



PROGRAM INTEGRITY ASSESSMENT SUPPLEMENT

TEXAS FFY 2014 LIHEAP PLAN DRAFT

CONTENTS

ABSTRACT:..... 2

INSTRUCTIONS:..... 2

1. RECENT AUDIT FINDINGS ..... 2

2. COMPLIANCE MONITORING..... 2

3. FRAUD REPORTING MECHANISMS..... 4

4. VERIFYING APPLICANT IDENTITIES ..... 6

5. SOCIAL SECURITY NUMBER REQUESTS..... 7

6. CROSS-CHECKING SOCIAL SECURITY NUMBERS AGAINST GOVERNMENT SYSTEMS/DATABASES..... 8

7. VERIFYING APPLICANT INCOME..... 9

8. PRIVACY-PROTECTION AND CONFIDENTIALITY ..... 10

9. LIHEAP BENEFITS POLICY ..... 10

10. PROCEDURES FOR UNREGULATED ENERGY VENDORS ..... 11

11. VERIFYING THE AUTHENTICITY OF ENERGY VENDORS..... 11

12. TRAINING AND TECHNICAL ASSISTANCE..... 12

13. AUDITS OF LOCAL ADMINISTERING AGENCIES ..... 13

Additional Information and Attachments..... 14

**ABSTRACT:**

HHS is requiring further detail from Grantees on their FY2014 plans for preventing and detecting fraud, abuse, and improper payments. HHS is also requiring that Grantees highlight and describe all elements of this FY2014 plan which represent improvements or changes to the Grantees' FY2013 plan for preventing and detecting fraud, abuse and improper payment prevention.

**INSTRUCTIONS:**

Please provide full descriptions of the Grantee's plans and strategy for each area, and attach/reference excerpts from relevant policy documents for each question/column. Responses must explicitly explain whether any changes are planned for the new FY.

**1. RECENT AUDIT FINDINGS**

*Necessary outcomes from these systems and strategies: The timely and thorough resolution of weaknesses or reportable conditions as revealed by the audit.*

- a. Describe any audit findings of material weaknesses and reportable conditions, questioned costs and other findings cited in FY2013 or the prior three years, in annual audits, Grantee monitoring assessments, Inspector General reviews, or other Government Agency reviews of LIHEAP agency finances.**

In FY 2010, Grantee monitoring assessment revealed inadequate management of LIHEAP programs by two subrecipient organizations. LIHEAP contracts with both organizations were terminated.

In FY 2012, Grantee monitoring assessment revealed inadequate management of LIHEAP programs by two subrecipient organizations. LIHEAP contracts with both organizations were terminated.

- b. Please describe whether the cited audit findings or relevant operations have been resolved or corrected. If not, please describe the plan and timeline for doing so in FY2014.**

Resolved – Termination of all contracts for the inadequate management of LIHEAP programs by all subrecipient organizations referenced in 1.a.

- c. If there is no plan in place, please explain why not.**

N/A. The Department has timely and thorough resolution of weaknesses or reportable conditions as revealed by audits at the Subrecipient level.

**2. COMPLIANCE MONITORING**

*Necessary outcomes from these systems and strategies: A sound methodology, with a schedule for regular monitoring and a more effective monitoring tool to gather information.*

**a. Describe the Grantee's FY 2013 strategies that will continue in FY 2014 for monitoring compliance with State and Federal LIHEAP policies and procedures by the Grantee and local administering agencies.**

In June of 2012, the Department undertook a Department-wide reorganization that included moving all staff associated with compliance and monitoring functions to the Compliance Division. Staff that provide planning, contract execution and training and technical assistance for LIHEAP, remained within the Community Affairs Division.

The Department requires each subrecipient to submit monthly funding and performance reports. Reports are due on the fifteenth of the following month. The Contract Specialist will complete a desk monitoring review of monthly funding and performance reports to ensure the subrecipient has the capacity to carry out program activities in a timely manner. The Contract Specialist will review each monthly expenditure request to determine if a Subrecipient expenditure report contains anomalies that may pose a risk to the program.

Monitors review necessary program documents and financial records through desk reviews and on-site reviews to ascertain compliance with program requirements. Selection of contracts for monitoring is primarily based on risk assessment. Contracts may also be selected for monitoring based on other factors, such as prior findings, complaints and/or special requests.

Monitors will perform an onsite monitoring visit of each subrecipient at least once every three years based on a Risk Assessment Module. On-site monitoring will be performed in conjunction with the Division's Community Service Block Grant whenever possible. TDHCA may monitor a subrecipient more than once based on the previous monitoring report and current contract performance.

The Monitor will utilize a monitoring instrument to document the Subrecipient's compliance of specific program rules, regulations and requirements. The Compliance Division will frequently review and/or revise the monitoring instrument to address a change in or the applicability of program rules and regulations.

Monitors will review the Subrecipient's financial records such as the single audit, general ledgers, program expenditures, receipts, bank statements, bank reconciliation reports, and cancelled checks to ensure that program funds are being expended on allowable program activities.

Monitors will review the administration of the program and individual client records to ensure the clients are eligible, prioritized, and served within the requirements of the LIHEAP Act, TAC Rules, Subrecipient funding contract and TDHCA established guidelines. Client files will also be reviewed to ensure household needs have been identified, the client has been provided client education, and referred to other programs and services that have been identified by the subrecipient.

Monitors will develop a report that details the issues found during the on-site monitoring. The report will note the issues in findings and recommended Improvements. The report may also note a requirement of the Subrecipient to complete a corrective action.

Upon the Monitoring Manager's review, a report will be mailed to each subrecipient. Subrecipient must submit a written response within 30 days of the report. The response must address the requirement(s) of the corrective action, if any. The monitor will review of the Subrecipient's response and compliance with the corrective action, to ensure the corrective action has been completed and/or implemented.

- b. Please highlight any strategies for compliance monitoring from your plan which will be newly implemented as of FY 2014.**

n/a

- c. If you don't have a firm compliance monitoring system in place for FY 2014, please describe how the State is verifying that LIHEAP policy and procedures are being followed.**

n/a

### **3. FRAUD REPORTING MECHANISMS**

*Necessary outcomes of these strategies and systems: Clear lines of communication for citizens, grantees, clients, and employees to use in pointing out potential cases of fraud or improper payments to State administrators.*

- a. For FY 2013 activities continuing in FY 2014, please describe all (a) mechanisms available to the public for reporting cases of suspected LIHEAP fraud, waste or abuse [These may include telephone hotlines, websites, email addresses, etc.]; (b) strategies for advertising these resources.**

The Internal Audit Division of TDHCA has initiated a toll free hotline that can be used by the general public or other stakeholders, as well as the Department's employees, to anonymously report instances of fraud, waste and abuse.

Internal Audit contracts with The Network to provide the hotline services. The Network is a third-party administrator of anonymous hotlines. The hotline is available 24 hours a day, 365 days a year and calls are answered by employees of The Network. Information can be provided anonymously via a telephone call, a fax, a letter or an e-mail. If reports are made by fax or e-mail, The Network will ensure that the complaint remains anonymous.

Matters brought to the attention of the Department in which fraud, waste or abuse of funds may have occurred will be forwarded to the State Auditor's Office as required by the Texas Government Code, Section 321.022.

(1) If the administrative head of a department or entity that is subject to audit by the state auditor has reasonable cause to believe that money received from the state by the department

Texas Department of Housing and Community Affairs  
DRAFT FFY 2014 LIHEAP Program Integrity Assessment Supplement

or entity or by a client or contractor of the department or entity may have been lost, misappropriated, or misused, or that other fraudulent or unlawful conduct has occurred in relation to the operation of the department or entity, the administrative head shall report the reason and basis for the belief to the state auditor.

The state auditor may investigate the report or may monitor any investigation conducted by the department or entity.

(2) The state auditor, in consultation with state agencies and institutions, shall prescribe the form, content, and timing of a report required by this section.

(3) All records of a communication by or to the state auditor relating to a report to the state auditor under Subsection (a) are audit working papers of the state auditor.

As posted on the TDHCA website at <http://www.tdhca.state.tx.us/fraud-waste-abuse.htm>, an incident of fraud, waste or abuse at the Texas Department of Housing and Community Affairs, can be reported in any of the following ways:

**By Phone**

Call toll free: 877-749-3316

**By Mail**

The Network

ATTN: Texas Department of Housing and Community Affairs

333 Research Court

Norcross, GA 30092

**By Fax**

770-409-5008

Faxes need to include the following information on the cover sheet:

TO: The Network

ATTN: The Texas Department of Housing and Community Affairs

**By E-Mail**

[Reportline@tnwinc.com](mailto:Reportline@tnwinc.com)

Please include "Texas Department of Housing and Community Affairs" in the email text.

The public can also directly file a complaint with the State Auditor's Office at 1-800-TX-AUDIT or online at <https://sao.fraud.state.tx.us/Hotline.aspx>.

In October 2010, TDHCA developed and distributed its Recommended Practice on Fraud, Waste, and Abuse to all TDHCA Employees, posted on the Department's website and distributed via the TDHCA ListServ email system. The Recommended Practice on Fraud, Waste, and Abuse document is attached.

This email system is open to the public but subscription is required of subrecipients for all Community Affairs programs, including all LIHEAP funded programs. Program-specific

Texas Department of Housing and Community Affairs  
DRAFT FFY 2014 LIHEAP Program Integrity Assessment Supplement

announcements, policy updates, changes in requirements, and other notifications are sent via this email system.

In July 2010, the Department created The Previously Weatherized Units (PW Units) module that is used to collect the address, city, zip, date weatherized, and subrecipient name for houses and units weatherized since September 30, 1994 through non-ARRA Department of Energy (DOE) WAP funds and Low Income Housing Energy Assistance Program (LIHEAP) WAP funds. This database is only available to subrecipient agencies of LIHEAP and DOE funds.

The data collected through this module will be used to ensure no houses or units in Texas have been weatherized twice since 1994 using non-ARRA DOE WAP or LIHEAP WAP funds. Subrecipients must search using this module prior to weatherizing units.

**b. Please highlight any tools or mechanisms from your plan which will be newly implemented in FY 2014, and the timeline for that implementation.**

TDHCA will continue to post information on the Department website and distribute Listserv announcements about fraud, waste, and abuse policies.

**c. If you don't have any tools or mechanisms available to the public to prevent fraud or improper payments, please describe your plan for involving all citizens and stakeholders involved with your program in detecting fraud.**

n/a

**4. VERIFYING APPLICANT IDENTITIES**

*Necessary outcomes from these systems and strategies: Income and energy supplier data that allow program benefits to be provided to eligible individuals.*

**a. Describe all FY 2013 Grantee policies continuing in FY 2014 for how identities of applicants and household members are verified.**

TDHCA policies for how identities of applicants and household members are documented are detailed in TAC Title 10, Part 1, Chapter 5, or any subsequent sections of the Texas Administrative Code covering LIHEAP household eligibility. :

(1) Subchapter A, Rule 5.19: Client Income Guidelines,

(2) Subchapter A, Rule 5.20: Determining Income Eligibility, and

(3) Subchapter D, Rule 5.407: Subrecipient Requirements for Establishing Priority for Eligible Households and Client Eligibility Criteria.

TAC Rules effective at the time of Plan submission are attached.

Texas Department of Housing and Community Affairs  
DRAFT FFY 2014 LIHEAP Program Integrity Assessment Supplement

TDHCA has also been working to assist LIHEAP subrecipient agencies that must meet the requirements of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) to gain access to the Systemic Alien Verification for Entitlements (SAVE) system. Accordingly, the Department is seeking a Memorandum of Agreement (MOA) with the Department of Homeland Security, U.S. Citizenship and Immigration Services (DHS-USCIS).

**b. Please highlight any policy or strategy from your plan which will be newly implemented in FY 2014.**

In addition to SAVE, the Department continues to seek partnerships with other state agencies that maintain systems and databases to verify individual or household member identities. Discussions have begun with The Texas Health and Human Services Commission, the state designated hub for Social Security Administration data.

Partnerships are being sought with agencies such as the Texas Workforce Commission, the Texas Department of State Health Services, and the Texas Department of Criminal Justice for linkages to new hire databases, state death records, and prisoner databases respectively.

The Department hopes to move to a statewide database for all Community Affairs Division Programs, LIHEAP included. Currently, application intake and income verification are handled by the local subrecipient agencies. By centralizing this information in a statewide database, the Department will be able to more effectively and efficiently verify LIHEAP individual applicants and households. The Department is using the three year timeline for implementation that has been adopted by the National LIHEAP Program Integrity Workgroup.

**c. If you don't have a system in place for verifying applicant's identities, please explain why and how the Grantee is ensuring that only authentic and eligible applicants are receiving benefits.**

TDHCA does not have a system in place for verification of applicant's identities as there has previously been no requirement nationally. The Department has informed the statewide LIHEAP network that the LIHEAP program is moving towards the implementation of the recommendations in LIHEAP IM-2010-06.

With the achievement of the partnerships and statewide database described above, TDHCA will have more tools available to check the identity and eligibility of applicants receiving LIHEAP benefits statewide.

## **5. SOCIAL SECURITY NUMBER REQUESTS**

*Necessary outcomes from these systems and strategies: All valid household members are reported for correct benefit determination.*

**a. Describe the Grantee's FY 2014 policy in regards to requiring Social Security Numbers from applicants and/or household members applying for LIHEAP benefits.**

Texas Department of Housing and Community Affairs  
DRAFT FFY 2014 LIHEAP Program Integrity Assessment Supplement

According to the Texas Administrative Code (TAC), the Department does not currently require SSNs to verify eligibility of applicants and/or household members applying for LIHEAP benefits. See Subchapter D, Rule 5.407: Subrecipient Requirements for Establishing Priority for Eligible Households and Client Eligibility Criteria in the attached TAC Rules. As described in the previous sections, the Department is moving towards implementation of the recommendations in LIHEAP IM-2010-06.

**b. Please describe whether the State's policy for requiring or not requiring Social Security numbers is new as of FY2014, or remaining the same.**

The Department's policy for not requiring Social Security numbers will remain the same for PY 2014. The Department is moving towards implementation of HHS guidance from IM-2010-06 that strongly encourages States to establish and implement policies and procedures governing individual program application requirements to be used in requiring Social Security Numbers for recipients in LIHEAP, including the utility of information by local administering agencies that administer LIHEAP benefits. States are to ensure that adequate procedures are in place for the safeguarding of such information in the administration of the program.

**c. If the Grantee is not requiring Social Security Numbers of LIHEAP applicants and/or household members, please explain what supplementary measures are being employed to prevent fraud.**

As described in sections 2 and 3 above, the Department has a robust and effective compliance monitoring system and fraud reporting system in place. These systems will continue to be enhanced with the partnership with additional state and federal partners.

**6. CROSS-CHECKING SOCIAL SECURITY NUMBERS AGAINST GOVERNMENT SYSTEMS/DATABASES**

*Necessary outcomes from these systems and strategies: Use of all available database systems to make sound eligibility determination.*

**a. Describe if and how the Grantee used existing government systems and databases to verify applicant or household member identities in FY 2012 and continuing in FY 2013. (Social Security Administration Enumeration Verification System, prisoner databases, Government death records, etc.)**

The Department does not currently use existing government systems and databases to verify applicant or household member identities.

As described above in Section 3, the Department uses its internal Previously Weatherized Units database to ensure no houses or units in Texas have been weatherized more than once since 1994 using DOE WAP or LIHEAP WAP funds.

- b. Please highlight which, if any, policies or strategies for using existing government databases will be newly implemented in FY 2014.**

As described above in section 4b, partnerships are being sought with agencies such as the Texas Workforce Commission, the Texas Department of State Health Services, and the Texas Department of Criminal Justice for linkages to new hire databases, state death records, and prisoner databases respectively. Partnership discussions have begun with The Texas Health and Human Services Commission, the state designated hub for Social Security Numbers.

- c. If the Grantee won't be cross checking Social Security Numbers and ID information with existing government databases, please describe how the Grantee will supplement this fraud prevention strategy.**

The fraud, waste, and abuse policies described in section 3 will continue to be practiced and enhanced as the LIHEAP program is administered statewide.

## **7. VERIFYING APPLICANT INCOME**

*Necessary outcomes from these systems and strategies: Effective income determination achieved through coordination across program lines.*

- a. Describe how the Grantee or designee used State Directories of new hires or similar systems to confirm income eligibility in FY 2013 and continuing in FY 2014.**

The Department does not currently use State Directories of new hires or similar systems to confirm income eligibility in FY2013.

To determine income eligibility for program services, subrecipients must base annualized eligibility determinations on household income from thirty (30) days prior to the date of application for assistance. Each subrecipient must maintain documentation of income from all sources for all household members for the entire thirty (30) day period prior to the date of application and multiply the monthly amount by twelve (12) to annualize income. Income documentation must be collected from all income sources for all household members eighteen (18) years and older for the entire thirty (30) day period.

If proof of income is unavailable, the applicant must complete and sign a Department approved Declaration of Income Statement (DIS). A sample Declaration of Income Statement is attached.

