

CITY OF EL PASO, TEXAS  
AGENDA ITEM  
DEPARTMENT HEAD'S SUMMARY FORM

DEPARTMENT: Community and Human Development

AGENDA DATE: March 23, 2010

CONTACT PERSON NAME AND PHONE NUMBER: Bill Lilly (541-4643)

DISTRICT(S) AFFECTED: All Districts

SUBJECT:

AUTHORIZE the City Manager to execute standard contracts between the City of El Paso and Department-approved contractors to perform eligible weatherization energy conservation services on approved residential units pursuant to the City's Department of Energy (DOE) and Texas Department of Housing and Community Affairs (TDHCA) Weatherization Assistance Program (WAP). Also authorize the City Manager or her designee to execute standard grant agreements and related documents between the City of El Paso and eligible applicants to provide for the energy assessments and weatherization improvements on the approved eligible residential units.

BACKGROUND / DISCUSSION:

DEPAR The City of El Paso of El Paso applied to the Texas Department of Housing and Community  
AGEN Affairs and received an award of \$4,007,592 of American Recovery and Reinvestment Act  
CONT (ARRA) funds for the Weatherization Assistance Program. The program is designed to assist  
DISTR low-income families in lowering their energy consumption and subsequently, their energy costs  
and increasing their health, safety and well being. The maximum that may be expended on any  
dwelling unit is \$6500.

Staff is requesting that the City Council authorize the City Manager to execute contracts between the City of El Paso and approved Subcontractors and the City of El Paso and eligible applicants for the installation of approved weatherization and energy efficiency measures.

PRIOR COUNCIL ACTION:

On December 15, 2009, the City Council authorized the execution of the contract between the City of El Paso and the Texas Department of Housing and Community Affairs (TDHCA) in the amount of \$4,007,592 for American Recovery and Reinvestment Act (ARRA) funds for the Weatherization Assistance Program.

AMOUNT AND SOURCE OF FUNDING:

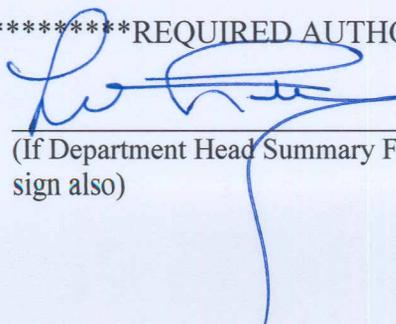
Funding in the amount of \$4,007,592 with come from American Recovery and Reinvestment Act (ARRA) funds via the Texas Department of Housing and Community Affairs

BOARD / COMMISSION ACTION:

Enter appropriate comments or N/A

\*\*\*\*\*REQUIRED AUTHORIZATION\*\*\*\*\*

DEPARTMENT HEAD:

  
(If Department Head Summary Form is initiated by Purchasing, client department should sign also)

# RESOLUTION

## BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

That the City Manager be authorized to execute standard contracts between the City of El Paso and Department-approved contractors to perform eligible weatherization energy conservation services on approved residential units pursuant to the City's Department of Energy (DOE) and Texas Department of Housing and Community Affairs (TDHCA) Weatherization Assistance Program (WAP); and that the City Manager or her designee be authorized to execute standard grant agreements and related documents between the City of El Paso and eligible applicants to provide for the energy assessments and weatherization improvements on the approved eligible residential units.

ADOPTED this \_\_\_\_\_ day of March, 2010.

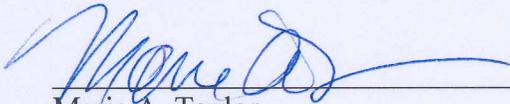
## THE CITY OF EL PASO

\_\_\_\_\_  
John F. Cook  
Mayor

### ATTEST:

\_\_\_\_\_  
Richarda Duffy Momsen, City Clerk

### APPROVED AS TO FORM:

  
\_\_\_\_\_  
Marie A. Taylor  
Assistant City Attorney

### APPROVED AS TO CONTENT:

  
\_\_\_\_\_  
William Lilly, Director  
Community and Human Development

**El Paso Weatherization Assistance Program**  
(RFP No. \_\_\_\_\_) Weatherization Contract

**THIS CONTRACT** is made effective on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between the **CITY OF EL PASO**, (“City”), a municipal corporation and home-rule city of the State of Texas and \_\_\_\_\_, (“Contractor”), a Texas \_\_\_\_\_, doing business in the State of Texas.

The initial addresses of the parties, which one party may change by giving written notice of its changed address to the other party are as follows:

**CITY**  
City of El Paso  
2 Civic Center Plaza- Floor  
El Paso, Texas 79901-1196  
ATTN: Raul “Ed” Gonzalez,  
Weatherization Coordinator  
Community & Human Development

**CONTRACTOR**  
  
  
\_\_\_\_\_, Texas  
ATTN:

**WHEREAS**, The City desires to engage the services of the Contractor, pursuant to this Contract, to deliver, on behalf of the City, energy assessment and weatherization emergency conservation installment services related to the City’s Weatherization Program for eligible residential properties in the City of El Paso.

