

WEATHERIZATION ASSISTANCE GRANT AGREEMENT

This Weatherization Assistance Grant Agreement (the “Agreement”) is entered into as of this ____ day of _____, 20XX by and between the Maryland Department of Housing and Community Development, a principal department of the State of Maryland (the “Department”), and Subgrantee, Inc. _____, a Maryland _____ (the “Subgrantee”).

WHEREAS, the federal Department of Energy (“DOE”) has authorized the Department to operate a Weatherization Assistance Program (“WAP”) for low income families in the State of Maryland (the “Program”) pursuant to the provisions of the Energy Conservation and Production Act, 42 U.S.C. Section 6851 et seq., as amended (the “Act”) and the federal regulations set forth in 10 CFR Part 440, as amended (the “Federal Regulations”); and

WHEREAS, the creation of the Program is mandated by Section 4-211(c) of the Housing and Community Development Article of the Annotated Code of Maryland; and

WHEREAS, the Program is also governed by the State Regulations set forth in COMAR 05.04.14 (the “State Regulations”), the Program Operations Manual (the “Manual”) and the Weatherization Field Guide/SWS (“Field Guide”). The Act, Federal Regulations including the Special Terms and Conditions (the “DOE Terms”), State Regulations, Field Guide and the Manual are hereinafter referred to collectively as the Program Guidelines and are incorporated herein; and

WHEREAS, the Subgrantee applied for and was selected by the Department to provide weatherization services under the Program; and

WHEREAS, the parties agree that the Subgrantee shall provide the services under the Program in accordance with the terms and conditions set forth herein.

NOW THEREFORE, in consideration of the foregoing, and subject to the conditions contained herein, the Department and the Subgrantee agree as follows:

GENERAL TERMS AND CONDITIONS

1. **Purpose of Agreement.** The purpose of this Agreement is to provide the Subgrantee with funding to operate a weatherization assistance program in the following jurisdiction(s): _____ and other jurisdictions as assigned by letter or other written communication by the Department in accordance with the Program Guidelines and this Agreement.

2. **Grant Amount and Uses.**

a. Grant funds may only be used for allowable program costs as identified in the Federal Regulations 10 CFR 440 and 2 CFR 200 that are necessary to implement the WAP program.

b. The Department shall allocate \$_____ to reimburse the Subgrantee for the cost of providing weatherization services (the "WAP Funds") to a minimum number of <X> units in the following categories.

- (i) Administrative funds: \$_____
- (ii) Program Operations: \$_____
- (iii) Health and Safety (H&S) funds: \$_____
- (iv) Training and Technical Assistance (T&TA) \$_____

c. Disbursement or reimbursement of all or any portion of the WAP Funds, including Program Operations, Administrative, T&TA, and Health & Safety Funds, **is subject to the availability of monies** from the following sources:

- (i) \$_____ from DOE for 20XX (the "20XX DOE Funds")

d. It is expected that all allocated funds will be expensed within the defined performance period. The total amount of WAP Funds may be increased or decreased, and the jurisdiction listed in Section 1 may be assigned to another subgrantee by the Department, at its discretion, if:

- (i) The rate of expenditure or production under this Agreement is not consistent with the proposed rate of expenditure or production set forth in the State Plan for the Program Year and future requirements established by DOE; or
- (ii) The Subgrantee fails to perform under this Agreement.

e. The Subgrantee hereby agrees that the WAP Funds may be increased or decreased in accordance with this section unilaterally by letter or other written communication from the Department. The Subgrantee further understands and agrees that DOE and the Department may issue future Program Guidelines, requirements, and schedules to ensure effective and timely use of all funds provided under this Agreement.

3. Disbursement.

a. After the effective date of this Agreement and subject to the Performance Period as defined herein, the Department may disburse in one or more payments, an amount equal to the Administrative Funds .

b. Funds shall be disbursed as reimbursements to the Subgrantee for costs that are allowable and properly documented in compliance with the Program Guidelines. Currently, the Program Guidelines require that all reimbursement requests shall be properly invoiced through the Hancock Database System. Requests for reimbursement shall be submitted on a per dwelling unit basis in a format designated by Program Guidelines and as frequently as stipulated by the Program Manager defined in Section 7.

c. The Department has, in its sole discretion, the right to withhold any portion of the WAP Funds or to reduce future reimbursements where it is determined that:

- (i) the Subgrantee failed to perform the services in accordance with the Program Guidelines; or
- (ii) the Subgrantee is in default under this Agreement.

4. Term of the Agreement. The effective date of this Agreement is the date the Department receives a fully executed Agreement, as determined by the date entered on the first page of this Agreement. All weatherization work funded by this Agreement shall be completed by the Agreement End Date of June 30, 20XX.