- b. Please highlight any policies or strategies for using new hire directories which will be newly implemented in FY 2014.**

As stated in previous sections, the Department is seeking partnerships with other state agencies that maintain systems and databases to verify individual or household member identities. Partnership is being sought with the Texas Workforce Commission for linkage to a new hire database.

- c. If the Grantee won't be using new hire directories to verify applicant and household member incomes how will the Grantee be verifying the that information?**

In an attempt to limit use of the DIS described above, all self-certifications of client income must include a notarized statement signed by the potential applicant indicating that the client has no other proof of income.

All Declaration of Income Statements must be accompanied by a statement written by the client indicating that the client has no other proof of income and documenting efforts made to obtain income statements. The client statement must include a notarized signature.

**8. PRIVACY-PROTECTION AND CONFIDENTIALITY**

*Necessary outcomes from these systems and strategies: Clear and secure methods that maintain confidentiality and safeguard the private information of applicants.*

- a. Describe the financial and operating controls in place in FY 2013 that will continue in FY 2014 to protect client information against improper use or disclosure.**

Subrecipients maintain client information onsite. Each subrecipient is required to have policies and procedures in place to protect client confidentiality. Data submitted to TDHCA electronically is stored on a secure server.

The Department has a coding system in place for all monitoring reports that reference client data to ensure that no client information is released.

- b. Please highlight any controls or strategies from your plan which will be newly implemented as of FY 2014.**

As indicated in 4. a., the Department is seeking a MOA with DHS-USCIS to gain access to the SAVE system. The Department will adhere to procedures as outlined in this agreement to maintain confidentiality and safeguard the private information of LIHEAP applicants

**If you don't have relevant physical or operational controls in place to ensure the security and confidentiality of private information disclosed by applicants, please explain why.**

n/a

**9. LIHEAP BENEFITS POLICY**

*Necessary outcomes from these systems and strategies: Authorized energy vendors are receiving payments on behalf of LIHEAP eligible clients.*

- a. Describe FY 2013 Grantee policies continuing in FY 2014 for protecting against fraud when making payments, or providing benefits to energy vendors on behalf of clients.**

Texas Department of Housing and Community Affairs  
DRAFT FFY 2014 LIHEAP Program Integrity Assessment Supplement

Federal law requires that all LIHEAP subrecipients have vendor agreements in place with energy vendors. The Department monitors each subrecipient to ensure that vendor agreements are in place. Monitoring practices are described in Section 2 above.

These vendor agreements ensure that no LIHEAP benefit payments are made directly to clients or to vendors without agreements.

- b. Please highlight any fraud prevention efforts relating to making payments or providing benefits which will be newly implemented in FY 2014.**

All policies described above will continue. There is nothing new for the 2014 plan.

- c. If the Grantee doesn't have policy in place to protect against improper payments when making payments or providing benefits on behalf of clients, what supplementary steps is the Grantee taking to ensure program integrity.**

n/a

**10. PROCEDURES FOR UNREGULATED ENERGY VENDORS**

*Necessary outcomes from these systems and strategies: Participating vendors are thoroughly researched and inspected before benefits are issued.*

- a. Describe the Grantee's FY 2013 procedures continuing in FY 2014 for averting fraud and improper payments when dealing with bulk fuel dealers of heating oil, propane, wood and other un-regulated energy utilities.**

As above, Federal law requires that all LIHEAP subrecipients have vendor agreements in place with energy vendors. The Department applies this practice to both regulated and unregulated energy vendors. The Department monitors each subrecipient to ensure that vendor agreements are in place.

- b. Please highlight any strategies policy in this area which will be newly implemented in FY 2014.**

All policies described above will continue. There is nothing new for the 2014 plan.

- c. If you don't have a firm plan for averting fraud when dealing with unregulated energy vendors, please describe how the Grantee is ensuring program integrity.**

n/a

**11. VERIFYING THE AUTHENTICITY OF ENERGY VENDORS**

*Necessary outcomes from these systems and strategies: An effective process that effectively confirms the existence of entities receiving federal funds.*

- a. Describe Grantee FY 2013 policies continuing in FY 2014 for verifying the authenticity of energy vendors being paid under LIHEAP, as part of the Grantee's procedure for averting fraud.**

As above, Federal law requires that all LIHEAP subrecipients have vendor agreements in place with energy vendors. The Department monitors each subrecipient to ensure that vendor agreements are in place

- b. Please highlight any policies for verifying vendor authenticity which will be newly implemented in FY 2014.**

The Department plans to amend vendor agreements to require a Tax Identification Number (TIN) from each vendor. This TIN will be verified with the Texas Comptroller and/or Secretary of State.

Further, the Department plans to verify energy vendors through the Public Utilities Commission database of regulated electric vendors and the Texas Railroad Commission database of regulated propane vendors.

- c. If you don't have a system in place for verifying vendor authenticity, please describe how the Grantee can ensure that funds are being distributed through valid intermediaries?**

n/a

## **12. TRAINING AND TECHNICAL ASSISTANCE**

*Necessary outcomes from these systems and strategies: The timely and thorough resolution of weaknesses or reportable conditions as revealed by the audit.*

- a. In regards to fraud prevention, please describe elements of your FY 2013 plan continuing in FY 2014 for training and providing technical assistance to (a) employees, (b) non-governmental staff involved in the eligibility process, (c) clients, and (d) energy vendors.**

The Department provides training and technical assistance to employees, non-governmental staff involved in the eligibility process, clients, and energy vendors as requested. Further, the Department provides in person training and technical assistance at cluster workshops and statewide conferences.

In 2012, the Department established an on-line question portal for Subrecipient staff to request training and/or technical assistance. This information is used to create FAQ's, Best Practices, or to initiate specific trainings.

- b. Please highlight specific elements of your training regimen and technical assistance resources from your plan which will represent newly implemented in FY 2014.**

The Fraud Prevention training class developed for the Department's Weatherization Assistance Program will be made available online.

Texas Department of Housing and Community Affairs  
DRAFT FFY 2014 LIHEAP Program Integrity Assessment Supplement

Subrecipient agencies will be required to post Fraud, Waste and Abuse posters where non-governmental staff involved in the eligibility process, (c) clients, and (d) energy vendors are present.

Any entity that has signed a vendor agreement will receive the Department's monitoring practices for fraud compliance.

- c. **If you don't have a system in place for anti-fraud training or technical assistance for employees, clients or energy vendors, please describe your strategy for ensuring all employees understand what is expected of them and what tactics they are permitted to employ.**

n/a

### **13. AUDITS OF LOCAL ADMINISTERING AGENCIES**

*Necessary outcomes from these systems and strategies: Reduce improper payments, maintain local agency integrity, and benefits awarded to eligible households.*

- a. **Please describe the annual audit requirements in place for local administering agencies in FY 2013 that will continue into FY 2014.**

The Department's LIHEAP program is audited under the Single Audit Act. TDHCA contracts require subrecipients that exceed \$500,000 in expenditures to follow the single Audit procedures and submit a copy of the Audit to the Department for review.

Subrecipients not exempt from the single audit requirements are responsible for submitting their Single Audit Report within thirty (30) days of completion of their audit and no later than nine (9) months after the end of the audit period (fiscal year end) to the Department's Portfolio Management and Compliance Division as well as to the CA Division. Refer to 31 U.S.C. §7502.

In addition to the Audit requirement described above, subrecipients are also subject to monitoring visits from the Department as described in section 2. Compliance Monitoring.

- b. **Please describe new policies or strategies to be implemented in FY 2014.**

All policies described above will continue. There is nothing new for the 2014 plan.

- c. **If you don't have specific audit requirements for local administering agencies, please explain how the Grantee will ensure that LIHEAP funds are properly audited under the Single Audit Act requirements.**

n/a

Texas Department of Housing and Community Affairs  
DRAFT FFY 2014 LIHEAP Program Integrity Assessment Supplement

**ADDITIONAL INFORMATION**

Please attach further information that describes the Grantee's Program Integrity Policies, including supporting documentation from program manuals, including pages/sections from established LIHEAP policies and procedures.

**Supplement Attachments**

- A) TDHCA Recommended Practice on Fraud, Waste, and Abuse
- B) Texas Administrative Code for TDHCA's LIHEAP programs effective at the time of Plan submission
- C) Sample of Vendor Agreement
- D) Sample of Department approved Declaration of Income Statement
- E) Sample TDHCA contract for PY 2013 CEAP Subrecipients
- F) Sample TDHCA contract for PY 2013 LIHEAP WAP Subrecipients

**VENDOR AGREEMENT  
COMPREHENSIVE ENERGY ASSISTANCE PROGRAM**

The purpose of the Comprehensive Energy Assistance Program (CEAP) funded from the Low-Income Home Energy Assistance Program (LIHEAP) grant is to maintain an energy supply to heat and cool the residences of eligible low-income clients.

For purposes of this agreement, a Retail Energy Provider is defined as an electricity, natural gas, propane, or wood vendor who sells the energy product to residential customers of energy for the purposes of heating or cooling the residence.

The Retail Energy Provider (Vendor) agrees to honor the purpose of the CEAP and to accept pledges of payment from CEAP Agencies only for certified customers to whom Vendor continues to provide energy services. The Energy Assistance Provider (Agency) agrees to make payments only for eligible low-income clients.

This vendor agreement is by and between:

\_\_\_\_\_ and  
Energy Assistance Provider (Agency)

\_\_\_\_\_ and  
Retail Energy Provider (Vendor)

Vendor and Agency agree to assist customers in the following counties:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

This agreement shall be effective from the \_\_\_ day of \_\_\_\_\_ 20\_\_ for a period not to exceed two years from the effective date. Either party may terminate this agreement by written notice. Such written notice of termination shall not be effect any obligation by either party incurred prior to the receipt of such notice. Notice shall be sent via certified mail with return receipt requested.

\_\_\_\_\_  
(Vendor Name)

\_\_\_\_\_  
(Vendor Mailing Address)

\_\_\_\_\_  
(Name of Agency)

\_\_\_\_\_  
(Agency Mailing Address)

The Agency named above represents and warrants to Vendor that it is a subrecipient of the Texas Department of Housing and Community Affairs ("TDHCA") and as such is authorized and has received funding from the TDHCA to provide bill payment assistance service for eligible low-income households.

The Vendor named above is a Retail Energy Provider who represents and warrants that it is authorized to receive payment from Agency on behalf of a customer that the Agency has determined to be eligible under the CEAP guidelines and as such is a "Certified Customer".

**Vendor will, with reference to a Certified Customer:**

- Extend the CEAP applicants energy service for up to five (5) business days while the Agency determines whether the CEAP applicant is eligible pursuant to the CEAP guidelines;
- Upon receipt of a completed and signed Energy Assistance Pledge Agreement (the form of which is attached hereto and incorporated herein as Exhibit "A") (Pledge Agreement) continue or restore energy service to Certified Customer without any increase in energy charges, service charges, or other charges affecting the total cost of the bill excluding disconnect/reconnect fees and tampering fees;
- Invoice the Certified Customer in accordance with Vendor's normal billing practices;
- Upon verbal or written request from Agency, provide at no cost to the Agency the Certified Customer's billing history for the previous twelve (12) months, or available history plus estimates if less than 12 months of billing history and usage is available. Vendor will transmit such billing history via electronic mail or facsimile no later than the end of the next business day following the request.
- Work with Agency and Certified Customer to explore the feasibility of offering flexible payment arrangements that may include, without limitation, waiving security deposits, reconnect fees, application fees, and all other fees whenever possible;
- Not discriminate against Certified Customer in price or services, including the availability of deferred payment plans, level or average payment plans, discount, budget, advance payment or other credit plans; provided, however, that the Certified Customer must meet the qualification criteria of Vendor for any such plans.
- Not refuse to provide energy service or otherwise discriminate in the marketing and provision of energy service to any Certified Customer because of race, creed, color, national origin, ancestry, sex, marital status, lawful source of income, level of income, disability financial status, location of customer in an economically distressed geographic area, or qualification for low-income or energy efficiency services;
- Allow Agency forty-five (45) days from the date of the pledge to forward payment to the vendor. Vendor agrees not to consider the portion of the Certified Customer's account to be paid by the Agency delinquent if said payment is received within the above mentioned forty-five (45) day period and Vendor is provided with a signed pledge from the Agency within 5 days of identifying a Certified Customer and making a pledge;

- Not interrupt service if Certified Customer enters into an agreement with the Vendor concerning how the Certified Customer will pay the balance owed Vendor and the Certified Customer is meeting the obligations under such agreement.
- **The Agency will:**
- Not provide pledges on behalf of a Certified Customer to Vendor without having adequate funds to pay such pledge;
- Pay pledges within forty-five (45) of making pledge to Vendor;
- Determine if a customer is a Certified Customer within five (5) business days of contacting Vendor.
- Provide Vendor a list of names, telephone numbers and email addresses of Agency staff designated to make pledges on behalf of the Agency in Certified Clients.

\_\_\_\_\_  
Authorized Vendor Signature

\_\_\_\_\_  
Date Agreement Signed

\_\_\_\_\_  
Typed Name of Authorized Signature

\_\_\_\_\_  
Title of Authorized Signature

\_\_\_\_\_  
(Area Code) Telephone Number

\_\_\_\_\_  
Authorized Agency Signature

\_\_\_\_\_  
Date Agreement Signed

\_\_\_\_\_  
Typed Name of Authorized Signature

\_\_\_\_\_  
Title of Authorized Signature

\_\_\_\_\_  
(Area Code) Telephone Number

DECLARATION OF INCOME STATEMENT  
(DECLARACION DE INGRESOS)

I, \_\_\_\_\_, do hereby declare on \_\_\_\_\_ (date) that:  
(Yo) (Applicant's Name/Nombre del Solicitante) (declaro que:) en esta fecha

- I have no documented proof of income due to the following situation \_\_\_\_\_

(No tengo prueba para documentar mis ingresos por medio de tal razones)

- I am applying for assistance from \_\_\_\_\_:  
(Yo deseo aplicar para asistencia con \_\_\_\_\_ (agencia):) (Agency Name)

My household consists of \_\_\_\_\_ number of persons and the following household members, 18 years and older, have earned the following gross income during the 30 day period prior to the date of application for assistance:

Name: _____	Gross Amount Earned: _____
Name: _____	Gross Amount Earned: _____
Name: _____	Gross Amount Earned: _____
Name: _____	Gross Amount Earned: _____

(En mi hogar radican (¿cuántas?) personas, y los siguientes miembros que tienen 18 años de edad ó mas que han ganado dinero durante los pasados 30 dias antes de aplicar para asistencia. Indique el nombre y los ingresos ganados de cada miembro.)

- My household's gross income, for all household members 18 years and older, for the 30 day period prior to the date of application for assistance is \$ \_\_\_\_\_  
(El total de los ingresos de mi hogar, para los miembros que tienen 18 años de edad ó mas por los pasado 30 dias pasados, antes de aplicar por asistencia es (¿cuánto?))
- and my household's gross annualized income based on the 30 day period prior to the date of application for assistance is \$ \_\_\_\_\_  
(y el ingreso anual de mi hogar ha sido calculado para el año, según los pasados 30 dias, antes de aplicar para asistencia, llegan a (¿cuántos dólares?))

I certify that the above information for the income of all household members 18 years and older is true and correct to the best of my knowledge and belief. (Yo certifico que la información proveida de los ingresos de los miembros de mi hogar que tienen 18 años ó mas es verdadera y correcta según mi saber y creencia.)

I understand that the information will be verified to the extent possible; and that I may be subject to prosecution for providing false or fraudulent information. (Comprendo que la información será verificada hasta donde sea posible y que puedo ser enjuiciado por haber proveído información falsa ó fraudulenta.)

\_\_\_\_\_  
(Applicant Signature/Firma del Solicitante)

\_\_\_\_\_  
(Date/Fecha)

\_\_\_\_\_  
(Street Address/Dirección)

\_\_\_\_\_  
(City/Ciudad)

\_\_\_\_\_  
(County/Condado)

\_\_\_\_\_  
(Zip/Código Postal)

\_\_\_\_\_  
(Subrecipient Representative's Signature and Title)

\_\_\_\_\_  
Date

\_\_\_\_\_  
(Reviewed & Approved (Ex.Dir. or Prog. Dir. Name & Title)

\_\_\_\_\_  
Date

**TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS**

CONTRACT NO. [REDACTED] FOR THE  
COMPREHENSIVE ENERGY ASSISTANCE PROGRAM  
(CFDA # 93.568)

**SECTION 1. PARTIES TO THE CONTRACT**

This Comprehensive Energy Assistance Program Contract No. [REDACTED] (the "Contract") is made by and between the Texas Department of Housing and Community Affairs, a public and official agency of the State of Texas (the "Department"), and [REDACTED] a non-profit corporation (the "Subrecipient"), hereinafter the "Parties".

**SECTION 2. CONTRACT PERIOD**

The period for performance of this Contract, unless earlier terminated, is **January 01, 2013** through **December 31, 2013** (hereinafter the "Contract Term").