**NOW, THEREFORE, IN CONSIDERATION OF THE PREMISES AND OF THE MUTUAL COVENANTS AND AGREEMENTS CONTAINED HEREIN, THE CITY AND THE CONTRACTOR AGREE AS FOLLOWS:**

**SECTION 1. SCOPE OF SERVICES**

- A. The Contractor will perform the following services as specifically set forth in the scope of services attached hereto as **Exhibit “A”** and incorporated herein for all purposes.
- B. The City designates the City’s Weatherization Coordinator as the Contractor’s primary contact during the term of this Contract.

**SECTION 2. INCORPORATION OF SOLICITATION DOCUMENTS AND CONTRACTOR’S PROPOSAL**

- A. The Solicitation Documents, including the Request for Proposal No. \_\_\_\_\_ are expressly incorporated in this Contract and made a part of it by reference herein.
- B. In the event of a conflict between (i) the body of this Contract and (ii) either the Solicitation Documents, any issued addenda or errata to the Solicitation Documents, or the Contractor’s Proposal, this Contract shall control; and the Request for Proposal and any addenda or errata thereof shall control over the Contractor’s Proposal in the event of any conflict between them.



(6) Reimbursement is solely on the basis of material and labor costs. Travel or mileage expenses incurred by the Subcontractor or his crews in the performance of this contract are not eligible for reimbursement or payment under this Contract.

- D. It is understood and agreed by the parties that the City will not be obligated to pay for any services not contained in **Exhibit "A"** or elsewhere in this Contract and its attachments. Except as specifically set forth in this Contract and its attachments, all costs related to the completion of the services requested herein shall be borne by the Contractor and not passed on to the City or otherwise paid by the City, unless a written amendment to this Contract or the applicable work order is executed by both parties allowing for additional costs or services.

#### **SECTION 4. TERM OF CONTRACT**

This Contract commences upon execution of the Contract and terminates on \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, unless terminated sooner in accordance with the terms and conditions of this Contract.

#### **SECTION 5. REPRESENTATIONS OF CONTRACTOR**

The Contractor represents, warrants and agrees as follows:

- A. It will comply with all applicable federal, state and local governmental laws, rules, regulations and all provisions of the City of El Paso Charter and Code of Ordinances, now existing or as may be amended, in the performance of its duties under this Contract.
- B. It shall obtain and pay for all licenses, permits and certificates required by any applicable statute, ordinance, rule or regulation of any regulatory body having jurisdiction over the conduct of its operations hereunder. The Contractor warrants that it is duly authorized and licensed to perform its duties hereunder in each jurisdiction in which it will act. It further warrants that its employees, agents and subcontractors shall maintain all required professional licenses during the term of the Contract. If the Contractor receives notice from a licensing authority of a suspension or revocation of a license of Subcontractor's employee(s), agent(s) or subcontractor(s), the Contractor shall immediately remove such employee, agent or subcontractor from performing any further services under this Contract until such license is reinstated and in good standing. If the Contractor fails to maintain such licenses or fails to remove any employee, agent or subcontractor who performs services under this contract whose license has expired or been revoked or suspended, the City shall be entitled, in its sole discretion, to immediately terminate this Contract upon notice to the Contractor.
- C. It warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for commission, percentage, brokerage, or contingent fee excepting bona fide employees of bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty the City shall have the right in addition to any other right or rights to cancel this contract without liability and to deduct from the

contract price, or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee.

- D. The Contractor is an independent contractor and is responsible for its respective acts or omission, and the City shall in no way be responsible as an employer to Contractor's employees, agents or subcontractors who perform service in connection with this contract.
- E. Neither party hereto has authority to bind the other or to hold out to third parties that it has the authority to bind the other.
- F. Contractor represents and warrants that the person executing this Contract and all documents related thereto has the authority to commit Contractor to the obligations, financial and otherwise, required by this Contract.
- G. It warrants that all improvements, hardware, fixtures and materials of whatever kind or nature to be installed or constructed on the weatherization unit by the Contractor or Contractor's agents and subcontractors shall be of good quality, suitable for their purpose and free from defects in workmanship or materials or other deficiencies, and shall be in compliance with all the requirements. All installed materials must meet the U.S. Department of Energy (DOE) materials specifications (refer to 10 CFR 440) in the Requests for Proposals and must comply with the minimum standards set forth in the Texas Department of Housing & Community Affairs (TDHCA) Texas Weatherization Field Guide, the Texas Mechanical Systems Field Guide and the Lead-Safe Weatherization Minimum Standards.
- H. It certifies, as a condition of receiving funds from the City under this Contract, that the funds will be used in accordance with state and federal laws.
- I. It certifies, that it does not and will not knowingly employ an undocumented worker, as defined in Texas Government Code Section 2264.001. If, after receiving payment(s) under this Contract, the Contractor is convicted of a violation under 8 U.S. C. Section 1324a, Contractor shall repay the payment(s) with interest, at a rate of 5% per annum, not later than the 120<sup>th</sup> day after the date the City or TDHCA notifies Contractor of the violation. The interest will accrue from the date the payment(s) were paid to Contractor until the date the reimbursement payments are repaid to the City. The City may also recover court costs and reasonable attorney's fees incurred in an action to recover the payment(s) subject to repayment under this subparagraph.