5. Reports and Recordkeeping.

a. Final Report. The Subgrantee shall promptly submit to the Program Manager a Final Report for each source of WAP Funds and Administrative Funds set forth in Section 2(d) above. If required, the reports shall contain information and shall be due on the dates set forth in the Program Guidelines.

b. The Subgrantee shall maintain books, records, documents, and other evidence and adopt accounting procedures and practices that sufficiently and properly identify and reflect all direct and indirect costs of any nature expended in the performance of this Agreement, and in accordance with all applicable regulations set forth by the United States Office of Management and Budget (“OMB”) that has been or will be provided by the Department to the Subgrantee. Such books, records, documents, and other evidence shall be subject at all reasonable times and upon receipt of reasonable notice for inspection, review, or audit by Federal and/or State personnel whose official duties require such inspection, review, or audit and by such other persons authorized by the Department.

c. The Subgrantee shall retain all records for the periods of time set forth in the OMB Regulations or for three (3) years after the program has been closed-out by DOE, whichever period of time is longer, and shall provide the Department with records, reports, and other documentation as may be required by the Department.

d. Audit. The Subgrantee shall obtain the services of an independent Certified Public Accountant to perform an organization-wide Single Audit of the Subgrantee in accordance with the Single Audit Act of 1984 and 2 CFR 200 Subpart F (the “Audit”). The Audit shall cover the entire operations of the local government or not-for-profit organization and shall comply with Generally Accepted Government Auditing Standards for Financial and Compliance Audits as contained in the Standards for Audit of Government Organizations, Programs, Activities, and Functions (1988 Revision), issued by the U.S. General Accounting Office. The current Audit is due to the Department within nine (9) months after the end of the Subgrantee’s fiscal year, or thirty (30) days from the date the report is issued to the subgrantee, whichever is sooner. The most recent available Audit must also be submitted with this contract.

6. Default and Remedies.

a. The following shall constitute a default under this Agreement: (i) breach of any of the Subgrantee's covenants, agreements, or certifications in this Agreement, including the expenditure of WAP Funds and Administrative Funds for any use other than for the purposes set out in the Program Guidelines; or (ii) demand by DOE upon the Department for the repayment of WAP Funds for any action or inaction of the Subgrantee.

b. Upon occurrence of any default, the Department shall have the right to terminate this Agreement by written notice to the Subgrantee. Subgrantee shall have 30 days from the date the Department's notice is postmarked to cure the default. After the conclusion of the 30-day period, if Subgrantee has not cured or commenced to cure the default to the satisfaction of the Department, the Department may at its option immediately terminate this Agreement. In the event of termination by the Department:

(i) Subgrantee's authority to request reimbursement shall cease and the Subgrantee shall have no right, title, or interest in or to any of the WAP Funds not disbursed;

(ii) the Department may demand repayment from the Subgrantee of any amounts the Department determines were not expended in accordance with this Agreement; and

(iii) the Department, at its discretion, may demand repayment of all WAP Funds distributed to the Subgrantee.

c. Notwithstanding Section 6.a-b. above, the Department may suspend the Subgrantee from the Program immediately upon making a determination that: (1) not to do so would pose an imminent danger to life, health, or property; or (2) the performance by the Subgrantee is not in compliance with the Program Guidelines. The Department will notify the Subgrantee of the date of suspension by certified mail. The notice shall include the grounds for the suspension and the opportunity for the Subgrantee to request a conference with the Department. If the Department receives a request from the Subgrantee for a conference within fifteen (15) days from the mailing date of the notice of the suspension, the Department will schedule a conference with the Subgrantee. After the conference, the Department will promptly either: terminate the Agreement; continue the suspension; or reinstate the Subgrantee.

d. In addition to the rights and remedies contained in this Agreement, the Department may at any time proceed to protect and enforce all rights available to the Department by suit in equity, action at law, or by any other appropriate proceedings, all of which rights and remedies shall survive the termination of this Agreement.

7. Program Coordinator. The representative of the Department who will serve as Program Coordinator for this Agreement is the Program Manager for the Weatherization Assistance Program or designee.

8. Indemnification/Insurance.

a. To the extent permitted by law, Subgrantee releases the Department from, and agrees that the Department shall not have any liability for, and agrees to defend, protect, indemnify, and save harmless the Department from and against, any and all liabilities, suits, actions, claims, demands, losses, expenses, and costs of every kind and nature, including reasonable attorney's fees, incurred by, or asserted against, the Department, as a result of or in connection with the services provided. All money expended by the Department as a result of such liabilities, suits, actions, claims, demands, losses, expenses, or costs, together with interest at a rate not to exceed the maximum interest rates permitted by law, shall be immediately and without notice due and payable by Subgrantee to the Department. Subgrantee's obligation to indemnify the Department shall survive the term of this Agreement.

b. Insurance. Subgrantee shall maintain the insurance coverage set forth below during the term of this Agreement, and for a period of three (3) years thereafter. Such insurance levels may be satisfied by a combination of general liability and excess coverage. Upon execution of this Agreement, Subgrantee shall furnish to the Department properly executed Certificates of Insurance, including naming the Department as additional insured. Subgrantee shall directly provide to the Department any notices of non-renewal or cancellation in any of the required coverages within thirty (30) days of receipt of such notices.