**SECTION 3. SUBRECIPIENT PERFORMANCE**

Subrecipient shall, on an equitable basis throughout its service area, operate a Comprehensive Energy Assistance Program, (hereinafter the "CEAP"), in accordance with the Economic Opportunity Act of 1964 (Public Law 88-452), the Low-Income Home Energy Assistance Act of 1981 as amended (42 U.S.C. Sec. 8621 et seq.) (Title XXVI of the Omnibus Budget Reconciliation Act of 1981, Public Law 97-35, as amended) (hereinafter the "LIHEAP Act"), Chapter 2306 of the Texas Government Code (hereinafter the "State Act"), the implementing State regulations under Title 10, Part 1, Chapter 5, Subchapters A and D of the Texas Administrative Code, as amended or supplemented from time to time (hereinafter the "State Rules"), the LIHEAP State Plan, Subrecipient's Service Delivery Plan as defined in the State Rules, the Department's guidance related to CEAP, all applicable state and federal regulations and the terms of this Contract. Subrecipient shall assist low-income households with priority being given in no particular order to elderly, persons with disabilities, households with a young child 5 years of age or under, households with high energy burden and households with high energy consumption. Subrecipient shall implement the CEAP in accordance with the Certifications attached hereto as Exhibit A, the Budget attached hereto as Exhibit B, , the Documentation of Disability requirements attached hereto as Exhibit C, and all such Exhibits incorporated herein for all relevant purposes; the assurances, certifications, and all other statements made by Subrecipient in its application funding under this Contract; and with all other terms, provisions, and requirements herein set forth. Subrecipient shall perform direct services under this Contract beginning on January 7, 2013 and continuing until the end of the Contract Term in accordance with the State Rules, amended to be effective January 7, 2013.

**SECTION 4. DEPARTMENT OBLIGATIONS**

- A. In consideration of Subrecipient's satisfactory performance of this Contract, Department shall reimburse Subrecipient for the actual allowable costs for administrative expenditures and Assurance 16 activities as defined herein incurred by Subrecipient during the Contract Term and for the actual allowable costs for direct services incurred by Subrecipient on or after January 7, 2013, in the amount(s) specified in Exhibit B, Budget, of this Contract.
- B. Any decision to obligate additional funds or deobligate funds shall be made in writing by Department in its sole discretion based upon factors including, but not limited to, the status of funding under grants to Department, the rate of Subrecipient's utilization of funds under this or previous contracts, the existence of questioned or disallowed costs under this or other contracts between the Parties, and Subrecipient's overall compliance with the terms of this Contract.
- C. Department's obligations under this Contract are contingent upon the actual receipt of funds from the U.S. Department of Health and Human Services. If sufficient funds are not available to make payments under this Contract, Department shall notify Subrecipient in writing within a reasonable time after such fact is determined. Department shall then terminate this Contract and will not be liable for the failure to make any payment to Subrecipient under this Contract. Department acknowledges that it has received obligations from those sources which, if paid, will be sufficient to pay the allowable costs incurred by Subrecipient under this Contract.

- D. Department is not liable for any cost incurred by Subrecipient which:
1. is subject to reimbursement by a source other than Department;
  2. is for performance of services or activities not authorized by the LIHEAP Act, or which is not in accordance with the terms of this Contract;
  3. is for non-administrative services such as direct services incurred from January 1, 2013 to January 6, 2013;
  4. is not incurred during the Contract Term;
  5. is not reported to Department on a monthly expenditure or performance report within forty five (45) days following the end of the Contract Term; or
  6. is incurred for the purchase or permanent improvement of real property.
- E. Subrecipient shall refund, within fifteen (15) days of the Department's request, any sum of money paid to Subrecipient which Department determines has resulted in an overpayment or has not been spent in accordance with the terms of this Contract.
- F. Notwithstanding any other provision of this Contract, the total of all payments and other obligations incurred by Department under this Contract shall not exceed the sum of [REDACTED].

#### **SECTION 5. METHOD OF PAYMENT/CASH BALANCES**

- A. Each month, Subrecipient may request an advance payment of CEAP funds under this Contract. As per the Uniform Grant Management Standards, 34 T.A.C. §20.421 et seq (herein "UGMS"), Subrecipient's requests for advances shall be limited to the amount needed and be timed to be in accordance with actual immediate cash requirements of the Subrecipient in carrying out the purpose of this Contract.
- B. Subrecipient shall establish procedures to minimize the time elapsing between the disbursement of funds from Department to Subrecipient and the expenditure of such funds by Subrecipient.
- C. Subrecipient must request an advance payment by submitting a properly completed monthly expenditure report to the Department through the electronic reporting system no later than the fifteenth (15th) day of the month prior to the month for which advance payment is sought.
- D. Subsection 4(A) notwithstanding, Department reserves the right to utilize a modified cost reimbursement method of payment, whereby reimbursement of costs incurred by a Subrecipient is made only after the Department has reviewed and approved backup documentation provided by the Subrecipient to support such costs for all funds if (1) Subrecipient maintains excessive cash balances or requests advance payments in excess of thirty (30) days need; (2) Department identifies any deficiency in the internal controls or financial management system used by Subrecipient; (3) Subrecipient violates any of the terms of this Contract; (4) Department's funding sources require the use of a cost reimbursement method of payment or (5) Subrecipient owes the Department funds.
- E. Department may offset or withhold any amounts otherwise owed to Subrecipient under this Contract against any amount owed by Subrecipient to Department arising under this Contract.
- F. All funds paid to Subrecipient under this Contract are paid in trust for the exclusive benefit of the eligible clients of the CEAP and for allowable direct services incurred on or after January 7, 2013 and for allowable administrative expenditures and Assurance 16 activities defined below incurred during the Contract Term, including but not limited to, training/travel expenditures, and services that encourage and enable households to reduce their home energy needs and thereby the need for energy assistance (hereafter "Assurance 16 activities") as defined in the LIHEAP Act.

## **SECTION 6. COST PRINCIPLES AND ADMINISTRATIVE REQUIREMENTS**

- A. Except as expressly modified by law or the terms of this Contract, Subrecipient shall comply with the cost principles and uniform administrative requirements set forth in the UGMS. All references therein to "local government" shall be construed to mean Subrecipient
- B. Uniform cost principles for non-profit organizations are set forth in OMB Circular A-122 as implemented by 2 C.F.R. Part 230. Uniform administrative requirements for non-profits are set forth in OMB Circular A-110. OMB Circular A-133 "Audits of States, Local Governments, and Non-Profit Organizations," sets forth audit standards for governmental organizations and other organizations expending Federal funds. The expenditure threshold requiring an audit under Circular A-133 is \$500,000.
- C. Notwithstanding any other provision of this Contract, Department shall only be liable to Subrecipient for costs incurred or performances rendered for activities specified in the LIHEAP Act.
- D. Subrecipient may incur costs for activities associated with the closeout of the CEAP Contract for a period not to exceed forty five (45) days from the end of the Contract Term defined in Section 2 of this Contract.

## **SECTION 7. TERMINATION AND SUSPENSION**

- A. Pursuant to §5.17 of the State Rules, Department may terminate this Contract, in whole or in part, at any time Department determines that there is cause for termination. Cause for termination includes, but is not limited to, Subrecipient's failure to comply with any term of this Contract or reasonable belief that Subrecipient cannot or will not comply with the requirements of the Contract. If the Department determines that a Subrecipient has failed to comply with the terms of the Contract, or has failed to provide services that meet appropriate standards, goals, or other requirements established by the Department, Department will notify Subrecipient of the deficiencies to be corrected and require the deficiencies be corrected prior to implementing termination.
- B. Subrecipient's failure to expend the funds provided under this Contract in a timely manner may result in either the termination of this Contract or Subrecipient's ineligibility to receive additional funding under CEAP, or a reduction in the original allocation of funds to Subrecipient.
- C. Nothing in this Section shall be construed to limit Department's authority to withhold payment and immediately suspend this Contract if Department identifies possible instances of fraud, abuse, waste, fiscal mismanagement, or other deficiencies in Subrecipient's performance including but not limited to, Subrecipient's failure to correct any monitoring findings on this or any state contract or on a single audit review. Suspension shall be a temporary measure pending either corrective action by Subrecipient or a decision by Department to terminate this Contract.
- D. Notwithstanding any exercise by Department of its right of termination or suspension, Subrecipient shall not be relieved of any liability to Department for damages by virtue of any breach of this contract by Subrecipient. Department may withhold any payment due to Subrecipient until such time as the exact amount of damages due to Department is agreed upon or is otherwise determined in writing between Parties.
- E. Department shall not be liable for any costs incurred by Subrecipient after termination or during suspension of this Contract.

## **SECTION 8. ALLOWABLE EXPENDITURES**

- A. The allowability of Subrecipient's costs incurred in the performance of this Contract shall be determined in accordance with the provisions of Section 4 and the regulations set forth in the LIHEAP Act and the State Rules, subject to the limitations and exceptions set forth in this Section.
- B. CEAP funds may be used for administrative activities and Assurance 16 activities during the Contract Term as well as other allowable expenditures under this Contract such as direct services incurred on or after January 7, 2013 until the end of the Contract Term, and include the following:

1. Conducting Assurance 16 activities, to include needs assessment, referrals, budget counseling, energy conservation education and assistance with energy vendors;
  2. Providing assistance to low income households in meeting their home energy costs;
  3. Intervening in energy crisis situations; or
  4. Department-approved travel and training.
- C. CEAP funds allow up to 6% of the award amount to be utilized for administrative costs. Administrative costs incurred by Subrecipient in performing this Contract are to be based on actual programmatic expenditures and shall be allowed up to the amount outlined in Exhibit B of this Contract. Eligible administrative costs include costs related to staff performance of management, accounting and reporting activities.
- D. Administrative and Assurance 16 Activities funds as defined under and in accordance with the State Rules are earned through provision of direct services to clients. Subrecipient may choose to submit a final budget revision no later than forty five (45) days prior to the end of the Contract Term to use its administration and Assurance 16 activities funds for direct service categories; however, Subrecipient is still required to perform Assurance 16 activities.
- E. Subrecipient shall provide direct services to clients on or after January 7, 2013 and within sixty (60) days of receipt of funds under this Contract pursuant to §5.406(b) of the State Rules, effective January 7, 2013.

#### **SECTION 9. RECORD KEEPING REQUIREMENTS**

- A. Subrecipient shall maintain fiscal and programmatic records and supporting documentation for all expenditures of funds made under this Contract in accordance with the UGMS, Section III, Common Rule: State Uniform Administrative Requirements for Grants and Cooperative Agreements, Subpart C -Post Award Requirements, \_42.
- B. Open Records. Subrecipient acknowledges that all information collected, assembled, or maintained by Subrecipient pertaining to this Contract is subject to the Texas Public Information Act, Chapter 552 of Texas Government Code and must provide citizens, public agencies, and other interested parties with reasonable access to all records pertaining to this Contract subject to and in accordance with the Texas Public Information Act.
- C. Subrecipient shall give the U.S. Department of Health and Human Services, the U.S. General Accounting Office, the Texas Comptroller, the State Auditor's Office, and Department, or any of their duly authorized representatives, access to and the right to examine and copy, on or off the premises of Subrecipient, all records pertaining to this Contract. Such right to access shall continue as long as the records are retained by Subrecipient. Subrecipient agrees to maintain such records in an accessible location for the greater of: (i) four (4) years; (ii) if notified by the Department in writing, the date that the final audit is accepted with all audit issues resolved to the Department's satisfaction; (iii) if any litigation claim, negotiation, inspection, or other action has started before the expiration of the required retention period records must be retained until completion of the action and resolution of all issues which arise under it; (iv) a date consistent with any other period required by federal or state law or regulation. Subrecipient agrees to cooperate with any examination conducted pursuant to this Subsection. Upon termination of this Contract, all records are property of the Department.
- D. Subrecipient shall maintain a client file system to document direct services rendered. The direct services must be rendered on or after January 7, 2013. Each client file shall contain the following:
1. Client application containing all Department requirements;
  2. Documentation/verification of client income for the thirty (30) days preceding their application for all household members eighteen (18) years and older, or Declaration of Income Statement (DIS) (if applicable). In order to use the DIS form, each subrecipient shall develop and implement a written policy and procedure on the use of the form, including policies requiring a client statement of efforts to obtain documentation of income with a notarized client signature; as outlined in § 5.407(e) of the State Rules.
  3. Copy of client's utility bill(s);

4. Energy consumption history for previous twelve (12) months (all fuel types) (not applicable for Household Crisis);
  5. Documentation of payment (Documentation of payment may be maintained in a separate file, but must be accessible to the Department.);
  6. Documentation of benefits determination;
  7. Notice of Denial Form (if applicable);
  8. Right of appeal and procedures for denial or termination of services (if applicable);
  9. Any documentation required by directives;
  10. Priority rating form; and
  11. Case notes sufficient to document that Assurance 16 activity has occurred.
- E. Subrecipient shall maintain complete client files at all times. Costs associated with incomplete files found at the time of program monitoring may be disallowed.

#### **SECTION 10. REPORTING REQUIREMENTS**

- A. Subrecipient shall electronically submit to Department, no later than fifteen (15) days after the end of each month of the Contract Term, a Funding Report of all expenditures of funds and clients served under this Contract during the previous month. **These reports are due even if Subrecipient has no new activity to report during the month.**
- B. Subrecipient shall submit to Department, no later than forty five (45) days after the end of the Contract Term, an inventory of all vehicles, tools, and equipment with a unit acquisition cost of \$5,000 and /or a useful life of more than one year, if purchased in whole or in part with funds received under this Contract or previous CEAP contracts. The inventory shall include the vehicles, tools, equipment, and appliances purchased with Energy Crisis funds on hand as of the last day of the Contract Term. Subrecipient acknowledges that all equipment and supplies purchased with funds from the CEAP are the property of CEAP and as such, stay with the subrecipient which provides CEAP services in the service area.
- C. Subrecipient shall electronically submit to Department, no later than forty five (45) days after the end of the Contract Term, a final report of all expenditures of funds and clients served under this Contract. Failure of Subrecipient to provide a full accounting of funds expended under this Contract may result in the termination of this Contract and ineligibility to receive additional funds. If Subrecipient fails to submit a final expenditure/performance report within 45 days of the end of the Contract Term, Department will use the last report submitted by Subrecipient as the final report.
- D. If Subrecipient fails to submit, in a timely and satisfactory manner, any report or response required by this Contract, Department may withhold any or all payments otherwise due or requested by Subrecipient hereunder. Payments may be withheld until such time as the delinquent report or response is received by Department. If the delinquent report or response is not received within forty-five (45) days of its due date, Department may suspend or terminate this Contract. If Subrecipient receives funds from Department over two or more Contract Terms, funds may be withheld or this Contract suspended or terminated for Subrecipient's failure to submit a past due report or response (including an audit report) from a prior contract or Contract Term.
- E. Subrecipient shall provide the Department with a Data Universal Numbering System (DUNS) number and a Central Contractor Registration (CCR) System number. The DUNS number must be provided in a document from Dun and Bradstreet and the current CCR number must be submitted from a document retrieved from the <https://www.sam.gov/portal/public/SAM/> website. These documents must be provided to the Department prior to the processing first payment to Subrecipient. Subrecipient shall maintain a current DUNS number and CCR number for the entire Contract Term.

**SECTION 11. VENDOR AGREEMENTS**

For each of Subrecipient's vendors, Subrecipient shall implement and maintain a vendor agreement that contains assurances relating to fair billing practices, delivery procedures, and pricing procedures for business transactions involving CEAP clients. All vendor agreements are subject to monitoring procedures performed by TDHCA. All vendor agreements must be renegotiated every two years.

**SECTION 12. CHANGES AND AMENDMENTS**

- A. Any change, addition or deletion to the terms of this Contract required by a change in federal or state law or regulation is automatically incorporated herein and is effective on the date designated by such law or regulation.
- B. Except as specifically provided otherwise in this Contract, any changes, additions, or deletions to the terms of this Contract shall be in writing and executed by both Parties to this Contract. If any Party returns an executed copy by facsimile machine or electronic transmission, the signing party intends the copy of its authorized signature printed by the receiving machine or the electronic transmission, to be its original signature.
- C. Written requests for Contract amendment must be received by the Department by no later than forty five (45) days prior to the end of the Contract Term.