## **SECTION 6. REQUIRED DOCUMENTATION**

Contractor hereby agrees to provide any and all documentation necessary to fulfill any and all grants (federal, state, or local) requirements pertaining hereto. Contractor shall submit any requested reports, data, and information on the performance of this Contract as may be required by DOE pursuant to 10 CFR 440.25, TDHCA, or the City.

## **SECTION 7. DISCRIMINATION PROHIBITED**

- A. No person in the United States shall, on the grounds of race, creed, color, national origin, (including immigration status where an alien holds proper work authorization), religion, sex, age, or disability be excluded from participation in, be denied the benefits of, or be otherwise subjected to segregation or discrimination in any way, shape or form in employment or under projects or activities funded in whole or in part with funds made available to Contractor pursuant to this Contract, as set forth in Title VI of the Civil Rights Act of 1964 (42 U.S.C. Section 2000d) and implementing regulations at Title 24 CFR Part 1; Age Discrimination Act of 1975 (42 U.S.C. Sections 6101-07) and implementing regulations at Title 24 CFR Part 146; Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. Section 794); implementing regulations at Title 24 CFR Part 8 and Title 1 of the Americans with Disabilities Act of 1990 (ADA) and implementing regulations at Title 28 CFR Part 35.
- B. Furthermore, Contractor shall comply with all the equal opportunity requirements in Title 24 CFR Section 5.105; the requirements of Executive Order 11246 (Equal Opportunity) and the implementing regulations at Title 41 CFR Chapter 60; and the requirements attached to this Contract and incorporated by reference as **Addendum A**.
- C. Contractor must file the Assurance required under City Ordinance 9779, prohibiting discrimination against disabled persons. Failure to do so in any manner which impairs the quality of performance hereunder, or affects the administration of the funds provided hereunder, shall constitute a breach of this Contract.

## **SECTION 8. NON-RELIGIOUS ACTIVITIES**

As applicable, Contractor shall comply with the regulations promulgated by the federal government regarding faith-based activities, as defined at 24 CFR 570.200(j).

## **SECTION 9. CONFLICTS OF INTEREST**

- A. Contractor represents that neither it nor any member of its governing body presently has any interest or shall acquire any interest in, directly or indirectly, which would conflict with the performance of this Contract and that no person having such interest shall be employed by Contractor or appointed as a member of Contractor's governing body.
- B. Contractor shall establish safeguards to prohibit its employees from using their positions for a purpose that is or gives the appearance of being motivated by a desire for private gain for themselves or others, particularly those with whom they have family, business or other ties.
- C. Contractor agrees that it will comply with TEX GOV'T CODE ANN. Chapter 573 by ensuring that no officer, employee, or member of the governing body of Contractor shall vote for or confirm the employment of any person related within the second degree by affinity or third degree by consanguinity to any member of the governing body or to any officer or employee authorized to employ or supervise such person. This prohibition shall not prohibit the continued employment of a person who has been continuously employed for a period of two years prior to the election or appointment of the officer, employee, or governing body member related to such person in the prohibited degree.

**SECTION 10. HATCH ACT**

Neither the funds advanced pursuant to this Contract, nor any personnel who may be employed by Contractor with funds advanced pursuant to this Contract shall be in any way or to any extent engaged in any conduct or political activity in contravention of Chapter 15 of Title 5 of the United States Code.

**SECTION 11. INTEREST OF CERTAIN FEDERAL OFFICIALS**

No member of or delegate to the Congress of the United States, and no Resident Commissioners, shall be entitled to any share or part of this Contract between City and Contractor or to any benefits arising there from.

**SECTION 12. POLITICAL AND LOBBYING ACTIVITIES PROHIBITED**

- A. None of the funds, materials, property or services provided directly or indirectly under this Contract shall be used for any partisan political activity or to further the election or defeat of any candidate for public office, or for publicity, lobbying, and/or propaganda purposes designed to support or defeat legislation pending before the Congress of the United States of America, the Legislature of the State of Texas, or the City Council of the El Paso.
  
