation Act on behalf of these employees and any claims made by any third party as a consequence of any act or omission on the part of these employees are in no way the State’s obligation or responsibility.

16. Affirmative Action

If applicable, the Grantee certifies that it has received a Certificate of Compliance from the Commissioner of Human Rights pursuant to Minn. Stat. §363A.36.

17 Publicity and Endorsement

17.1 **Publicity.** Any publicity regarding the subject matter of this grant contract must identify the State and USDHHS as the sponsoring agencies and must not be released without prior written approval from the State’s Authorized

Representative. For purposes of this provision, publicity includes notices, informational pamphlets, press releases, research, reports, signs, and similar public notices prepared by or for the Grantee individually or jointly with others, or any subcontractors, with respect to the program, publications, or services provided resulting from this grant contract.

17.2 **Endorsement.** The Grantee must not claim that the State or USDHHS endorses its products or services.

18. Plain Language

All written materials developed or used by the Grantee to communicate with sub-grantees or sub-grant applicants must be understandable to a person of average intelligence and education.

19. Governing Law, Jurisdiction, and Venue

Minnesota law, without regard to its choice-of-law provisions, governs this grant contract. Venue for all legal proceedings out of this grant contract, or its breach, must be in the appropriate state or federal court with competent jurisdiction in Ramsey County, Minnesota.

20. Termination, Repayment, and Cooperation

- 20.1 **Termination by the State.** The State may terminate this grant contract at any time, with or without cause, upon written notice to the Grantee. Upon termination, the Grantee will be entitled to payment, determined on a pro rata basis, for services satisfactorily performed, except as limited by this clause.
- 20.2 **Termination for Insufficient Funding.** The State may immediately terminate this contract if funding is withdrawn by the USDHHS; the Minnesota Legislature, or if funding cannot be continued at a level sufficient to allow for the payment of the services covered here. Termination must be by written or fax notice to the Grantee. The State is not obligated to pay for any services that are provided after notice and effective date of termination. However, the Grantee will be entitled to payment, determined on a pro rata basis, for services satisfactorily performed to the extent that funds are available. The State will not be assessed any penalty if the contract is terminated because of the decision of the Minnesota Legislature, or other funding source, not to appropriate funds. The State must provide the Grantee notice of the lack of funding within a reasonable time of the State's receiving that notice.
- 20.3 **Termination by the Grantee.** The Grantee may terminate this grant contract at any time, with or without cause, upon sixty days written notice to the State. Such written notice must include proposed terms for the discontinuation of the Grantee's services and an estimated final invoice for the Grantee's services performed. No later than sixty days after termination, the Grantee must submit a final invoice to the State. The State may accept or reject in whole or in part the Grantee's proposed terms, estimated final invoice or final invoice, and shall notify the Grantee of its decision within five business days of its receipt of the Grantee's termination notice, and within fifteen business days of its receipt of the Grantee's final invoice. Upon termination and submission of a final invoice, and upon acceptance of the final invoice by the State, the Grantee will be entitled to payment, determined on a pro rata basis, for services satisfactorily performed.
- 20.4 **Repayment for Ineligible costs.** If the State or the Grantee terminates this contract, the State may withhold payment for outstanding invoiced costs pending its determination of the eligibility of all costs for which the Grantee has been paid by the State. If the State determines that total payments to the Grantee under this contract exceed eligible costs actually incurred by the Grantee, the Grantee will repay to the State all funds received in excess of eligible costs. This clause shall not be construed to bar any other legal remedies the State may have to recover funds expended by the Grantee for ineligible costs.
- 20.5 **Cooperation.** In the event of termination under this clause, the Grantee will fully cooperate with the State in the transfer of program information, records and equipment to the State and/or any other entity designated in writing by the State to receive such information, records and equipment.

21. Disclosure of Grantee Tax Identification Numbers

Under Minn. Stat. § 270C.65, and other applicable law, the Grantee consents to disclosure of its social security number, federal employer tax identification number, and/or Minnesota tax identification number, already provided to the State, to federal and state tax agencies and state personnel involved in the payment of state obligations. These identification numbers may be used in the enforcement of federal and state tax laws which could result in action requiring the Grantee to file state tax returns and pay delinquent state tax liabilities, if any.

22. Minn. Stat. §181.59

The vendor will comply with the provisions of Minn. Stat. §181.59 which require:

Every contract for or on behalf of the state of Minnesota, or any county, city, town, township, school, school district, or any other district in the state, for materials, supplies, or construction shall contain provisions by which the contractor agrees: (1) That, in the hiring of common or skilled labor for the performance of any work under any contract, or any subcontract, no contractor, material supplier, or vendor, shall, by reason of race, creed, or color, discriminate against the person or persons who are citizens of the United States or resident aliens who are qualified and available to perform the work to which the employment relates; (2) That no contractor, material supplier, or vendor, shall, in any manner, discriminate against, or intimidate, or prevent the employment of any person or persons identified in clause (1) of this section, or on being hired, prevent, or conspire to prevent, the person or persons from the performance of work under any contract on account of race, creed, or color; (3) That a violation of this section is a misdemeanor; and (4) That this contract may be canceled or terminated by the state, county, city, town, school board, or any other person authorized to grant the contracts for employment, and all money due, or to become due under the contract, may be forfeited for a second or any subsequent violation of the terms or conditions of this contract.

23. Equal Treatment for Faith-Based Organizations

All agencies must comply with the USDHHS rules regarding nondiscrimination of faith-based organizations as found within 45 CFR Parts 74, 87, 92, and 96.

1. STATE ENCUMBRANCE VERIFICATION

Individual certifies that funds have been encumbered as required by Minn. Stat. § 16A.15 and 16C.05.

Signed: _____,

Date: _____,

CFMS Grant contract No. _____,

3. MINNESOTA DEPT OF COMMERCE

By: _____,
(with delegated authority)

Title: _____,

Date: _____,

2. «AGENCY»

The Grantee certifies that the appropriate person(s) have executed the grant contract on behalf of the Grantee as required by applicable articles, bylaws, resolutions, or ordinances.

By: _____,

Title: _____,