**SECTION 13. PROGRAM INCOME**

Subrecipient shall account for and expend program income derived from activities financed in whole or in part with funds provided under this Contract in accordance with the UGMS, Common Rule, § 25 and OMB Circular A 110 § 24

**SECTION 14 TECHNICAL ASSISTANCE AND MONITORING**

Department may issue technical guidance to explain the rules and provide directions on terms of this Contract. Department or its designee may conduct on and off-site monitoring and evaluation of Subrecipient's compliance with the terms of this Contract. Department's monitoring may include a review of the efficiency, economy, and efficacy of Subrecipient's performance. Department will notify Subrecipient in writing of any deficiencies noted during such monitoring. Department may provide training and technical assistance to Subrecipient in correcting the deficiencies noted. Department may require corrective action to remedy deficiencies noted in Subrecipient's accounting, personnel, procurement, and management procedures and systems in order to comply with State or Federal requirements. Department may conduct follow-up visits to review the previously noted deficiencies and to assess the Subrecipient's efforts made to correct them. Repeated deficiencies may result in disallowed costs. Department may terminate or suspend this Contract or invoke other remedies Department determines to be appropriate in the event monitoring reveals material deficiencies in Subrecipient's performance, or Subrecipient fails to correct any deficiency within a reasonable period of time, as determined by the Department. Department or its designee may conduct an ongoing program evaluation throughout the Contract Term.

**SECTION 15 INDEPENDENT SUBRECIPIENT**

It is agreed that Department is contracting with Subrecipient as an independent contractor. Subrecipient agrees to indemnify Department against any disallowed costs or other claims which may be asserted by any third party in connection with the services to be performed by Subrecipient under this Contract.

**SECTION 16. PROCUREMENT STANDARDS**

- A. For making procurements under this contract, Subrecipient shall comply with 45 C.F.R. Part 74, OMB Circular A-110, 10 T.A.C. §5.10, and all applicable federal, state, and local laws, regulations, and ordinances.
- B. Subrecipient may not use funds provided under this Contract to purchase personal property, equipment, goods, or services with a unit acquisition cost (the net invoice unit price of an item of equipment) of more than \$5,000 unless Subrecipient has received the prior written approval of Department for such purchase.

- C. Upon the termination or non-renewal of this Contract, Department may transfer title to any such property or equipment having a unit acquisition cost (the net invoice unit price of an item of equipment) of \$5,000 or more to itself or to any other entity receiving Department funding.

**SECTION 17 SUBCONTRACTS**

- A Subrecipient may not subcontract the primary performance of this Contract, including but not limited to expenditure and performance reporting and drawing funds through the Community Affairs Contract System, and only may enter into properly procured contractual agreements for consulting and other professional services, if Subrecipient has received Department's prior written approval. Subrecipient may subcontract for the delivery of client assistance without obtaining Department's prior approval. Any subcontract for the delivery of client assistance will be subject to monitoring by the Department as per Section 14.
  
- B In no event shall any provision of this Section 17, specifically the requirement that Subrecipient obtain Department's prior written approval of a subcontractor, be construed as relieving Subrecipient of the responsibility for ensuring that the performances rendered under all subcontracts are rendered so as to comply with all of the terms of this Contract, as if such performances rendered were rendered by Subrecipient. Department's approval under this section does not constitute adoption, ratification, or acceptance of Subrecipient's or subcontractor's performance hereunder. Department maintains the right to monitor and require Subrecipient's full compliance with the terms of this Contract. Department's approval under this section does not waive any right of action which may exist or which may subsequently accrue to Department under this Contract.

**SECTION 18. AUDIT**

- A. Subrecipient shall arrange for the performance of an annual financial and compliance audit of funds received and performances rendered under this Contract, subject to the following conditions and limitations:
  - 1. Subrecipient expending \$500,000 or more in total Federal awards or \$500,000 in total state financial assistance shall have an audit performed in accordance with the Single Audit Act Amendments of 1996, 31 U.S.C. 7501, and OMB Circular No. A-133, "Audits of States, Local Governments, and Non-Profit Organizations" issued June 30, 1997. For purposes of this Section 18, "Federal financial assistance" means assistance provided by a Federal agency in the form of grants, contracts, loans, loan guarantees, property, cooperative agreements, interest subsidies, insurance or direct appropriations, or other assistance, but does not include amounts received as reimbursement for services rendered to individuals in accordance with OMB guidelines. The term includes awards of Federal financial assistance received directly from Federal agencies, or indirectly through other units of State and local government;
  - 2. Sections 4 D (3) and (4) above notwithstanding, Subrecipient may utilize funds budgeted under this Contract to pay for that portion of the cost of such audit services properly allocable to the activities funded by Department under this Contract.
  - 3. Subrecipient shall submit three (3) copies of such audit report and any associated management letter to the Department, two (2) copies of the audit report to Department's Compliance and Asset Oversight Division and one (1) copy of the audit report to the Department's Community Affairs Division within the earlier of thirty (30) days after receipt of the auditor's report(s), or nine (9) months after the end of the audit period. Subrecipient shall make audit report available for public inspection within thirty (30) days after receipt of the audit report(s). Audits performed under this Section are subject to review and resolution by Department or its authorized representative. Subrecipient shall submit such audit report to the Federal clearinghouse designated by OMB in accordance with OMB A-133.
  - 4. The audit report must include verification of all expenditures by budget category, in accordance with Exhibit B, Budget, of this Contract.
  
- B. The cost of auditing services for a Subrecipient expending less than \$500,000 in total Federal awards per fiscal year is not an allowable charge under Federal awards.

- C. Subsection A of this Section 18 notwithstanding, Department reserves the right to conduct an annual financial and compliance audit of funds received and performance rendered under this Contract. Subrecipient agrees to permit Department or its authorized representative to audit Subrecipient's records and obtain any documents, materials, or information necessary to facilitate such audit.
- D. Subrecipient understands and agrees that it shall be liable to the Department for any costs disallowed pursuant to financial and compliance audit(s) of funds received under this Contract. Subrecipient further understands and agrees that reimbursement to Department of such disallowed costs shall be paid by Subrecipient from funds which were not provided or otherwise made available to Subrecipient under this Contract.
- E. Subrecipient shall facilitate the performance of such audit or audits conducted pursuant to this Section 18 as Department may require of Subrecipient.
- F. Subrecipient shall procure audit services through an open, competitive process at least once every four years. The auditor shall retain working papers and reports for a minimum of the three years after the date of directive of the auditor's report to the Subrecipient. Audit working papers shall be made available upon request to Department at the completion of the audit, as part of a quality review, to resolve audit findings, or to carry out oversight responsibilities consistent with the purposes of this Section. Access to working papers includes the right to obtain copies of working papers, as is reasonable and necessary.
- G. For any fiscal year ending within or immediately after the Contract Term, Subrecipient must submit an "Audit Certification Form" (available from the Department) within sixty (60) days after the Subrecipient's fiscal year end.

#### **SECTION 19. MANAGEMENT OF EQUIPMENT AND INVENTORY**

- A. Subrecipient shall comply with Subchapter A of the State Rules.
- B. Subrecipient may not use funds provided under this Contract to purchase personal property, equipment, goods, or services with a unit acquisition cost (the net invoice unit price of an item of equipment) of more than \$5,000 unless Subrecipient has received the prior written approval of Department for such purchase
- C. Upon the termination or non-renewal of this Contract, Department may transfer title to any such property or equipment having a useful life of one year or more or a unit acquisition cost (the net invoice unit price of an item of equipment) of \$5,000 or more to itself or to any other entity receiving Department funding.

#### **SECTION 20. TRAVEL AND TRAINING**

The travel funds are to be used only for Department-approved training events. Subrecipient shall adhere to OMB Circular A-122 and either its board-approved travel policy, or in the absence of such a policy, the State of Texas travel policies.

#### **SECTION 21. BONDING AND INSURANCE REQUIREMENTS**

- A. If Subrecipient will enter in to a construction or facility improvements contract with a third-party in the amount of \$25,000 of greater, Subrecipient must execute with the contractor a payment bond in the full amount of the contract. If the Subrecipient will enter in to contract with a prime contractor in excess of \$100,000, a performance bond in the full amount of the contract is also required. These bonds must be executed by a corporate surety authorized to do business in Texas, a list of which may be obtained from the State Insurance Department. Such assurances of completion will run to the Department as obligee and must be documented prior to the start of construction.
- B. Subrecipient shall maintain adequate fidelity bond coverage as set forth in Section 5.7 of the State Rules.

- C. Subrecipient shall maintain adequate personal injury and property damage liability insurance. Subrecipient is encouraged to obtain pollution occurrence insurance in addition to the general liability insurance. Generally, regular liability insurance policies do not provide coverage for potential effects of many health and safety measures, such as lead disturbances and other pollution occurrence items. Subrecipient should review existing policies to determine if lead contamination is covered. If it is not, Subrecipient should consider securing adequate coverage for all construction projects. Additional liability insurance costs may be paid from administrative funds. The Department strongly recommends the Subrecipient require their contractors to carry pollution occurrence insurance to avoid being liable for any mistakes the contractors may make. Each agency should get a legal opinion regarding the best course to take for implementing the pollution occurrence insurance coverage.

## **SECTION 22. LITIGATION AND CLAIMS**

Subrecipient shall give Department immediate written notice of any claim or action filed with a court or administrative agency against Subrecipient and arising out of the performance of this Contract or any subcontract hereunder. Subrecipient shall furnish to Department copies of all pertinent papers received by Subrecipient with respect to such action or claim.

## **SECTION 23. LEGAL AUTHORITY**

- A. Subrecipient assures and guarantees that it possesses the legal authority to enter into this Contract, to receive and manage the funds authorized by this Contract, and to perform the services Subrecipient has obligated itself to perform hereunder. The execution, delivery, and performance of this Contract will not violate Subrecipient's constitutive documents or any requirement to which Subrecipient is subject and represents the legal, valid, and binding agreement of Subrecipient, enforceable in accordance with its terms.
- B. The person signing this Contract on behalf of Subrecipient hereby warrants that he/she has been duly authorized by Contract to execute this Contract on behalf of Subrecipient and to validly and legally bind Subrecipient to the terms, provisions and performances herein.
- C. Department shall have the right to suspend or terminate this Contract if there is a dispute as to the legal authority of either Subrecipient, or the person signing this Contract on behalf of Subrecipient, to enter into this Contract or to render performances hereunder. Subrecipient is liable to Department for any money it has received from Department for performance of the provisions of this Contract, if the Department has terminated this Contract for reasons enumerated in this Section 23.

## **SECTION 24. COMPLIANCE WITH LAWS**

- A. FEDERAL, STATE AND LOCAL LAW. Subrecipient shall comply with the LIHEAP Act, the federal rules and regulations promulgated under the LIHEAP Act, the State Act, the State CEAP Rules, LIHEAP State Plan, and all federal, state, and local laws and regulations applicable to the performance of this Contract.
- B. DRUG-FREE WORKPLACE ACT OF 1988. The Subrecipient affirms by signing this contract that it is implementing the Drug-Free Workplace Act of 1988.
- C. PRO-CHILDREN ACT OF 1994. Subrecipient shall follow the requirements of the Pro-Children Act of 1994, (20 U.S.C. Sec. 6081 et seq.) which requires that smoking not be permitted in any portion of any indoor facility owned or leased or contracted by an entity and used routinely or regularly for the provision of health, day care, education, or library services to children under the age of 18 if the services are funded by Federal programs either directly or through States or local governments by Federal grant, contract, loan or loan guarantee
- D. LIMITED ENGLISH PROFICIENCY (LEP). Subrecipients must provide program applications, forms, and educational materials in English, Spanish, and any appropriate language, based on the needs of the service area and in compliance with the requirements in Executive Order 13166 of August 11, 2000. To ensure compliance, the Subrecipient must take reasonable steps to insure that persons with Limited English Proficiency have meaningful access to the program. Meaningful access may entail provide language assistance services, including oral and written translation, where necessary.

**SECTION 25. PREVENTION OF WASTE, FRAUD, AND ABUSE**

- A. Subrecipient shall establish, maintain, and utilize systems and procedures to prevent, detect, and correct waste, fraud, and abuse in activities funded under this Contract. The systems and procedures shall address possible waste, fraud, and abuse by Subrecipient, its employees, clients, vendors, subcontractors and administering agencies. Subrecipient's internal control systems and all transactions and other significant events are to be clearly documented, and the documentation is to be readily available for monitoring by Department.
- B. Subrecipient shall give Department complete access to all of its records, employees, and agents for the purposes of any investigation of the Comprehensive Energy Assistance Program. Subrecipient shall immediately notify Department of any discovery of waste, fraud, or abuse. Subrecipient shall fully cooperate with Department's efforts to detect, investigate, and prevent waste, fraud, and abuse in the Comprehensive Energy Assistance Program.
- C. Subrecipient may not discriminate against any employee or other person who reports a violation of the terms of this Contract, or of any law or regulation, to Department or to any appropriate law enforcement authority, if the report is made in good faith.

**SECTION 26. CERTIFICATION REGARDING UNDOCUMENTED WORKERS**

Pursuant to Chapter 2264 of the Texas Government Code, by execution of this Contract, Subrecipient hereby certifies that Subrecipient/Local Operator, or a branch, division, or department of Subrecipient does not and will not knowingly employ an undocumented worker, where "undocumented worker" means an individual who, at the time of employment, is not lawfully admitted for permanent residence to the United States or authorized under law to be employed in that manner in the United States. If, after receiving a public subsidy, Subrecipient, or a branch, division, or department of Subrecipient is convicted of a violation under 8 U.S.C. Section 1324a(f), Subrecipient shall repay the public subsidy with interest, at a rate of five percent (5%) per annum, not later than the 120th day after the date the Department notifies Subrecipient of the violation.

**SECTION 27. CONFLICT OF INTEREST/NEPOTISM**

- A. Subrecipient shall maintain written standards of conduct governing the performance of its employees engaged in the award and administration of contracts
- B. No employee, officer, or agent of Subrecipient shall participate in the selection, award, or administration of a contract supported by federal funds if a real or apparent conflict of interest would be involved. Such a conflict would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the Parties indicated herein, has a financial or other interest in the firm selected for an award.
- C. The officers, employees, and agents of the Subrecipient shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors, or parties to subagreements. Subrecipients may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct shall provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the Subrecipient.
- D. Subrecipients who are local governmental entities shall, in addition to the requirements of this Section, follow the requirements of Chapter 171 of the Local Government Code regarding conflicts of interest of officers of municipalities, counties, and certain other local governments.
- E. Failure to maintain written standards of conduct and to follow and enforce the written standards is a condition of default under this Contract and may result in termination of the Contract or deobligation of funds

**SECTION 28. POLITICAL ACTIVITY PROHIBITED**

- A. Funds provided under this Contract shall not be used for influencing the outcome of any election, or the passage or defeat of any legislative measure. This prohibition shall not be construed to prevent any official or employee of Subrecipient from furnishing to any member of its governing body upon request, or to any other local or state official or employee, or to any citizen, information in the hands of the employee or official not considered under law to be confidential information. Any action taken against an employee or official for supplying such information shall subject the person initiating the action to immediate dismissal from employment.

- B. Funds provided under this Contract may not be used directly or indirectly to hire employees or in any other way fund or support candidates for the legislative, executive, or judicial branches of government of Subrecipient, the State of Texas, or the government of the United States

**SECTION 29. NON-DISCRIMINATION AND EQUAL OPPORTUNITY**

- A. A person shall not be excluded from participation in, be denied the benefits of, be subjected to discrimination under, or be denied employment in the administration of or in connection with any program or activity funded in whole or in part with funds made available under this Contract, on the grounds of race, color, religion, sex, national origin, age, disability, political affiliation or belief.
- B. Subrecipient agrees to carry out an Equal Employment Opportunity Program in keeping with the principles as provided in President's Executive Order 11246 of September 24, 1965.
- C. Subrecipient will include the substance of this Section 29 in all subcontracts.

**SECTION 30. CERTIFICATION REGARDING CERTAIN DISASTER RELIEF CONTRACTS**

The Department may not award a Contract that includes proposed financial participation by a person who, during the five year period preceding the date of this Contract, has been convicted of violating a federal law in connection with a contract awarded by the federal government for relief, recovery, or reconstruction efforts as a result of Hurricane Rita, as defined by Section 39.459, Utilities Code, Hurricane Katrina, or any other disaster occurring after September 24, 2005; or assessed a penalty in a federal, civil or administrative enforcement action in connection with a contract awarded by the federal government for relief, recovery, or reconstruction efforts as a result of Hurricane Rita, as defined by Section 39.459, Utilities Code, Hurricane Katrina, or any other disaster occurring after September 24, 2005.

By execution of this Contract, the Subrecipient/Local Operator hereby certifies that it is eligible to participate in this Program and acknowledges that this Contract may be terminated and payment withheld if this certification is inaccurate.

**SECTION 31. MAINTENANCE OF EFFORT**

Funds provided to Subrecipient under this Contract may not be substituted for funds or resources from any other source nor in any way serve to reduce the funds or resources which would have been available to, or provided through, Subrecipient had this Contract never been executed.

**SECTION 32. DEBARRED AND SUSPENDED PARTIES**

By signing this Contract, Subrecipient certifies that its principal employees, board members, agents, or contractors agents are not included in the Excluded Parties List System (EPLS) maintained by the General Services Administration (GSA). Subrecipient also certifies that it will not award any funds provided by this Contract to any party that is debarred, suspended, or otherwise excluded from or ineligible for participation in federal assistance programs under Executive Order 12549. Subrecipient agrees that prior to entering into any agreement with a potential subcontractor that the verification process to comply with this requirement will be accomplished by checking the System for Award Management (SAM) at [www.sam.gov](http://www.sam.gov) and including a copy of the results in its project files.