- B. Contractor hereby agrees to sign the Certification Regarding Lobbying, attached hereto and made a part of this Contract as **Addendum B**, and if necessary, the Disclosure of Lobbying Activities, attached hereto and made a part of the Certification Regarding Lobbying as **Addendum B**, and return said signed Certification and, if necessary, the completed Disclosure of Lobbying Activities, to City. Contractor shall require the language of the Certification and Disclosure be included in all subcontracts and that all subcontractors shall certify and disclose accordingly.

**SECTION 13. PREVAILING WAGES AND RATES**

Notwithstanding any other provision of law and in a manner consistent with other provisions of the American Recovery and Reinvestment Act of 2009, all laborers and mechanics employed by Contractor and subcontractors in performance of this Contract shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code, pursuant to the Davis-Bacon Act (40 U.S.C. §276a-276a-7) to comply with compensation requirements. Contractor and its subcontractors shall submit weekly the required payroll certification documentation to the City for inspection, review, and certification prior to making any disbursement for the construction work.

**SECTION 14. USE OF ALCOHOLIC BEVERAGES**

None of the funds provided under this Contract shall be used for the payment of salaries to any employee who uses alcoholic beverages while on active duty. No funds provided under this Contract shall be used for the purchase of alcoholic beverages.

## **SECTION 15. DEBARMENT**

By signing this Agreement, Contractor certifies that it is not debarred, suspended or otherwise excluded from or ineligible for participation in federal assistance programs under Executive Order 12549 and 24 CFR Part 24. Further, Contractor is required to immediately report to the City and TDHCA if it is debarred, suspended or otherwise excluded from or ineligible for participation in federal assistance programs under Executive Order 12549 and 24 CFR Part 24. Failure to adequately perform under this Contract may result in penalties up to and including Debarment from performing additional work for the TDHCA.

## **SECTION 16. RECORDKEEPING REQUIREMENTS**

Contractor shall comply with the record keeping requirements set forth at 10 CFR 440.24 and with such additional record keeping requirements as specified by the City.

## **SECTION 17. FORM, ACCESS, RETENTION OF RECORDS**

- A. Contractor shall prepare and maintain files, books, and records, including property, personnel and financial records, as they pertain to costs incurred, audits, administration, activities and functions, and recordkeeping, in connection with the services to be performed under this Contract and shall document all transactions and services performed under this Contract. These records shall be maintained for a period of three (3) years after the termination or expiration of this Contract.
- B. The City, DOE, TDHCA, Comptroller General of the United States or any authorized representative shall have a right of access to make copies of and a right to examine all records, files, books, papers, or documents which are deemed pertinent to the performance of this Contract, as determined solely in the reasonable exercise of the City's, DOE's, TDHCA's or Comptroller General's or their authorized representative's discretion. Copying and auditing will be performed at a reasonable time and place, such as during Contractor's usual business hours, and at Contractor's principal place of business or office. This right shall continue for three (3) years after termination or expiration of this Contract. The City, DOE, TDHCA, or Comptroller General or their authorized representative may additionally request the copying, mailing and/or electronic transmission of records by Contractor.
- C. City reserves the right on its behalf, and on behalf of DOE, TDHCA, and the Comptroller General of the United States, to perform, or have their designees perform, a periodic on-site and desk audit monitoring of Contractor's compliance with the provisions of this Contract. The monitoring shall be conducted in a reasonable time, place and manner by the City. Contractor shall provide the assistance and information needed by the City in monitoring and evaluating the performance of the above-mentioned areas of accountability. It is understood that the City, or its designee, may perform periodic fiscal and programmatic monitoring reviews, including a review of any audit conducted by Contractor. The City, DOE, TDHCA, or the Comptroller General, and/or their designees may request the copying, mailing, and/or electronic transmission of Contractor's records in connection with an on-site or desk audit monitoring.

**SECTION 18. CHANGES AND AMENDMENTS**

Any change in the terms of this Contract required by a change in state or federal law or regulation is automatically incorporated herein effective on the date designated by such law or regulation and Contractor is on constructive notice of this change whether actual notice is provided. The performance under this Contract may be amended from time to time during the period of performance of this contract, by the City, TDHCA or a federal agency issuing policy directives which serve to establish, interpret, or clarify performance requirements under this contract. Such policy directives shall be promulgated by the TDHCA in the form of issuance, shall have the effect of qualifying the terms of this Contract and shall be binding upon Contractor as if written herein.

**SECTION 19. REQUIREMENT TO POST NOTICE OF WHISTLEBLOWER RIGHTS AND REMEDIES**

Any Contractor receiving funds under this Contract shall post notice of the rights and remedies afforded whistleblowers under Section 1553 of the American Recovery and Reinvestment Act of 2009.