(i) Worker's Compensation: statutory benefits and limits. Insurance shall contain benefits and limits in full compliance with all state and federal requirements. It shall also include Employer's Liability Insurance with limits of not less than five hundred thousand dollars (\$500,000) per accident, five hundred thousand dollars (\$500,000) per disease and a five hundred thousand dollars (\$500,000) policy limit on disease.

(ii) Comprehensive Automobile Liability Insurance: two million dollars (\$2,000,000) combined single limit per occurrence for bodily injury and property damage shall be in the respective party's name and shall include owned, non-owned, leased and hired vehicle coverage.

(iii) Commercial General Liability Insurance: Insurance shall include a Broad Form Liability Endorsement, including product liability and completed operations coverage with limits of not less than two million dollars (\$2,000,000) combined single limits per occurrence and in the aggregate. Such insurance levels may be satisfied by a combination of general liability and excess coverage.

(iv) If the Subgrantee is a local government, the insurance requirements contained herein may be satisfied through evidence of a self-insurance program satisfactory to the Department.

9. Applicability to Contractors and Agents. Where the services under this Agreement are to be carried out by a contractor or agent of the Subgrantee as procured through a free and open competition process in compliance with all applicable laws, including but not limited to 2 CFR 200.318 through 2 CFR 200.326, the provisions of this Agreement shall be made binding on such

contractor or agent of the Subgrantee. This shall be accomplished by a written agreement or contract between the Subgrantee and any contractor or agent. Where the term “Subgrantee” appears in this Agreement, it shall be interpreted to include any subcontractor or agent of the Subgrantee. The Subgrantee acknowledges and agrees that the Subgrantee has ultimate legal responsibility for ensuring compliance with the requirements of this Agreement.

10. Subgrantee’s Certifications. Subgrantee certifies that:

a. Subgrantee is a [non profit entity duly organized and validly existing under the laws of the State of Maryland][municipal corporation duly organized and validly existing under the laws of the State of Maryland] [body corporate and politic of the State of Maryland] and has all requisite power and authority to enter into and carry out the transactions contemplated by this Agreement.

b. This Agreement has been duly authorized, executed, and delivered by the Subgrantee in such a manner and form as to comply with all applicable laws to make this Agreement the valid and legally binding act and agreement of the Subgrantee.

c. The representations, statements, and other matters contained in the Subgrantee’s application are and remain true and complete in all material respects.

d. Subgrantee has not been, nor currently is, the subject of an investigation by the State of Maryland, the DOE, or any federal, State, or local governmental entity for alleged criminal or civil violations.

e. Subgrantee shall abide by the terms and conditions set forth herein and in the Program Guidelines and provide training to its employees in accordance with the provisions in the Program Guidelines. The attached Special Terms and Conditions is incorporated into the Program Guidelines and the Agreement.

f. Subgrantee shall provide weatherization services to those households eligible for assistance under the Program Guidelines;

g. Subgrantee shall reimburse the Department for any adjustment or repayment of WAP Funds expended due to actions of Subgrantee that reduce funding levels from DOE; and

h. Subgrantee shall abide by and perform all work in accordance with Maryland’s Field Guide and DOE’s most current Standard Work Specifications (SWS). The Subgrantee’s signature on this agreement signifies its acknowledgement of expectations for work quality and performance in accordance with WPN 15-4 and its responsibility to follow all work standards as outlined in the documents referenced in this paragraph.

11. Fair Practices Certification.

a. The Subgrantee certifies that it prohibits discrimination on the basis of political or religious opinion or affiliation, marital status, sexual orientation, color, creed or national origin, or physical or mental disability of a qualified disabled individual.

b. The Subgrantee agrees that it will not engage in the forms of discrimination set forth in paragraph (a) of this Section 11.

c. The Subgrantee shall comply with the provisions of the Governor's Executive Order 01.01.2007.09 regarding the code of fair employment practices and any regulations promulgated thereunder.

d. Upon request by the Department, the Subgrantee shall submit to the Department information relating to its operations, with regard to the contents of this Section.