**SECTION 33. FAITH BASED AND SECTARIAN ACTIVITY**

Funds provided under this Contract may not be used for sectarian or inherently religious activities such as worship, religious instruction or proselytization, and must be for the benefit of persons regardless of religious affiliation. Subrecipient shall comply with the regulations promulgated by the HHS at 45 C.F.R. §87.2.

**SECTION 34. COPYRIGHT**

Subrecipient may copyright materials developed in the performance of this Contract or with funds expended under this Contract. Department and HHS shall each have a royalty-free, nonexclusive, and irrevocable right to reproduce, publish, or otherwise use, and to authorize others to use, the copyrighted work for government purposes

**SECTION 35. NO WAIVER**

Any right or remedy given to Department by this Contract shall not preclude the existence of any other right or remedy, nor shall any action taken in the exercise of any right or remedy be deemed a waiver of any other right or remedy. The failure of Department to exercise any right or remedy on any occasion shall not constitute a waiver of Department's right to exercise that or any other right or remedy at a later time.

**SECTION 36. SEVERABILITY**

If any section or provision of this Contract is held to be invalid or unenforceable by a court or administrative tribunal of competent jurisdiction, the remainder shall remain valid and binding.

**SECTION 37. ORAL AND WRITTEN AGREEMENTS**

- A. All oral and written agreements between the Parties relating to the subject matter of this Contract have been reduced to writing and are contained in this Contract.
  
- B. The attachments enumerated and denominated below are a part of this Contract and constitute promised performances under this Contract:
  - 1 Exhibit A, Certification Regarding Lobbying for Contracts, Grants, Loans, and Cooperative Agreements
  
  - 2 Exhibit B, Budget
  
  - 3 Exhibit C, Documentation of Disability

**SECTION 38. SPECIAL CONDITIONS**

- A. In order to achieve compliance with the LIHEAP Act, Subrecipient must coordinate with other energy related programs. Specifically, Subrecipient must make documented referrals to the local Weatherization Assistance Program subrecipient and the Lite Up Texas program administered by the Public Utility Commission of Texas
  
- B. Subrecipient shall accept applications for CEAP benefits at sites that are geographically accessible to all households in the service area. Subrecipient shall provide elderly and disabled individuals the means to submit applications for CEAP benefits without leaving their residence or by securing transportation for them to the sites that accept such applications.

**SECTION 39. APPEALS PROCESS**

In compliance with the LIHEAP Act, Subrecipient must provide an opportunity for a fair administrative hearing to individuals whose application for assistance is denied, terminated or not acted upon in a timely manner. Subrecipient must establish a denial of service complaint procedure in accordance with §5.405 the State Rules.

**SECTION 40. USE OF ALCOHOLIC BEVERAGES**

Funds provided under this Contract may not be used for the payment of salaries to any Subrecipient's employees who use alcoholic beverages while on active duty, for travel expenses expended for alcoholic beverages, or for the purchase of alcoholic beverages.

**SECTION 41. FORCE MAJURE**

If the obligations are delayed by the following, an equitable adjustment will be made for delay or failure to perform hereunder:

- A. Any of the following events: (i) catastrophic weather conditions or other extraordinary elements of nature or acts of God; (ii) acts of war (declared or undeclared), (iii) acts of terrorism, insurrection, riots, civil disorders, rebellion or sabotage; and (iv) quarantines, embargoes and other similar unusual actions of federal, provincial, local or foreign Governmental Authorities; and
- B. The non-performing party is without fault in causing or failing to prevent the occurrence of such event, and such occurrence could not have been circumvented by reasonable precautions and could not have been prevented or circumvented through the use of commercially reasonable alternative sources, workaround plans or other means.

**SECTION 42. TIME IS OF THE ESSENCE**

Time is of the essence with respect to Subrecipient's compliance with all covenants, agreements, terms and conditions of this Contract.

**SECTION 43. COUNTERPARTS AND FACSIMILE SIGNATURES**

This Contract may be executed in one or more counterparts each of which shall be deemed an original but all of which together shall constitute one and the same instrument. Signed signature pages may be transmitted by facsimile or other electronic transmission, and any such signature shall have the same legal effect as an original.

**SECTION 44. NUMBER, GENDER**

Unless the context requires otherwise, the words of the masculine gender shall include the feminine, and singular words shall include the plural.

**SECTION 45. NOTICE**

- A. If notice is provided concerning this Contract, notice may be given at the following (herein referred to as "Notice Address"):

**As to Department:**

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS  
 P. O. Box 13941  
 Austin, Texas 78711-3941  
 Attention: Michael DeYoung  
 Telephone: (512) 475-3950  
 Fax: (512) 475-3935  
 michael.deyoung@tdhca.state.tx.us

**As to Subrecipient:**



- B. All notices or other communications hereunder shall be deemed given when delivered, mailed by overnight service, or five days after mailing by certified or registered mail, postage prepaid, return receipt requested, addressed to the appropriate Notice Address as defined in the above Subsection A of this Section 45.

**SECTION 46. VENUE AND JURISDICTION**

This Contract is delivered and intended to be performed in the State of Texas. For purposes of litigation pursuant to this Contract, venue shall lie in Travis County, Texas.

EXECUTED to be effective on :1/1/2013

[REDACTED]

a non-profit corporation

By: [REDACTED]

Title:Executive Director

**TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS,  
a public and official agency of the State of Texas**

By: Timothy K. Irvine

Title:Its duly authorized officer or representative

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

CONTRACT NO. [REDACTED] FOR THE FY 2013  
COMPREHENSIVE ENERGY ASSISTANCE PROGRAM (CEAP)  
(CFDA # 93.568)

EXHIBIT A  
CERTIFICATION REGARDING LOBBYING FOR  
CONTRACTS, GRANTS, LOANS, AND COOPERATIVE AGREEMENTS

[REDACTED]  
a non-profit corporation

The undersigned certifies, to the best of its knowledge and belief, that:

1. No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an 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 any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, or modification of any federal contract, grant, loan, or cooperative agreement.
2. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of congress, an officer or employee of congress, or an employee of a member of congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit standard form -LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is material representation of fact on which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U S Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

[REDACTED]  
a non-profit corporation

By: [REDACTED]  
Title:Executive Director

Date:1/23/2013

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

CONTRACT NO. [REDACTED] FOR THE FY 2013  
 COMPREHENSIVE ENERGY ASSISTANCE PROGRAM (CEAP)  
 (CFDA # 93.568)

EXHIBIT B  
 BUDGET

[REDACTED]  
 a non-profit corporation

DEPARTMENT FINANCIAL OBLIGATIONS

[REDACTED] CEAP FUNDS CURRENTLY AVAILABLE  
 [REDACTED] TRAINING TRAVEL ALLOWANCE FUNDS CURRENTLY AVAILABLE

BUDGET FOR AVAILABLE ALLOCATIONS

BUDGET CATEGORY	FUNDS	%
Administration	[REDACTED]	-
Assurance 16	[REDACTED]	-
Direct Services	[REDACTED]	-
<b>TOTAL CEAP BUDGET</b>	[REDACTED]	-

BUDGET CATEGORY	FUNDS	%
Household Crisis	[REDACTED]	50.00
Utility Assistance	[REDACTED]	50.00
<b>TOTAL DIRECT SERVICES</b>	[REDACTED]	100.00

Subrecipient's service area consists of the following Texas counties:

[REDACTED]

Administrative costs, salaries, fringe benefits, non-training travel, equipment, supplies, audit and office space are limited to 6.2% of the contract expenditures, excluding Training/Travel costs. All other administrative costs, exclusive of administrative costs for Assurance 16 Activities, must be paid with nonfederal funds.

Assurance 16 Activities costs will be the maximum allowable under the total State of Texas LIHEAP award but at least 6.6% of the contract expenditures excluding Training and Travel costs and must be expended on or after January 7, 2013.

Department's prior written approval for purchase or lease of equipment with an acquisition cost of \$5,000 and over is required. Approval of this budget does not constitute prior approval for such purchases.

Funds may not be used for the purchase or improvement of land, or the purchase, construction, or permanent improvement of any building or facility.

Subrecipient is limited to only one budget revision request during the first 6 months of the Contract Term. A second and final budget revision must be received by the Department no later than 45 days prior to the end of the Contract Period.

Subrecipient shall provide outreach services under all components in this category. Failure to do so may result in contract termination. Subrecipient must document outreach, whether the outreach is conducted with CEAP funds or other funds.

**TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS**

CONTRACT NO. [REDACTED] FOR THE FY 2013  
COMPREHENSIVE ENERGY ASSISTANCE PROGRAM (CEAP)  
(CFDA # 93.568)

EXHIBIT C  
DOCUMENTATION OF DISABILITY

[REDACTED]  
a non-profit corporation

1. All CEAP purchases of portable heating/cooling units are allowable only for households "that include at least one member that is elderly, disabled, or a child aged 5 or younger when Subrecipient has met local weather crisis criteria, pursuant to 10 TAC 5.423(d)(4). No other reason for purchase, including medical reasons, shall be accepted. Notwithstanding the provisions under 10 TAC 10 TAC 5.402, 10 TAC 5.422(c), 10 TAC 5.422(d)(3), and 5.423(d)(4), under NO CIRCUMSTANCES should clients' medical information be collected or kept by Subrecipients.
2. Documentation of Disability must NOT include protected health information as defined in the Texas Health and Safety Code, Subtitle I, Chapter 181.

**TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS**  
CONTRACT NUMBER. [REDACTED] FOR THE  
LOW-INCOME HOME ENERGY ASSISTANCE ACT WEATHERIZATION ASSISTANCE PROGRAM  
(CFDA# 93.568)

**SECTION 1 PARTIES TO THE CONTRACT**

This Low Income Home Energy Assistance Program ("LIHEAP") Weatherization Assistance Program Contract (hereinafter "Contract") is made by and between the Texas Department of Housing and Community Affairs, a public and official agency of the State of Texas ("Department") and [REDACTED], a political subdivision of the State of Texas ("Subrecipient").

**SECTION 2. CONTRACT TERM**

The period for performance of this Contract, unless earlier terminated, is **April 01, 2013** through **March 31, 2014** (hereinafter the "Contract Term").

**SECTION 3 SUBRECIPIENT PERFORMANCE**

Subrecipient shall implement a Weatherization Assistance Program ("WAP") in accordance with the provisions of Part A of the Energy Conservation in Existing Buildings Act of 1976, as amended (42 U.S.C. §6861 et seq.) ("WAP Act"), the sections of the U.S. Department of Energy ("DOE") implementing regulations codified in 10 C.F.R. Parts 440 and 600 ("WAP Regulations") as indicated herein, any applicable Office of Management and Budget ("OMB") Circulars, the Texas WAP State Plan, the Texas LIHEAP State Plan; the implementing State regulations at Title 10, Part I, Chapter 5, Subchapters A, E and G of the Texas Administrative Code as amended or supplemented from time to time ("State Rules"), the Low-Income Home Energy Assistance Act of 1981 as amended (42 U.S.C. §8621 et seq.) ("LIHEAP Act"), and the implementing regulations codified in 45 C.F.R. Part 96 ("LIHEAP Regulations").

Subrecipient shall, on an equitable basis throughout its service area, develop and implement a WAP in the counties and in accordance with the term of the Contract and the "Budget and Performance Statement" attached as Exhibit A, the Certifications attached hereto as Exhibit B, the Personal Responsibility and Work Opportunity Act of 1996 ("PRWORA") Requirements for the WAP attached hereto as Exhibit C, the Documentation of Disability requirements attached hereto as Exhibit D, the LIHEAP Priority List attached hereto as Exhibit E, and all such Exhibits incorporated herein for all relevant purposes; the assurances, certifications, and all other statements made by Subrecipient in its funding under this Contract; and with all other terms, provisions, and requirements herein set forth. Subrecipient shall develop and implement the WAP to assist in achieving a prescribed level of energy efficiency in the dwellings of low-income persons. WAP services will be provided to owner occupied units as well as rental units. Priority will be given to in no particular order (1) households with Elderly Persons as defined in State Rules, (2) Persons with Disabilities as defined in State Rules, (3) households with young children that are age five (5) or younger, and/or (4) households with a high energy burden and households with high energy consumption. Subrecipients are allowed to perform weatherization measures as detailed in Exhibit E of this Contract. If Subrecipient leverages with any Department of Energy weatherization funds, all federal and state DOE rules and requirements will apply including but not limited to income calculation requirements as outlined in Department of Energy - Weatherization Program Notice 13-3. The work will be completed in accordance with the International Energy Conservation Code and the minimum requirements set in the State of Texas adopted International Residential Code or in jurisdictions authorized by State law to adopt later editions.

**SECTION 4. DEPARTMENT FINANCIAL OBLIGATIONS**

- A In consideration of Subrecipient's satisfactory performance of this Contract, Department shall reimburse Subrecipient for the actual allowable costs incurred by Subrecipient in the amount specified in the "Budget and Performance Statement" attached hereto as Exhibit A.
- B Department's obligations under this Contract are contingent upon the actual receipt by Department of adequate 2013 LIHEAP federal program funds. If sufficient funds are not available to make payments under this Contract, Department shall notify Subrecipient in writing within a reasonable time after such fact is determined. Department may then terminate this Contract and will not be liable for the failure to make any payment to Subrecipient under this Contract. Department acknowledges that it has received obligations from those sources which, if paid, will be sufficient to pay the allowable costs incurred by Subrecipient under this Contract.
- C Department is not liable for any cost incurred by Subrecipient which

- (1) is incurred to weatherize a dwelling unit which is not an eligible dwelling unit as defined in §440.22 of the WAP Regulations, except that pursuant to §5.2(b)(34) of the State Rules the dwelling unit shall be eligible for weatherization assistance if it is occupied by a family unit whose income is at or below 125 percent of the poverty guidelines updated periodically in the Federal Register by the U.S. Department of Health and Human Services under the authority of 42 U.S.C. §9902(2) "Poverty Income Guidelines" as;
  - (2) is incurred to weatherize a dwelling unit which is designated for acquisition or clearance by a federal, state, or local program within twelve months from the date weatherization of the dwelling unit is scheduled to be completed;
  - (3) is incurred to weatherize a dwelling unit previously weatherized with weatherization assistance program funds, except as provided for in §440.18(e)(2) of the WAP Regulations;
  - (4) is for Subrecipient's administrative costs incurred in excess of the maximum limitation set forth in Section 8 of this Contract;
  - (5) is not incurred during the Contract Term;
  - (6) is not reported to Department on a monthly expenditure or performance report within forty five (45) days after the termination of the Contract Term;
  - (7) is subject to reimbursement by a source other than Department; or
  - (8) is made in violation of any provision of this Contract or any provision of federal or state law or regulation, including, but not limited to those enumerated in this Contract.
- D. Subrecipient shall refund, within fifteen (15) days of Department's request, any sum of money paid to Subrecipient which Department determines has resulted in an overpayment or has not been spent in accordance with the terms of this Contract. Department may offset or withhold any amount otherwise owed to Subrecipient under this Contract against any amount owed by Subrecipient to Department arising under this or any other Contract between the parties.
- E. Notwithstanding any other provision of this Contract to the contrary, the total of all payments and other obligations incurred by the Department under this Contract shall not exceed the sum of [REDACTED].

#### **SECTION 5 METHOD OF PAYMENT/CASH BALANCES**

- A Each month, Subrecipient may request an advance payment of LIHEAP WAP funds under this Contract As per the Uniform Grant Management Standards, 34 T.A.C. §20.421 et seq ("UGMS"), Subrecipient's requests for advances shall be limited to the amount needed and be timed to be in accordance with actual immediate cash requirements of the Subrecipient in carrying out the purpose of this Contract.
- B The timing and amount of cash advances shall be as close as administratively feasible, not to exceed a 30 day projection of the actual disbursements by the Subrecipient to direct program costs and the proportionate share of any allowable indirect costs.
- C Subsection 4(A) notwithstanding, pursuant to §5 17 of the State Rules, the Department reserves the right to use a modified cost reimbursement method of payment for all funds, whereby reimbursement of costs incurred by a Subrecipient is made only after the Department has reviewed and approved backup documentation provided by the Subrecipient to support such costs for all funds if (1) Department determines that Subrecipient has maintained excess cash balances; (2) Department identifies any deficiency in the cash controls or financial management system maintained by Subrecipient; (3) Department identifies any deficiency in the quality of weatherization work performed by Subrecipient; (4) Department determines that a modified cost reimbursement method would benefit the program; (5) Department's funding sources require the use of a modified cost reimbursement method; or (6) Subrecipient fails to comply with any of the reporting requirements of Section 10.
- D All funds paid to Subrecipient under this Contract are paid in trust for the exclusive benefit of the eligible dwelling units of the weatherization assistance program and for the payment of the allowable expenditures identified in Section 8 of this Contract.