**SECTION 20. JOB POSTINGS ON WORKINTEXAS.COM**

Contractor must post all of their Contract-related job opportunities on the Workintexas.com website.

**SECTION 21. SPECIAL COMPLIANCE PROVISIONS**

Contractor shall comply with the requirements of all applicable laws and regulations, including but not limited to the following:

- (1) Copland "Anti-Kickback" Act (18 USC §874) as supplemented in Department of Labor regulations (29 CFR Part 3). Any suspected or reported violations of this act shall immediately be reported to Texas Department of Community Affairs.
- (2) When required by the federal grant program legislation, all construction contracts in excess of \$2,000 shall include a provision for compliance with the Davis-Bacon Act (140 USC §276a-276a-7) as supplemented by Department of Labor regulations (29 CFR Part 5).
- (3) All contracts in excess of \$2,000 for construction contracts and in excess of \$2,500 for other contracts which involve the employment of mechanics or laborers shall include a provision for compliance with sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 USC §§327-330) as supplemented by Department of Labor regulations (29 CFR Part 5).
- (4) For all contracts in excess of \$100,000 the parties shall comply with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act, Section 508 of the Clean Water Act, Executive Order 11738, and the relevant Environmental Protection Agency Regulations.

**SECTION 22. SB 608 CERTIFICATION**

Under Section 2261.053, Texas Government Code, Contractor certifies that it is not ineligible to receive this Contract and acknowledges that this Contract may be terminated and payment withheld if this certification is inaccurate.

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

- A. Contractor shall establish, maintain, and utilize internal control systems and procedures sufficient to prevent, detect, and correct incidents of waste, fraud, and abuse related to the City's Weatherization Program and to provide for the proper and effective management of all program and fiscal activities funded by this Contract. Contractor's internal control systems and all transactions and other significant events must be clearly documented and the documentation made readily available for review by the City or TDHCA.
- B Contractor shall give the City and TDHCA complete access to all of its records, employees, and agents for the purpose of monitoring or investigating the conduct related to the City's Weatherization Program. Contractor shall fully cooperate with City and TDHCA's efforts to detect, investigate, and prevent waste, fraud and abuse. Contractor shall immediately notify the City of any identified instances of waste, fraud, or abuse.
- C. Contractor will notify TDHCA upon identification of possible instances of waste, fraud, and abuse or other serious deficiencies.
- D. Contractor 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 the City or TDHCA or to any appropriate law enforcement authority, if the report is made in good faith.

**SECTION 24. CONFIDENTIAL WORK**

- A. Contractor recognizes that all materials to be prepared hereunder and all data received by the Contractor shall be kept in strictest confidence. The Contractor shall not divulge such confidential information except as approved in writing by the City or as otherwise required by law.
- B. The Contractor shall establish a method to secure the confidentiality of records or information that the Contractor may have access to in accordance with the applicable federal, state, and local laws and regulations. This provision shall not be construed as limiting the City's or its authorized representatives, right of access to records or other information under this Contract.
- C. If the Contractor receives inquiries regarding documents within its possession pursuant to this Contract, the Contractor shall immediately forward such request to the City Attorney's office for disposition.

D. The confidentiality of records and any other records related to the performance of this Contract will be maintained in accordance with and subject to all applicable laws, including the Public Information Act, Chapter 552, Texas Government Code.

**SECTION 25. OWNERSHIP**

All final reports and other materials prepared by the Contractor for the City as part of the paid services rendered under this Contract shall be the property of the City. Upon the City's request, Contractor shall deliver such materials to the City in accordance with the terms and conditions of this Contract. The City shall not, without the Contractor's written consent, associate the Contractor's name with the report/product, if a subsequent change is made in such report/product after submission to the City.

**SECTION 26. INSURANCE REQUIREMENTS**

With no intent to limit Contractor's liability or the indemnification provisions set forth below, the Contractor shall provide and maintain certain insurance in full force and effect at all times during the term of this Contract and any extensions thereto. Such insurance is described as follows:

A. Risks of Limits of Liability. The insurance, at a minimum, must include the following coverage and limits of liability:

<u>COVERAGE</u>	<u>LIMIT OF LIABILITY</u>
Worker's Compensation and  Employer's Liability	Statutory for Worker's Compensation  Bodily Injury by Accident \$500,000 (each accident) Bodily Injury by Disease \$250,000 (policy limit) Bodily Injury by Disease \$250,000 (each employee)
Comprehensive General: Including Broad Form Coverage, Contractual Bodily and Personal Injury	Bodily Injury and Property Damage, combined limits of Liability \$500,000 each occurrence and \$1,000,000 aggregate

Form of Policies. The insurance may be in one or more policies of insurance, the form of which must be approved by the Director of Community and Human Development ("Director").