12. Nondiscrimination and Drug and Alcohol Free Workplace.

a. The Subgrantee may not discriminate against any person on the basis of race, color, religion, national origin, sex, marital status, sexual orientation, physical or mental disability, or age in any aspect of the services to be provided in this Agreement.

b. The Subgrantee shall comply with applicable federal, State, and local laws regarding discrimination and equal opportunity in employment, including:

- (i) Titles VI and VII of the Civil Rights Act of 1964;
- (ii) Title VIII of the Civil Rights Act of 1968, as amended;
- (iii) The Americans with Disabilities Act of 1990; and
- (iv) Article 49B of the Annotated Code of Maryland, as amended.

c. The Subgrantee shall comply with the provisions of the Governor's Executive Order .01.01.1989.18 regarding a drug and alcohol-free workplace and any regulations promulgated thereunder.

13. Performance Period.

a. The WAP, Administrative, Training and Technical Assistance, and Health and Safety Funds from each of the sources set forth in Section 2 (d) must be expended between July 1, 20XX and June 30, 20XX (the "Performance Period").

14. Notice. All notices, requests, approvals, and consents of any kind made pursuant to this Agreement shall be in writing. Any such communication, unless otherwise specified, shall be deemed effective as of the date it is mailed, postage prepaid and addressed as follows:

Communication to the Department:

Weatherization Assistance Program
Department of Housing and Community Development
Housing and Building Energy Programs
7800 Harkins Road – 3rd Floor
Lanham, Maryland 20706
Attention: Kiahna Burney, Program Manager

Communication to Subgrantee:

15. Amendment. This Agreement, or any part thereof, may be amended from time to time only by a written instrument executed by the Department and the Subgrantee.

16. Assignment. This Agreement may not be assigned without the prior written approval of the Department.

17. Entire Agreement. This Agreement constitutes the entire agreement between the parties and supersedes all prior oral and written agreements between the parties hereto with respect to the WAP, Administrative, Technical Assistance and Training, and Health and Safety Funds.

18. Governing Law. This Agreement shall be construed, interpreted, and enforced in accordance with the laws of the State of Maryland.

19. Further Assurances and Corrective Instruments. Subgrantee agrees that it will, from time to time, execute and deliver, or cause to be executed and delivered, such amendments hereto and such further instruments as may be required by the Department to comply with any existing or future State Regulations, Federal Regulations, directives, policies, procedures, and other requirements, or to further the general purposes of this Agreement.

20. Delay Does Not Constitute Waiver. The failure or delay of the Department to exercise any right, power, or remedy upon default shall not constitute a waiver of any term, condition, covenant, or certification in this Agreement, nor constitute agreement to any such default and shall not preclude the Department from exercising any such right, power, or remedy at any later time or times.

21. Dispute Resolution. Should differences arise between the Department and the Subgrantee as to the meaning and application of the provisions of this Agreement, or should differences arise about matters not specifically mentioned in this Agreement, there shall be no suspension of work

by the Subgrantee on account of such differences, and in the interim the Subgrantee shall continue to comply with all Department instructions and requirements concerning the difference or dispute, and such difference or dispute shall be settled in accordance with the following procedure:

a. The Subgrantee shall submit in written form the reason or basis for said dispute or difference to the Program Manager. Such dispute or difference must be submitted in writing to the Program Manager within 30 working days of the occurrence complained of. This time limit may not be waived. The Program Manager shall then take the matter up with the proper person of authority working for the Subgrantee for settlement of the dispute or difference within 10 working days at a mutually convenient time to the Program Manager and the Subgrantee.

b. In the event Program Manager and the Subgrantee cannot arrive at a satisfactory solution within 10 working days, the dispute shall be referred by the Program Manager to the Director of the Department's Housing and Building Energy Programs for resolution within 10 working days of the referral.

c. In the event the dispute or difference cannot be settled satisfactorily by the Director of Housing and Building Energy Program's within 10 working days, the dispute or difference may be submitted to the Secretary of the Department for resolution. The Secretary may delegate his authority to hear such disputes to the Deputy Secretary of the Department. All decisions or resolutions of the Secretary or his designee shall be final.

SPECIAL TERMS AND CONDITIONS

UPDATED ANNUALLY - OBTAIN MOST RECENT FROM PROGRAM MANAGER TO ADD TO AGREEMENT

WITNESS our hands and seals, all as of the date first written above, intending to create a document under seal.

ATTEST/WITNESS: {SUBGRANTEE}

_____ By: _____ (SEAL)

_____ Name: _____

Print Name and Title

Title: _____

ATTEST/WITNESS

DEPARTMENT OF HOUSING AND
COMMUNITY DEVELOPMENT

_____ By: _____ (SEAL)

Name: Kenneth C. Holt

Title: _____

Date: _____

Approved for form and legal sufficiency

Assistant Attorney General