## SECTION 6. COST PRINCIPLES AND ADMINISTRATIVE REQUIREMENTS

- A. Except as expressly modified by law or the terms of this Contract, Subrecipient shall comply with the cost principles and uniform administrative requirements set forth in 34 T.A.C. §20.421, Uniform Grant Management Standards and 10 T.A.C. §5.10. All references therein to "local government" shall be construed to mean Subrecipient.
- B. Uniform cost principles for political subdivisions are set forth in Office of Management and Budget ("OMB") Circular A-87 as implemented by 2 C.F.R. Part 225. Uniform administrative requirements for political subdivisions are set forth in OMB Circular A-102. OMB Circular A-133 "Audits of States, Local Governments, and Non-Profit Organizations," sets forth audit standards for governmental organizations and other organizations expending Federal funds. The expenditure threshold requiring an audit under Circular A-133 is \$500,000.
- C. Notwithstanding any other provision of this Contract, Department shall only be liable to Subrecipient for costs incurred or performances rendered for activities specified in the WAP Act and LIHEAP Act.

## SECTION 7. TERMINATION AND SUSPENSION

- A. Department may terminate this Contract, in whole or in part, at any time Department determines that there is cause for termination. Cause for termination includes but is not limited to Subrecipient's failure to comply with any term of this Contract. Department shall notify Subrecipient in writing no less than thirty (30) days prior to the date of termination.
- B. Nothing in this Section shall be construed to limit Department's authority to withhold payment and immediately suspend Subrecipient's performance under this Contract if Department identifies possible instances of fraud, abuse, waste, fiscal mismanagement, or other serious deficiencies in Subrecipient's performance. Suspension shall be a temporary measure pending either corrective action by Subrecipient or a decision by Department to terminate this Contract.
- C. Notwithstanding any exercise by Department of its right of termination or suspension, Subrecipient shall not be relieved of any liability to Department for damages by virtue of any breach of this Contract by Subrecipient. Department may withhold any payment due to Subrecipient until such time as the exact amount of damages due to Department is agreed upon or is otherwise determined in writing between parties.
- D. Department shall not be liable for any costs incurred by Subrecipient after termination or during suspension of this Contract.
- E. Notwithstanding any exercise by Department of its right of termination or suspension, Subrecipient shall not be relieved of any liability to Department for damages by virtue of any breach of this Contract by Subrecipient.
- F. Subrecipient's failure to expend the funds provided under this Contract in a timely manner may result in either the termination of this Contract or Subrecipient's ineligibility to receive additional funding under WAP, or a reduction in the original allocation of funds to Subrecipient.

## SECTION 8. ALLOWABLE EXPENDITURES

- A. The allowability of Subrecipient's costs incurred in the performance of this Contract shall be determined in accordance with the provisions of Sections 4 and 5 of this Contract and the regulations set forth in §440.18 of the WAP Regulations, subject to the limitations and exceptions set forth in this Section.

To the maximum extent practicable, Subrecipient shall utilize funds provided under this Contract for the purchase of weatherization materials. Subrecipient shall weatherize eligible dwelling units using only weatherization materials which meet or exceed the standards prescribed by DOE in Appendix A to Part 440 of the WAP Regulations, State of Texas adopted International Residential Code (IRC) or jurisdictions authorized by State law to adopt later editions.

- B. For units where Subrecipient leverages with any Department of Energy weatherization funds, all weatherization measures installed must have an approved State of Texas Energy Audit savings-to-investment ratio (SIR) of one or greater unless otherwise indicated as health and safety or incidental repair items. Weatherization measures installed shall begin with those having the greatest SIR (on approved State of Texas Energy Audit) and proceed in descending order to the measures with the smallest SIR or until the maximum allowable per unit expenditures are achieved.

Allowable expenditures under this Contract include:

- (1) the purchase and delivery of weatherization materials as defined in §440.3 of the WAP Regulations;
- (2) if Subrecipient leverages with any Department of Energy weatherization funds, labor costs for doors, primary windows and storm windows that will result in approved energy savings with a SIR of one or greater in accordance with §440.19 of the WAP Regulations;

- (3) the cost of weatherization materials and labor for heating and cooling system tune ups, repairs, modification, or replacements. Whenever available, heating and cooling systems must have an Energy Star rating;
  - (4) transportation of weatherization and repair materials, tools, equipment, and work crews to a storage site and to the site of weatherization work;
  - (5) maintenance, operation, and insurance of vehicles used to transport weatherization materials;
  - (6) maintenance of tools and equipment;
  - (7) purchase or lease of tools or equipment;
  - (8) employment of on-site supervisory personnel;
  - (9) storage of weatherization materials, tools, and equipment;
  - (10) incidental repairs (such as repairs to roofs, walls, floors, and other parts of a dwelling unit) if such repairs are necessary for the effective performance or preservation of weatherization measures (If incidental repairs are necessary to make the installation of the weatherization measures effective, the cost of incidental repair measures charged to WAP funds awarded under this Contract shall not exceed the cost of weatherization measures charged to WAP);
  - (11) allowable health and safety measures; and
  - (12) allowable base load reduction measures.
- C. Health and Safety funds not expended may be moved to the labor, materials, and program support category. These changes will require a Contract action; therefore, Subrecipient must provide written notification to the Department at least forty-five (45) days prior to the end of the Contract Term before these funds can be moved.
- D. Administrative costs incurred by Subrecipient in performing this Contract are to be based on actual programmatic expenditures and shall be allowed up to the amount outlined in the "Budget and Performance Statement" attached hereto as Exhibit A. Allowable administrative costs may include reasonable costs associated with Subrecipient's administrative personnel, travel, audit fees, office space, equipment, and supplies which are necessary for the administration of WAP. Administrative costs are earned based upon the allowable percentage of total allowable expenditures, excluding the allowance for Department/LIHEAP Training Travel or special equipment purchases. Subrecipient may use any or all of the funds allowed for administrative purposes under this Contract for the purchase and delivery of weatherization materials. These changes will require a contract action; therefore, Subrecipient must provide written notification to the Department at least sixty (60) days prior to the end of the Contract Term before these funds can be moved.
- E. To the maximum extent practicable, Subrecipient shall secure the services of volunteers to weatherize dwelling units under the direction of qualified supervisors.

## **SECTION 9. RECORD KEEPING REQUIREMENTS**

- A. Subrecipient shall comply with the record keeping requirements set forth at §440.24 of the WAP Regulations and §5.22 of the State Rules and with such additional record keeping requirements as specified by Department.
- B. For each dwelling unit weatherized with funds received from LIHEAP WAP under this Contract, Subrecipient shall maintain a file containing the following information, including the following Department forms found in the Community Affairs Division section of the Department's website at <http://www.tdhca.state.tx.us/community-affairs/wap/guidance.htm#forms>:
- (1) Signed and completed Application for Weatherization Services indicating the ages of the residents, presence in the household of children age five (5) or younger, Elderly Persons (60 years or older), as defined in the State Rules, and Persons with Disabilities as defined in the State Rules. Date of Application for Weatherization Services and associated documents must be within 12 months of the start date indicated on the Building Weatherization Report (BWR);
  - (2) Twelve month consumer billing history for utilities;
  - (3) Consumption disclosure release form (for access to consumption data for use in surveys and studies);
  - (4) Eligibility and Eligibility documentation:
    - a. For units where Subrecipient leverages with any Department of Energy weatherization funds the following Definition of Income must be adhered to:
      - I. INCOME: Income means Cash Receipts earned and/or received by the applicant before taxes during applicable tax year(s) but not the Income Exclusions listed below in Section C. Gross Income is to be used, not Net Income.
      - II. CASH RECEIPTS: Cash Receipts include the following:
        - i. money, wages and salaries before any deductions;
        - ii. net receipts from non-farm or farm self-employment (receipts from a person's own business or from an owned or rented farm after deductions for business or farm expenses);

- iii. regular payments from social security, railroad retirement, unemployment compensation, strike benefits from union funds, worker's compensation, veteran's payments, training stipends, alimony, and military family allotments;
  - iv. private pensions, government employee pensions (including military retirement pay), and regular insurance or annuity payments;
  - v. dividend and/or interest;
  - vi. net rental income and net royalties;
  - vii. periodic receipts from estates or trusts;
  - viii. net gambling or lottery winnings; and
  - ix. any other required by Federal Laws.
- III. INCOME EXCLUSIONS: The following Cash Receipts are not considered sources of Income for the purposes of determining applicant eligibility:
- i. capital gains;
  - ii. any assets drawn down as withdrawals from a bank;
  - iii. money received from the sale of a property, house, or car;
  - iv. one-time payments from a welfare agency to a family or person who is in temporary financial difficulty;
  - v. tax refunds;
  - vi. gifts, loans, or lump-sum inheritances;
  - vii. college scholarships;
  - viii. one-time insurance payments, or compensation for injury;
  - ix. non-cash benefits, such as the employer-paid or union-paid portion of health insurance;
  - x. employee fringe benefits, food or housing received in lieu of wages;
  - xi. the value of food and fuel produced and consumed on farms;
  - xii. the imputed value of rent from owner-occupied non-farm or farm housing;
  - xiii. Depreciation for farm or business assets;
  - xiv. Federal non-cash benefit programs such as Medicare, Medicaid, Food Stamps, school lunches, and housing assistance;
  - xv. combat zone pay to the military;
  - xvi. Child Support;
  - xvii. Reverse mortgages;
  - xviii. Payments for care of Foster Children; and
  - xix. Any other required by Federal Laws.
- b. Documentation/verification of client income for the thirty (30) days preceding their application for all household members eighteen (18) years and older, or Declaration of Income Statement (DIS) (if applicable). In order to use the DIS form, each Subrecipient shall develop and implement a written policy and procedure on the user of the form, including policies requiring a client statement of efforts to obtain documentation of income with a notarized client signature; as outlined in §5.407(e) of the State Rules. Proof of income documentation requirements are the same for both single and multifamily housing. All proof of income must reflect earnings from within 12 months of the start date indicated on the Building Weatherization Report (BWR).
- c. No dwelling unit shall be weatherized without documentation that the dwelling unit is an eligible dwelling unit as defined in §440.22 of the WAP Regulations, except that pursuant to §5.2(b)(34) of the State Rules the dwelling unit shall be eligible for weatherization assistance if it is occupied by a family unit whose income is at or below 125 percent of the Poverty Income Guidelines;
- (5) BWR to include certification of final inspection and Justification for Omission of Priorities if applicable;
  - (6) invoices of materials purchased or inventory removal sheets;
  - (7) invoices of labor;
  - (8) If a rental unit, Landlord Agreement form, Landlord Financial Participation form and Landlord Permission to Perform Assessment & Inspections for Rental Units" form and all other landlord forms found in the Community Affairs Division section of the Department's website at <http://www.tdhca.state.tx.us/community-affairs/wap/docs/10-WAPLandlord.pdf> ;
  - (9) "Notice of Denial and Appeal Rights," if applicable;
  - (10) Signed and dated "Building Assessment" form, to include at a minimum, existing efficiencies of all heating and cooling appliances;
  - (11) "Attic Inspection" form (local design allowed);
  - (12) "Wall Inspection" form (local design allowed);

- (13) Documentation of pre weatherization carbon monoxide readings for all combustible appliances;
- (14) Documentation of post weatherization carbon monoxide readings for all combustible appliances;
- (15) "Blower Door Performance Standards and Data Sheet";
- (16) "Duct Blower Data Sheet" (if applicable);
- (17) Refrigerator metering information;
- (18) Signed client "Refrigerator Replacement Form" (if applicable);
- (19) Completed, signed and dated "LIHEAP Priority List" form (if applicable);
- (20) A complete copy of the approved State of Texas Energy Audit (if applicable);
- (21) A complete "Energy Audit Data Collection Form" (local design allowed);
- (22) A complete electronic copy of the approved State of Texas Energy Audit (if applicable);
- (23) Signed client receipt of the "Unified Weatherization Elements Notification Form" that includes Lead Hazard information, identification of Mold Like Substance, and State Historical Preservation information; and
- (24) Signed client receipt of "Mold-Like Substance Notification and Release Form for Texas Weatherization Programs"

- C. For each multi-family project weatherized with funds received from LIHEAP under this Contract, Subrecipient shall maintain a master file containing the following information:
  - (1) "Multifamily Project Building Data Checklist";
  - (2) "Multifamily Project Completion Checklist";
  - (3) "Landlord Permission to Perform an Assessment and Inspections for Rental Units";
  - (4) "Landlord Agreement" form;
  - (5) "Landlord Financial Participation Form"; and
  - (6) Significant Data Required in all Multifamily Projects
- D. Materials standards documentation for weatherization material purchased under this Contract must be maintained. These standards must meet the requirements according to Appendix A to Part 440 of the WAP Regulations.
- E. Subrecipient shall give the federal and state funding agencies, the Comptroller General of the United States, and Department access to and the right to reproduce all records pertaining to this Contract. All such records shall be maintained for at least three years after final payment has been made and all other pending matters are closed. Subrecipient shall include the requirements of this Subsection in all subcontracts.
- F. All LIHEAP WAP records maintained by Subrecipient, except records made confidential by law, shall be available for inspection by the public during Subrecipient's normal business hours to the extent required by the Texas Public Information Act (Chapter 552 of the Texas Government Code).
- G. All subrecipients must conduct a full household assessment addressing all possible allowable weatherization measures.

#### SECTION 10. REPORTING REQUIREMENTS

- A. Subrecipient shall electronically submit to Department no later than fifteen (15) days after the end of each month of the Contract Term a Performance Report listing demographic information on all units completed in the previous month and an Expenditure Report listing all expenditures of funds under this Contract during the previous month. **These reports are due even if Subrecipient has no new activity to report during the month. Both reports shall be submitted electronically.**
- B. Subrecipient shall electronically submit to Department no later than forty-five (45) days after the end of the Contract Term a final expenditure and programmatic report utilizing the Monthly Expenditure Report. The failure of Subrecipient to provide a full accounting of all funds expended under this Contract may result in ineligibility to receive additional funds or additional contracts. After forty-five (45) days, any expenditures not reported to the Department will result in funds being reallocated to LIHEAP purposes.
- C. Subrecipient shall submit to Department no later than forty-five (45) days after the end of the Contract Term an inventory of all vehicles, tools, and equipment with a unit acquisition cost of \$5,000.00 or more and a useful life of more than one year, if purchased in whole or in part with funds received under this or previous weatherization assistance program Contracts. The inventory shall reflect the tools and equipment on hand as of the last day of the Contract Term.
- D. Subrecipient shall update the Previously Weatherized Units database no later than fifteen (15) days after the end of each month of the contract for units weatherized under this Contract.
- E. Subrecipients are required to determine if households assisted under this Contract shall be reported as duplicated or unduplicated by accessing the LIHEAP Household Database located in the Community Affairs Contract System.

- F. Subrecipient shall submit other reports, data, and information on the performance of this Contract as may be required by DOE pursuant to §440.25 of the WAP Regulations, by U. S. Department of Health and Human Services (HHS), or by the Department.
- G. If Subrecipient fails to submit, in a timely and satisfactory manner, any report or response required by this Contract, including responses to monitoring reports, Department may withhold any and all payments otherwise due or requested by Subrecipient hereunder. Payments may be withheld until such time as the delinquent report or response is received by Department. If the delinquent report or response is not received within forty-five (45) days of its due date, Department may suspend or terminate this Contract. If Subrecipient receives LIHEAP WAP funds from the Department over two or more Contracts of subsequent terms, funds may be withheld or this Contract suspended or terminated by Subrecipient's failure to submit a past due report or response (including a report of audit) from a prior Contract Term.
- H. Subrecipient shall provide the Department with a Data Universal Numbering System (DUNS) number and a Central Contractor Registration (CCR) System number. The DUNS number must be provided in a document from Dun and Bradstreet and the current CCR number must be submitted from a document retrieved from the [www.sam.gov](http://www.sam.gov) website. These documents must be provided to the Department prior to the processing first payment to Subrecipient. Subrecipient shall maintain a current DUNS number and CCR number for the entire Contract Term.

#### **SECTION 11. CHANGES AND AMENDMENTS**

- A. Any change, addition or deletion to the terms of this Contract required by a change in federal or state law or regulation is automatically incorporated herein and is effective on the date designated by such law or regulation, so long as approved by the Department.
- B. Except as specifically provided otherwise in this Contract, any changes, additions, or deletions to the terms of this Contract shall be in writing and executed by both parties to this Contract. If any Party returns an executed copy by facsimile machine or electronic transmission, the signing party intends the copy of its authorized signature printed by the receiving machine or the electronic transmission, to be its original signature.
- C. Written requests for Contract amendment must be received by the Department by no later than forty-five (45) days prior to the end of the Contract Term.

#### **SECTION 12. PROGRAM INCOME**

Subrecipient shall account for and expend program income derived from activities financed in whole or in part with funds provided under this Contract in accordance with the Uniform Grant Management Standards, Common Rule, §\_25 and OMB Circular A-102, Attachment, 2e.