Issuers of Policies. The issuer of any policy must have a certificate of authority to transact insurance business in the State of Texas. Each issuer must be responsible, reputable, and have financial capability consistent with the risks covered. Each issuer shall be subject to approval by the Director in his sole discretion as to conformance with these requirements.

Insured Parties. Each policy, except those for Workers' Compensation, Employer's Liability and Professional Liability, must name the City (and its elected and appointed officials, officers, agents and employees) as Additional Insured parties on the original policy and all renewals or replacements during the term of this Contract.

Deductibles. A policy may contain deductible amounts only if the Director approves the amount and scope of the deductible. Contractor shall assume and bear any claims or losses to the extent of such deductible amount and waives any claim it may ever have for the same against the City, its officers, agents or employees.

Cancellation. Each policy must expressly state that it may not be canceled or non-renewed unless thirty (30) days advance notice of cancellation or intent not to renew is given in writing to the Director by the insurance company. Contractor shall give written notice to the Director within five (5) days of the date upon which total claims by any party against the Contractor reduce the aggregate amount of coverage below the amounts required by this Contract.

Subrogation. Each policy must contain an endorsement to the effect that the issuer waives any claim or right in the nature of subrogation to recover against the City, its elected and appointed officials, officers, agents or employees.

Endorsement of Primary Insurance. Each policy must contain an endorsement that such policy is primary insurance to any other insurance available to the Additional Insured with respect to claims arising hereunder and that the insurance applies separately to each insured.

Subcontractors. Contractor shall require all subcontractors to carry insurance naming the City as an Additional Insured and meeting all of the above requirements

Delivery of Policies. Copies of all policies referred to above, certified by the agent or attorney-in-fact issuing them together with written proof that the premiums have been paid, shall be deposited by the Contractor with the Director prior to beginning work under this Contract, and thereafter before the beginning of each year of the Term of this Contract. Notwithstanding the termination notice provisions in this Contract, the failure of the Contractor to provide the Director with the above proof of insurance prior to beginning work and thereafter prior to the beginning of each year of the Term of this Contract, shall constitute a default on the part of the Contractor entitling the city, upon three (3) days written notice to Contractor to terminate this Contract. This default provision shall also apply to the proof of insurance requirements under circumstances where a policy is canceled or expires during a given year of the Term. Notwithstanding the proof of insurance requirements set forth above, it is the intention of the parties hereto that the Contractor, throughout the Term of this Contract, continuously and without interruption, maintain in force the required insurance coverage set forth above. Failure of the Contractor to comply with this requirement shall constitute a default of the Contractor allowing the City, at its option, to terminate this Contract.

## **SECTION 27. CANCELLATION BY THE CITY**

The City shall have the right to cancel for default all or any part of the undelivered portion of this order if the Contractor breaches any of the terms hereof including warranties of the Contractor or if the Contractor becomes insolvent or commits acts of bankruptcy. Such right

of cancellation is in addition to and not in lieu of any other remedies that the City may have in law or equity.

## **SECTION 28. GRATUITIES**

The City may, by written notice to the Contractor, cancel this Contract without liability to the Contractor if it is determined by the City that gratuities, in the form of entertainment, gifts, or otherwise, were offered or given by the Contractor, or any agent or representative of the Contractor, to any officer or employee of the City of El Paso with a view toward securing a contract or securing favorable treatment with respect to the awarding or amending, or the making or any determinations with respect to the performing of such a contract. In the event this Contract is canceled by the City, pursuant to this provision, the City shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by the Contractor in providing such gratuities.

## **SECTION 29. INDEMNIFICATION**

**Contractor or its insurer SHALL INDEMNIFY, HOLD HARMLESS, AND DEFEND, the City, its elected officials, agents, employees, officers, directors, and representatives of the City, individually or collective, FROM AND AGAINST ANY AND ALL COSTS, CLAIMS, LIENS, DAMAGES, LOSSES, EXPENSES, FEES, FINES, PENALTIES, PROCEEDINGS, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY AND SUITS OF ANY KIND AND NATURE, INCLUDING BUT NOT LIMITED TO, PERSONAL INJURY OR DEATH FROM PROPERTY DAMAGE, MADE UPON THE CITY DIRECTLY ARISING OUT OF, RESULTING FROM OR RELATED TO THE CONTRACTOR'S ACTIVITIES UNDER THIS CONTRACT, INCLUDING ANY ACT OR OMISSION BY CONTRACTOR, ITS AGENTS, EMPLOYEES OR SUBCONTRACTORS WHILE IN THE EXERCISE OF PERFORMANCE OF THE RIGHTS OR DUTIES UNDER THIS CONTRACT, ALL, WITHOUT HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW. The provisions of this indemnification are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any person or entity. Without modifying the conditions of preserving, asserting or enforcing any legal liability against the City as required by City Charter or any law, the City will promptly forward to Contractor every demand, notice, summons or other process received by the city in any claim or legal proceeding contemplated herein. In addition, Contractor shall promptly advise the City in writing of any claim or demand against the City or Contractor known to Contractor related to or arising out of Contractor's activities under this Contract. Contractor will 1) investigate or cause the investigation of accidents or occurrences involving such injuries or damages; 2) negotiate or cause to be negotiated the claim as the Contractor may deem expedient; 3) defend or cause to be defended on behalf of the City all suits for damages even if groundless, false, or fraudulent, brought because of such injuries or damages. Contractor will pay all judgments finally establishing liability of the City in actions defended by Contractor pursuant to this section along with all attorney's fees and costs incurred by the City including interest accruing to the date of payment by Contractor, and premiums on any appeal bonds. The City, at its election will have the right to participate**