#### **SECTION 13. INDEPENDENT SUBRECIPIENT**

It is agreed that Department is contracting with Subrecipient as an independent contractor. Subrecipient agrees to indemnify Department against any disallowed costs or other claims, which may be asserted by any third party in connection with the services to be performed by Subrecipient under this Contract.

#### **SECTION 14. PROCUREMENT STANDARDS**

- A. Subrecipient shall comply with OMB Circular A-102 and 10 T.A.C. § 5.10. If leveraging DOE funds, Subrecipient shall also comply with 10 C.F.R. § 600.236(b-i).
- B. Subrecipient may not use funds provided under this Contract to purchase personal property, equipment, goods, or services with a unit acquisition cost (the net invoice unit price of an item of equipment) of more than \$5,000 unless Subrecipient has received the prior written approval of Department for such purchase.
- C. Upon the termination or non-renewal of this Contract, Department may transfer title to any such property or equipment having a useful life of one year or more or a unit acquisition cost (the net invoice unit price of an item of equipment) of \$5,000 or more to itself or to any other entity receiving Department funding.

## SECTION 15. SUBCONTRACTS

- A. Subrecipient may not subcontract the primary performance of this Contract, including but not limited to expenditure and performance reporting and drawing funds through the Community Affairs Contract System. Subrecipient may subcontract for the delivery of client assistance without obtaining Department's prior approval. Any subcontract for the delivery of client assistance will be subject to monitoring by the Department as per Section 20. Subrecipient shall inspect all subcontractors' work and shall be responsible for ensuring that it is completed in a good and workmanlike manner. Subrecipient shall make no payment to subcontractor until all work is complete and has passed a final inspection.
- B. In no event shall any provision of this Section 15, specifically the requirement that Subrecipient obtain Department's prior written approval of a subcontractor, be construed as relieving Subrecipient of the responsibility for ensuring that the performances rendered under all subcontracts are rendered so as to comply with all of the terms of this Contract, as if such performances rendered were rendered by Subrecipient. Department's approval under this section does not constitute adoption, ratification, or acceptance of Subrecipient's or subcontractor's performance hereunder. Department maintains the right to monitor and require Subrecipient's full compliance with the terms of this Contract. Department's approval under this Section does not waive any right of action which may exist or which may subsequently accrue to Department under this Contract.
- C. Every initial assessment, every approved State of Texas Energy Audit, and every final inspection is the sole responsibility of the Subrecipient. Subrecipients may request in writing that the Department permit the Subrecipient to subcontract the performance of assessments, audits and final inspections. The Department will review each request separately to determine whether the request will be granted.

## SECTION 16. AUDIT

- A. Subrecipient shall arrange for the performance of an annual financial and compliance audit of funds received and performances rendered under this Contract, subject to the following conditions and limitations:
  - (1) Subrecipients expending \$500,000 or more in federal financial assistance for any fiscal year ending on or after December 31, 2003, shall have an audit made in accordance with Single Audit Act Amendments of 1996, 31 U.S.C. 7501 and OMB Circular No. A-133, "Audits of States, Local Governments, and Non-Profit Organizations" issued June 30, 1997. For purposes of this Section 16, "federal financial assistance" means assistance provided by a federal agency in the form of grants, contracts, loans, loan guarantees, property, cooperative agreements, interest subsidies, insurance or direct appropriations, but does not include direct federal cash assistance to individuals. The term includes awards of federal financial assistance received directly from federal agencies, or indirectly through other units of state and local government.
  - (2) Subrecipient shall utilize funds budgeted under this Contract to pay for that portion of the cost of such audit services properly allocable to the activities funded by Department under this Contract, provided however that Department shall not make payment for the cost of such audit services until Department has received a satisfactory audit report, as determined by Department, from Subrecipient.
  - (3) Subrecipient shall submit two (2) copies of such audit report and any associated management letter to the Department's Compliance and Asset Oversight Division within the earlier of thirty (30) days after receipt of the auditor's report(s), or nine (9) months after the end of the audit period. Subrecipient shall make audit report available for public inspection within thirty (30) days after receipt of the audit report(s). Audits performed under this Section 16 are subject to review and resolution by Department or its authorized representative. Subrecipient shall submit such audit report to the Federal clearinghouse designated by OMB in accordance with OMB A-133.
  - (4) The audit report must include verification of all expenditures by budget category, in accordance with the final "Monthly Expenditure Report" submitted to close out each year during the Contract Term.
- B. The cost of auditing services for a Subrecipient expending less than \$500,000 in total Federal awards per fiscal year is not an allowable charge under Federal awards.
- C. Subsection A of this Section 16 notwithstanding, Department reserves the right to conduct an annual financial and compliance audit of funds received and performances rendered under this Contract. Subrecipient agrees to permit Department or its authorized representative to audit Subrecipient's records and to obtain any documents, materials, or information necessary to facilitate such audit.

- D. Subrecipient understands and agrees that it shall be liable to Department for any costs disallowed pursuant to financial and compliance audit(s) of funds received under this Contract. Subrecipient further understands and agrees that reimbursement to Department of such disallowed costs shall be paid by Subrecipient from funds which were not provided or otherwise made available to Subrecipient under this Contract.
- E. Subsection A of this section notwithstanding, Subrecipients expending less than \$500,000 in Federal financial assistance may arrange for the performance of an annual financial statement audit. Such audit should include verification as required in Subsection 16(A)(4) of this Section.
- F. Subrecipient shall take such action to facilitate the performance of such audit or audits conducted pursuant to this section as Department may require of Subrecipient.
- G. Subrecipient shall procure audit services through an open, competitive process at least once every five years. The auditor shall retain working papers and reports for a minimum of three years after the date of issuance of the auditor's report to the auditee. Audit working papers shall be made available upon request to Department at the completion of the audit, as a part of a quality review, to resolve audit findings, or to carry out oversight responsibilities consistent with the purposes of this part. Access to working papers includes the right to obtain copies of working papers, as is reasonable and necessary.
- H. For any fiscal year ending within or immediately after the Contract Term, Subrecipient must submit an "Audit Certification Form (available from the Department) within sixty (60) days after the Subrecipient's fiscal year end.

#### **SECTION 17. MANAGEMENT OF EQUIPMENT AND INVENTORY**

- A. Subrecipient acknowledges that any vehicles, tools, and equipment with a unit acquisition cost of \$5,000 or more and a useful life of more than one year, if purchased in whole or in part with funds received under this or previous weatherization assistance program Contracts, are not assets of either the Subrecipient or the Department but are held in trust for the Weatherization Assistance Program and as such are assets of the Weatherization Assistance Program. Any equipment, tools, or vehicles having a useful life of more than one year and an acquisition cost of \$5,000 or more per unit must receive prior approval from the Department before the purchase is made.
- B. Subrecipient shall develop and implement a property management system, which conforms to the uniform administrative requirements referenced in Section 6. Subrecipient shall not use, transfer, or dispose of any property acquired in whole or in part with funds provided under this or a previous weatherization assistance program Contract except in accordance with its own property management system.
- C. Upon termination or non-renewal of this Contract, the Department may transfer the title of equipment to a third party named by the Department. Such a transfer shall be subject to the following standards:
  - (1) The equipment shall be appropriately identified in the award or otherwise made known to the recipient in writing.
  - (2) The Department will issue disposition instructions after receipt of final inventory.
- D. Subrecipient shall establish adequate safeguards to prevent loss, damage, or theft of property acquired hereunder and shall promptly report to Department any loss, damage, or theft of property with an acquisition cost of five thousand and no/100 dollars (\$5,000) or more.
- E. In addition to the inventory of tools and equipment required under Section 10, Subrecipient shall take a physical inventory of all WAP materials and shall reconcile the results with its property records at least once every year. Any differences between quantities determined by the inventory and those shown in the property records shall be investigated by Subrecipient to determine the cause of the difference.

#### **SECTION 18. BONDING AND INSURANCE REQUIREMENTS**

- A. If Subrecipient will enter in to a contract for weatherization activities with a third-party in the amount of \$25,000 or greater, Subrecipient must execute with the contractor a payment bond in the full amount of the contract. If the Subrecipient enters into a contract with a prime contractor in excess of \$100,000, a performance bond in the full amount of the contract is also required. These bonds must be executed by a corporate surety authorized to do business in Texas, a list of which may be obtained from the State Insurance Department. Such assurances of completion will run to the Department as obligee and must be documented prior to the start of weatherization activities.

- B. Subrecipient shall maintain adequate personal injury and property damage liability insurance. Subrecipient is encouraged to obtain pollution occurrence insurance in addition to the general liability insurance. Generally, regular liability insurance policies do not provide coverage for potential effects of many health and safety measures, such as lead disturbances and other pollution occurrence items. Subrecipient should review existing policies to determine if lead contamination is covered. If it is not, Subrecipients should consider securing adequate coverage for all construction projects.
- C. Subrecipient should consider securing adequate coverage for all units to be weatherized. The Department strongly recommends the Subrecipient require their contractors to carry pollution occurrence insurance to avoid being liable for any mistakes the contractors may make. Each Subrecipient should get a legal opinion regarding the best course to take for implementing the pollution occurrence insurance coverage.
- D. Subrecipients must also require all independent subcontractors to have general liability insurance. Subrecipients' insurance must cover the pollution occurrence insurance coverage for their independent subcontractors or the independent subcontractors must obtain the coverage.

#### **SECTION 19. LITIGATION AND CLAIMS**

Subrecipient shall give Department immediate written notice of any claim or action filed with a court or administrative agency against Subrecipient and arising out of the performance of this Contract or any subcontract hereunder. Subrecipient shall furnish to Department copies of all pertinent papers received by Subrecipient with respect to such action or claim.

#### **SECTION 20. TECHNICAL ASSISTANCE AND MONITORING**

- A. Department may issue technical guidance to explain the rules and provide directions on the terms of this Contract. Installation of weatherization materials shall be in accordance with the Material Installation Standards Manual.
- B. Department or its designee may conduct on and off-site monitoring and evaluation of Subrecipient's compliance with the terms of this Contract. Department's monitoring may include a review of the efficiency, economy, and efficacy of Subrecipient's performance. Department will notify Subrecipient in writing of any deficiencies noted during such monitoring. Department may provide training and technical assistance to Subrecipient in correcting the deficiencies noted. Department may require corrective action to remedy deficiencies noted in Subrecipient's accounting, personnel, procurement, and management procedures and systems in order to comply with State or Federal requirements. Department may conduct follow-up visits to review the previously noted deficiencies and to assess the Subrecipient's efforts made to correct them. Repeated deficiencies may result in disallowed costs. Department may terminate or suspend this Contract or invoke other remedies Department determines to be appropriate in the event monitoring reveals material deficiencies in Subrecipient's performance, or Subrecipient fails to correct any deficiency within a reasonable period of time, as determined by the Department. Department or its designee may conduct an ongoing program evaluation throughout the Contract Term.

#### **SECTION 21. LEGAL AUTHORITY**

- A. Subrecipient assures and guarantees that it possesses the legal authority to enter into this Contract, to receive and manage the funds authorized by this Contract, and to perform the services Subrecipient has obligated itself to perform hereunder. The execution, delivery, and performance of this Contract will not violate Subrecipient's constitutive documents or any requirement to which Subrecipient is subject and represents the legal, valid, and binding agreement of Subrecipient, enforceable in accordance with its terms.
- B. The person signing this Contract on behalf of Subrecipient hereby warrants that he/she has been authorized by Subrecipient to execute this Contract on behalf of Subrecipient and to validly and legally bind Subrecipient to all terms, provisions and performances herein set forth.
- C. Department shall have the right to suspend or terminate this Contract if there is a dispute as to the legal authority of either Subrecipient or the person signing this Contract on behalf of Subrecipient, to enter into this Contract or to render performances hereunder. Subrecipient is liable to Department for any money it has received from Department for performance of the provisions of this Contract, if the Department has terminated this Contract for reasons enumerated in this Section 21.

## **SECTION 22. COMPLIANCE WITH LAWS**

- A. FEDERAL, STATE AND LOCAL LAW. Subrecipient shall comply with the LIHEAP Act, the WAP Act, the WAP Regulations, the LIHEAP Regulations, any applicable Office of Management and Budget (OMB) Circulars, the Texas DOE WAP State Plan, LIHEAP State Plan, the State Rules, and all federal, state, and local laws and regulations applicable to the performance of this Contract.
- B. DRUG-FREE WORKPLACE ACT OF 1988. The Subrecipient affirms by signing this Contract that it is implementing the Drug-Free Workplace Act of 1988.
- C. PRO-CHILDREN ACT OF 1994. Subrecipient shall follow the requirements of the Pro-Children Act of 1994, (20 U.S.C. Sec. 6081 et seq.) which requires that smoking not be permitted in any portion of any indoor facility owned or leased or contracted by an entity and used routinely or regularly for the provision of health, day care, education, or library services to children under the age of 18 if the services are funded by Federal programs either directly or through States or local governments by Federal grant, contract, loan or loan guarantee.
- D. LIMITED ENGLISH PROFICIENCY (LEP). Subrecipients must provide program applications, forms, and educational materials in English, Spanish, and any appropriate language, based on the needs of the service area and in compliance with the requirements in Executive Order 13166 of August 11, 2000. To ensure compliance, the Subrecipient must take reasonable steps to insure that persons with Limited English Proficiency have meaningful access to the program. Meaningful access may entail provide language assistance services, including oral and written translation, where necessary.

## **SECTION 23. PREVENTION OF FRAUD AND ABUSE**

- A. Subrecipient shall establish, maintain, and utilize internal control systems and procedures sufficient to prevent, detect, and correct incidents of waste, fraud, and abuse in the WAP and to provide for the proper and effective management of all program and fiscal activities funded by this Contract. Subrecipient's internal control systems and all transactions and other significant events must be clearly documented and the documentation made readily available for review by Department.
- B. Subrecipient shall give Department complete access to all of its records, employees, and agents for the purpose of monitoring or investigating the WAP. Subrecipient shall fully cooperate with Department's efforts to detect, investigate, and prevent waste, fraud, and abuse. Subrecipient shall immediately notify the Department of any identified instances of waste, fraud, or abuse.
- C. Subrecipient may not discriminate against any employee or other person who reports a violation of the terms of this Contract or of any law or regulation to Department or to any appropriate law enforcement authority, if the report is made in good faith.

## **SECTION 24. CERTIFICATION REGARDING UNDOCUMENTED WORKERS**

Pursuant to Chapter 2264 of the Texas Government Code, by execution of this Contract, Subrecipient hereby certifies that Subrecipient/Local Operator, or a branch, division, or department of Subrecipient does not and will not knowingly employ an undocumented worker, where "undocumented worker" means an individual who, at the time of employment, is not lawfully admitted for permanent residence to the United States or authorized under law to be employed in that manner in the United States. If, after receiving a public subsidy, Subrecipient, or a branch, division, or department of Subrecipient is convicted of a violation under 8 U.S.C. Section 1324a(f), Subrecipient shall repay the public subsidy with interest, at a rate of five percent (5%) per annum, not later than the 120th day after the date the Department notifies Subrecipient of the violation.

## **SECTION 25. CONFLICT OF INTEREST/NEPOTISM**

- A. Subrecipient shall maintain written standards of conduct governing the performance of its employees engaged in the award and administration of contracts.
- B. No employee, officer, or agent of Subrecipient shall participate in the selection, award, or administration of a contract supported by federal funds if a real or apparent conflict of interest would be involved. Such a conflict would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in the firm selected for an award.

- C. The officers, employees, and agents of the Subrecipient shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors, or parties to subagreements. Subrecipients may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct shall provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the Subrecipient.
- D. Subrecipients who are local governmental entities shall, in addition to the requirements of this Section, follow the requirements of Chapter 171 of the Local Government Code regarding conflicts of interest of officers of municipalities, counties, and certain other local governments.
- E. Failure to maintain written standards of conduct and to follow and enforce the written standards is a condition of default under this Contract and may result in termination of the Contract or deobligation of funds.

**SECTION 26. POLITICAL ACTIVITY AND LOBBYING PROHIBITED**

- A. Funds provided under this Contract shall not be used for influencing the outcome of any election, or the passage or defeat of any legislative measure. This prohibition shall not be construed to prevent any official or employee of Subrecipient from furnishing to any member of its governing body upon request, or to any other local or state official or employee or to any citizen information in the hands of the employee or official not considered under law to be confidential information. Any action taken against an employee or official for supplying such information shall subject the person initiating the action to immediate dismissal from employment.
- B. Funds provided under this Contract may be used directly or indirectly to hire employees or in any other way fund or support candidates for the legislative, executive, or judicial branches of government of Subrecipient, the State of Texas, or the government of the United States.

**SECTION 27. NON-DISCRIMINATION AND EQUAL OPPORTUNITY**

- A. A person shall not be excluded from participation in, be denied the benefits of, be subjected to discrimination under, or be denied employment in the administration of or in connection with any program or activity funded in whole or in part with funds made available under this Contract, on the grounds of race, color, religion, sex, national origin, age, disability, political affiliation or belief.
- B. Subrecipient agrees to carry out an Equal Employment Opportunity Program in keeping with the principles as provided in President's Executive Order 11246 of September 24, 1965.
- C. Subrecipient will include the substance of Section 27 in all subcontracts.

**SECTION 28. CERTIFICATION REGARDING CERTAIN DISASTER RELIEF CONTRACTS**

The Department may not award a Contract that includes proposed financial participation by a person who, during the five year period preceding the date of this Contract, has been convicted of violating a federal law in connection with a contract awarded by the federal government for relief, recovery, or reconstruction efforts as a result of Hurricane Rita, as defined by Section 39.459, Utilities Code, Hurricane Katrina, or any other disaster occurring after September 24, 2005; or assessed a penalty in a federal, civil or administrative enforcement action in connection with a contract awarded by the federal government for relief, recovery, or reconstruction efforts as a result of Hurricane Rita, as defined by Section 39.459, Utilities Code, Hurricane Katrina, or any other disaster occurring after September 24, 2005.

By execution of this Contract, the Subrecipient/Local Operator hereby certifies that it is eligible to participate in this Program and acknowledges that this Contract may be terminated and payment withheld if this certification is inaccurate.

**SECTION 29. TRAINING AND TECHNICAL ASSISTANCE FUNDS**

- A. Training and technical assistance funds shall be used for State sponsored, LIHEAP sponsored, and other relevant workshops and conferences provided the agenda includes topics directly related to administering WAP in accordance with §5.532 of the LIHEAP State Rules. For Training & Technical Assistance other than State or LIHEAP sponsored, Subrecipient must receive prior written approval from the Department.
- B. Travel funds are to be used only for Department-approved training events. Subrecipient shall adhere to OMB Circular A-87 {2 CFR 225} and either its board-approved travel policy, or in the absence of such a policy, the State of Texas travel policies.

### **SECTION 30. MAINTENANCE OF EFFORT**

Funds provided to Subrecipient under this Contract may not be substituted for funds or resources from any other source, nor may they in any way serve to reduce the funds or resources, which would have been available to or provided through Subrecipient, had this Contract never been executed.

### **SECTION 31. DEBARRED AND SUSPENDED PARTIES**

By signing this Contract, Subrecipient certifies that neither it nor its current principle parties are included in the Excluded Parties List System (EPLS) maintained by the General Services Administration (GSA). Subrecipient also certifies that it will not award any funds provided by this Contract to any party that is debarred, suspended, or otherwise excluded from or ineligible for participation in federal assistance programs under Executive Order 12549. Subrecipient agrees that prior to entering into any agreement with a potential subcontractor that the verification process to comply with this requirement will be accomplished by checking the System for Award Management (SAM) at [www.sam.gov](http://www.sam.gov) and including a copy of the results in its project files.

### **SECTION 32. NO WAIVER**

No right or remedy given to Department by this Contract shall preclude the existence of any other right or remedy, nor shall any action taken in the exercise of any right or remedy be deemed a waiver of any other right or remedy. The failure of Department to exercise any right or remedy on any occasion shall not constitute a waiver of Department's right to exercise that or any other right or remedy at a later time.

### **SECTION 33. ORAL AND WRITTEN AGREEMENTS**

- A. All oral and written agreements between the parties relating to the subject matter of this Contract have been reduced to writing and are contained in this Contract.
- B. The attachments enumerated and denominated below are a part of this Contract and constitute promised performances under this Contract:
  - (1) Exhibit A, Budget and Performance Statement
  - (2) Exhibit B, Certification Regarding Lobbying for Contracts, Grants, Loans, and Cooperative Agreements
  - (3) Exhibit C, PRWORA Requirements
  - (4) Exhibit D, Documentation of Disability
  - (5) Exhibit E, LIHEAP Priority List

### **SECTION 34. SEVERABILITY**

If any portion of this Contract is held to be invalid by a court of competent jurisdiction, the remainder of it shall remain valid and binding.

### **SECTION 35. HISTORICAL PRESERVATION**

Prior to the expenditure of Federal funds to alter any structure or site, the Subrecipient is required to comply with the requirements of Section 106 of the National Historic Preservation Act (16 U.S.C. 470 )(NHPA). The Department has provided guidance through the best practice document posted on the Department's website at <http://www.tdhca.state.tx.us/community-affairs/wap/docs/WAP-BP-HistoricPresFlowchart.pdf>

### **SECTION 36. USE OF ALCOHOLIC BEVERAGES**

Funds provided under this Contract may not be used for the payment of salaries to any Subrecipient's employees who use alcoholic beverages while on active duty, for travel expenses expended for alcoholic beverages, or for the purchase of alcoholic beverages.

### **SECTION 37. APPEALS PROCESS**

In compliance with the WAP Act, Subrecipient must provide an opportunity for a fair administrative hearing to individuals whose application for assistance is denied, terminated or not acted upon in a timely manner, according to §5.505 of the WAP State Rules.

**SECTION 38. SPECIAL CONDITIONS**

Subrecipient shall accept applications for WAP benefits at sites that are geographically accessible to all households in the service area. Subrecipient shall provide elderly and disabled individuals the means to submit applications for WAP benefits without leaving their residence or by securing transportation for them to the sites that accept such applications.

**SECTION 39. FORCE MAJURE**

If the obligations are delayed by the following, an equitable adjustment will be made for delay or failure to perform hereunder:

- A. Any of the following events: (i) catastrophic weather conditions or other extraordinary elements of nature or acts of God; (ii) acts of war (declared or undeclared), (iii) acts of terrorism, insurrection, riots, civil disorders, rebellion or sabotage; and (iv) quarantines, embargoes and other similar unusual actions of federal, provincial, local or foreign Governmental Authorities; and
- B. The non-performing party is without fault in causing or failing to prevent the occurrence of such event, and such occurrence could not have been circumvented by reasonable precautions and could not have been prevented or circumvented through the use of commercially reasonable alternative sources, workaround plans or other means.

**SECTION 40. TIME IS OF THE ESSENCE**

Time is of the essence with respect to Subrecipient's compliance with all covenants, agreements, terms and conditions of this Contract.

**SECTION 41. COUNTERPARTS AND FACSIMILIE SIGNATURES**

This Contract may be executed in one or more counterparts each of which shall be deemed an original but all of which together shall constitute one and the same instrument. Signed signature pages may be transmitted by facsimile or other electronic transmission, and any such signature shall have the same legal effect as an original.

**SECTION 42. NUMBER, GENDER**

Unless the context requires otherwise, the words of the masculine gender shall include the feminine, and singular words shall include the plural.

**SECTION 43. NOTICE**

- A. If notice is provided concerning this Contract, notice may be given at the following (herein referred to as "Notice Address"):

**As to Department:**

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS  
P. O. Box 13941  
Austin, Texas 78711-3941  
Attention: Michael De Young  
Telephone: (512) 475-2125  
Fax: (512) 475-3935  
michael.deyoung@tdhca.state.tx.us

**As to Subrecipient:**



- B. All notices or other communications hereunder shall be deemed given when delivered, mailed by overnight service, or five days after mailing by certified or registered mail, postage prepaid, return receipt requested, addressed to the appropriate Notice Address as defined in the above Subsection A of this Section 43.

**SECTION 44. VENUE AND JURISDICTION**

This Contract is delivered and intended to be performed in the State of Texas. For purposes of litigation pursuant to this Contract, venue shall lie in Travis County, Texas.

EXECUTED to be effective on: **4/1/2013**



**a political subdivision of the State of Texas**

By:

Title:

Date:

**TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS,  
a public and official agency of the State of Texas**

By:

Title: Its duly authorized officer or representative

Date:

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS  
 CONTRACT NUMBER [REDACTED] FOR THE FY 2013  
 LIHEAP WEATHERIZATION ASSISTANCE PROGRAM (CFDA# 93.568)

EXHIBIT A

BUDGET AND PERFORMANCE STATEMENT

[REDACTED]  
 a political subdivision of the State of Texas

**DEPARTMENT FINANCIAL OBLIGATIONS**

[REDACTED] LIHEAP FUNDS CURRENTLY AVAILABLE  
 [REDACTED] TRAINING & TECHNICAL ASSISTANCE FUNDS CURRENTLY AVAILABLE  
 [REDACTED] TOTAL ANTICIPATED LIHEAP FUNDS  
 [REDACTED] TOTAL ANTICIPATED TRAINING & TECHNICAL ASSISTANCE FUNDS

Additional funds may be obligated via Amendment(s). Funds may only be obligated and expended during the current Contract Term. Unexpended fund balances will be recaptured.

**BUDGET FOR AVAILABLE ALLOCATIONS**

1

CATEGORIES	FUNDS
<sup>2</sup> Administration	\$ [REDACTED]
<sup>3</sup> Materials / Program Support / Labor	\$ [REDACTED]
<sup>4</sup> Health and Safety	\$ [REDACTED]
SUB-TOTAL	\$ [REDACTED]
<sup>5</sup> Training and Technical Assistance	\$ [REDACTED]
<b>TOTAL</b>	<b>\$ [REDACTED]</b>

**FOOTNOTES TO BUDGET FOR AVAILABLE ALLOCATIONS:**

- <sup>1</sup> Denotes that the Subrecipient must request in writing any adjustment needed to a budget category before the Department will make any adjustments to the budget categories. The only categories that can be reduced are the Administration, Training and Technical Assistance and/or the Health and Safety categories. Subrecipient is limited to two (2) requested budget revisions during the current Contract Term. Only those written request(s) from the Subrecipient received at least forty-five (45) days before the termination of the Contract Term will be reviewed. Department may decline to review written requests received during the final 45 days of the Contract Term.
- <sup>2</sup> Denotes maximum for administration based on 6.00% of total allowable expenditures.
- <sup>3</sup> Expenses incurred under Roof Repair will come out of your Materials / Program Support / Labor budget.
- <sup>4</sup> Denotes the maximum allowed for Health and Safety expenditures.
- <sup>5</sup> Department approved training / travel only.

**PERFORMANCE**

Subrecipient's service area consists of the following Texas counties:



Subrecipient shall provide weatherization program services sufficient to expend the Contract funds during the Contract Term. WAP costs per unit (materials, labor, and program support), excluding health and safety expenses, shall not exceed \$5,000.00 per unit without prior written approval from the Department. The cumulative total cost per unit (materials, labor, and program support), shall not exceed the maximum allowable by end of the Contract Term.

EXHIBIT B

**CERTIFICATION REGARDING LOBBYING FOR  
CONTRACTS, GRANTS, LOANS, AND COOPERATIVE AGREEMENTS**

[REDACTED]  
a political subdivision of the State of Texas

The undersigned certifies, to the best of its knowledge and belief, that:

1. No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an 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 any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, or modification of any federal contract, grant, loan, or cooperative agreement.
2. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of congress, an officer or employee of congress, or an employee of a member of congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit standard form -LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is material representation of fact on which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S.C. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

[REDACTED]  
a political subdivision of the State of Texas

By:  
Title:  
Date:

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS  
CONTRACT NO. [REDACTED] FOR THE FY 2013  
LIHEAP WEATHERIZATION ASSISTANCE PROGRAM (CFDA# 93.568)

EXHIBIT C

PRWORA REQUIREMENTS

[REDACTED]  
a political subdivision of the State of Texas

If an individual is applying for LIHEAP funds, a Subrecipient must verify that the individual applying for LIHEAP funds is a qualified recipient for funding under the Personal Responsibility and Work Opportunity Act of 1996, ("PRWORA"), Pub. L. 104-193, 110 Stat. 2105, codified at 8 U.S.C. § 1601 et. seq., as amended by the Omnibus Appropriations Act, 1997, Pub. L. 104-208.

To ensure that a non-qualified applicant does not receive "federal public benefits," a unit of general purpose government that administers "federal public benefit programs" is required to determine, and to verify, the individual's alienage status before granting eligibility. 8 U.S.C. § 1642 (a) and (b). Subrecipient must use the SAVE verification system to verify and document qualified alien eligibility.

An exception to the requirement of verification of alienage status applies when the applicant's eligibility is determined by a non-profit charitable organization. To be eligible for this exemption, an organization must be both "nonprofit" and "charitable." An organization is "nonprofit" if it is organized and operated for purposes other than making gains or profits for the organization, its member or its shareholders, and is precluded from distributing any gains or profits to its members or shareholders. An organization is "charitable" if it is organized and operated for charitable purposes. The term "charitable" should be interpreted in its generally accepted legal sense as developed by judicial decisions. It includes organizations dedicated to relief of the poor and distressed or the underprivileged, as well as religiously-affiliated organizations and educational organizations. Federal Register on November 17, 1997 at 62 Fed. Reg. 61344.

**TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS**  
CONTRACT NO. [REDACTED] FOR THE FY 2013  
LIHEAP WEATHERIZATION ASSISTANCE PROGRAM (CFDA# 93.568)

EXHIBIT D

DOCUMENTATION OF DISABILITY

[REDACTED]  
a political subdivision of the State of Texas

1. All LIHEAP WAP repairs, purchases and/or replacements of heating/cooling units are allowable only for eligible units for which a priority list has been completed and health and safety issues documented. No other reason for repair, purchase and/or replacements, including medical reasons, shall be accepted. Under NO CIRCUMSTANCES should clients' medical information be collected or kept by Subrecipients.
2. Acceptable forms of Documentation of Disability include: Social Security or Supplemental Security Income Statement, and acceptable proof of disability shall be kept in the client's file to validate eligibility. In no instance should a medical professional's documentation of disability be considered acceptable proof of a disability.

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS  
CONTRACT NO [REDACTED] FOR THE FY 2013  
LIHEAP WEATHERIZATION ASSISTANCE PROGRAM (CFDA# 93.568)

EXHIBIT E

LIHEAP PRIORITY LIST

[REDACTED]  
a political subdivision of the State of Texas

1. Health & Safety Items

- Refer to H&S guidance located on the Department website at the following link:  
<http://www.tdhca.state.tx.us/community-affairs/wap/guidance.htm#healthsafety>

2. Infiltration Measures, Maximum Cost

- \$750, maximum cost
- Must follow Material Installation Standards Manual located on the Department's website at the following link:  
<http://www.tdhca.state.tx.us/community-affairs/wap/docs/WAP-MISM.pdf>
- Home must have final blower door reading above Building Tightness Limit
- When solely utilizing the LIHEAP Priority List, minimum CFM reduction is not
- All cost (labor and materials) must be detailed on the Building Weatherization Report (BWR)
- No window or door replacements allowed
- Complete Blower Door Data Sheet as instructed

3. Duct Sealing

- \$750, maximum cost
- All return ducts to be sealed regardless of location
- All supply ducts to be sealed when in un-conditioned space

4. Attic Insulation

- Follow current code
- Block all heat sources & attic hatches
- If no insulation is added but ventilation needed, install ventilation under H&S

5. Compact Florescent Lighting (CFLs)

- Install maximum of 10 CFLs per house

6. Sidewall Insulation

- Dense pack all exterior wall cavities including above and below all windows and doors if no insulation exists

7. Smart Thermostat

- Install only after consultation/training with client

8. Refrigerator Replacement

- Meter for minimum of 30 minutes
- Pre-1993 units can be replaced without metering, as long as manufactured year is documented
- Replaced units must be de-manufactured properly, materials must be recycled and refrigerant properly disposed of to E.P.A. regulations

9. Solar Screens/Window Film

- Install in the following order:
  - West, South, East, then North side of house
- If overhang/eaves are 18" in depth or greater, or if the windows are covered by porches, garages, or any other permanent shading structure, then solar screens/window film cannot be installed on that window

10. Floor Insulation

- Follow current code
- Follow OSHA accessibility standards

11. Miscellaneous Repairs

- Maximum expenditure allowed is \$500
- Must be related to weatherization measure
- No window or door replacements allowed
- Materials include: lumber, shingles, flashing, siding, drywall, masonry supplies, minor window and door repair, gutters, downspouts, paint, stains, and sealants
- Regarding mobile homes, could include mobile home skirting and overhangs to protect mobile home doors
- Could also include carpentry work to protect water heaters located outside to protect DWH from weather elements
- Could include roof, wall, and floor repair; excluding leveling
- Repair of "essential wiring"
  - Essential wiring defined as any wiring going directly to an appliance that is being addressed by the WX program

12. HVAC/Evaporative Cooler System Service

- Complete replacement of furnace/AC/HVAC as energy efficiency measure is a possibility
  - i. Must meet current Energy Star rating
  - ii. Must document accurate Manual J and Manual S in client file
- Clean and tune
- Clean Evaporative and Condensing coils
- Check/adjust gas pressure
- Clean blower wheel (squirrel cage)
- Check all controls, set heat anticipator if applicable
- Change and leave up to twelve new air filters
- No replacement of window air-conditioners if a central system is repaired
- Replacement of window air-conditioners:
  - Maximum of three (3) window units can be replaced
  - Must be Energy Star Rated and sized according to manufacturer's room sizing specifications