**in any such negotiations or legal proceedings to the extent of its interest without relieving Contractor of any of its obligations under this paragraph.**

**The City will not be responsible for any loss or damage to the Contractor's property from any cause.**

Contractor shall require all of its subcontractors to include in their subcontracts indemnity in favor of the City in substantially the same form as above.

### **SECTION 30.           LIMITATION OF LIABILITY**

Contractor shall procure and maintain insurance as required by and set forth in the terms and conditions of this Contract. Notwithstanding any other provision of this Contract, and to the fullest extent permitted by law, the total liability, in the aggregate, of Contractor and Contractor's officers, directors, partners, employees, agents, and consultants (hereafter referred to collectively as "Contractor"), to the City and anyone claiming by, through, or under the City for any and all claims, losses, costs, or damages, whatsoever arising out of, resulting from or in any way related to this Contract from any cause or causes, including but not limited to negligence, professional errors or omissions, strict liability, or breach of contract, or warranty express or implied of the Contractor (hereafter "City's Claims"), shall not exceed an amount in excess of its primary general comprehensive policy limits required under this Contract, Section XIII. Neither Contractor nor the City will be responsible to the other for any special, indirect, or consequential damages arising in any manner from the work or services. If no such insurance coverage is provided with respect to City's Claims, then the total liability, in the aggregate, of the Contractor to the City and anyone claiming by, through, or under City for any and all such uninsured City's claims shall not exceed \$250,000.00.

### **SECTION 31.           TERMINATION OF CONTRACT**

This Contract may be terminated in whole or in part under any one of the following circumstances:

**TERMINATION FOR CONVENIENCE:** Either party may terminate this Contract upon written notice, provided such notice specifies an effective date for cancellation of not less than thirty (30) calendar days from the date such notice is received. All files are property of the City and at the City's request will be delivered at no cost to the City or its designated recipient at the effective date of cancellation. Such right of termination is in addition to and not in lieu of rights of the City set forth herein. In the event of termination by either party, the other party shall not be entitled to lost or anticipated profits. The end of the term of contract, unless extended, is pursuant to provisions of the Contract.

**TERMINATION FOR CAUSE:** Either party may terminate its performance under this Contract in the event of default by the other party and a failure by that party to cure such default after receiving notice thereof, all as provided in this Section. Default shall occur if a party fails to observe or perform any of its duties under this Contract. Should such a default occur, the injured party may deliver a written notice to the defaulting party describing such default and the proposed date of termination. Such proposed date of termination may not be

sooner than the 30<sup>th</sup> day following receipt of the notice. The injured party, at its sole option, may extend the proposed date of termination to a later date. If prior to the proposed date of termination, the defaulting party cures such default, then the proposed termination shall be ineffective. If the defaulting party fails to cure such default prior to the proposed date of termination, then the injured party may terminate its performance under this Contract as of such date.

**FORCE MAJEURE:** By reason of Force Majeure, either party hereto shall be rendered unable wholly or in part to carry out its obligations under this Contract then such party shall give notice and full particulars of such Force Majeure in writing to the other party within a reasonable time after occurrence of the event or cause relied upon, and the obligation of the party giving such notice, so far as it is affected by such Force Majeure, shall be suspended for only thirty (30) days during the continuance of the inability then claimed, except as hereinafter provided, but for no longer period, and such party shall endeavor to remove or overcome such inability with all reasonable dispatch. The term Force Majeure, as employed herein, shall mean acts of God, strikes, lockouts, or other industrial disturbances, act of public enemy, orders of any kind of government of the United States or the State of Texas or any civil or military authority, insurrections, riots, epidemics, landslides, lightning, earthquake, fires, hurricanes, storms, floods, washouts, droughts, arrests, restraint of government and people, civil disturbances, explosions, breakage or accidents to machinery, pipelines, or canals. It is understood and agreed that the settlement of strikes and lockouts shall be entirely within the discretion of the party having the difficulty. If a party is unable to comply with the provisions of this Contract by reason of Force Majeure for a period beyond 30 days after the event or cause relied upon, then upon written notice after the thirty (30) days, the City reserves the right to cancel this Contract without any further liability.

**EFFECTS OF TERMINATION:** All duties and obligations of the City and the Contractor shall cease upon termination or expiration of this Contract, except that:

- 1) Contractor shall release and make available to the City all records owned by the City, including all supporting documentation for the claims data contained in the computer database, and the database itself, which the Contractor shall download to one or more ASCII formatted tape(s), to be supplied to the City and shall cooperate fully to effect an orderly transfer of services and claim files.
- 2) All provisions of this Contract that expressly or impliedly contemplate or require payment or performance after the expiration or termination of this Contract shall survive such expiration or termination. Any unpaid obligation due and owing, by either party, as of the date of termination, shall continue to be due and payable. After termination or suspension of this Contract, the City shall not be liable for any costs incurred thereafter. The termination or suspension of this Contract notwithstanding, Contractor shall not be relieved of any liability for damages due to City by virtue of any prior or future breach of this Contract by Contractor. The City may withhold any payment otherwise due to Contractor until such time as the exact amount owed to the City by Contractor is determined and paid.

Nothing in this Section shall be construed to limit the City's authority to withhold payment and immediately suspend Contractor's performance under this Contract if the City or TDHCA

identifies possible instances of fraud, abuse, waste, fiscal mismanagement, or other serious deficiencies in Contractor's performance. Suspension shall be a temporary measure pending either corrective action by Contractor or a decision by the City to terminate this Contract.

**SECTION 32. RIGHT OF ASSURANCE**

Whenever one party to this Contract in good faith has reason to question the other party's intent to perform, it may demand that the other party give written assurance of its intent to perform. In the event that a demand is made and no assurance is given within five (5) calendar days, the demanding party may treat this failure as an anticipatory repudiation of the Contract.

**SECTION 33. ASSIGNMENT**

Neither party may assign its rights or obligations under this Contract without the prior written consent of the other party hereto. Any attempted assignment or delegation by either party shall be wholly void and totally ineffective for all purposes unless made in conformity with this paragraph.

**SECTION 34. SUBCONTRACTORS**

The Contractor may subcontract with other competent entities to provide services required to be performed under this Contract. Any work or services approved for subcontracting hereunder, however shall be contracted only by written contract and agreement, and unless specific waiver is granted in writing by the City, shall be subject by its terms to each and every provision of this Contract. Compliance by subcontracts with this Contract shall be Contractor's responsibility. Contractor shall submit a list, identifying the subcontractors who will perform services under this Contract, within ten (10) days of the effective date of this Contract. However, all subcontractors must be accepted and approved by the City in writing, and such consent shall not be unreasonably withheld.

Despite City approval of a subcontract or subcontractor, the City shall in no event be obligated to any third party, including any subcontract of the Contractor, for performance of work or services, nor shall City funds ever be used for payment of work or services performed prior to the date of Contract execution or extending beyond the expiration date of this Contract.

**SECTION 35. SURVIVAL**

Contractor shall remain obligated to the City under all clauses of this Contract that expressly or by their nature extend beyond the expiration or termination of this Contract, including but not limited to the Indemnification provisions hereof.

**SECTION 36. AMENDMENT & WAIVER**

The parties may amend this Contract at any time by mutual consent of the parties. Unless otherwise provided herein, this Contract may be amended only by written instrument duly executed on behalf of the City and the Contractor. No claim or right arising out of a breach of this Contract can be discharged in whole or in part by a waiver or renunciation of the claim or

right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party.

**SECTION 37. ENTIRE CONTRACT**

This Contract, together with the Exhibits attached hereto, constitutes the entire agreement between the parties hereto relating to the Contract. There exists no other written or oral understanding, agreements or assurances with respect to such matters except as are set forth herein. Unless expressly stated, this Contract confers no rights on any person(s) or business entity(s) that is not a party hereto. This Contract shall not be construed against or unfavorably to any party because of such party's involvement in the preparation or drafting of this Contract.

**SECTION 38. APPLICABLE LAW & VENUE**

This Contract shall be governed by the laws of the State of Texas along with any applicable provisions of Federal law or the City Charter or any ordinance of the City of El Paso. Both parties agree that venue for any litigation arising from this contract shall lie in El Paso, El Paso County, Texas.

**SECTION 39. ADVERTISING BY CONTRACTOR**

The Contractor shall not advertise or publish, without the City's prior consent, the fact that the City has entered into this contract, except to the extent necessary to comply with proper requests for information from an authorized representative of the federal, state, or local government.

**SECTION 40. LEGAL CONSTRUCTION**

Every provision of this Contract is severable, and if any term or provision hereof is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of this Contract. Where the context of the Contract require, the singular shall include the plural and the masculine gender shall include feminine.

**SECTION 41. NOTICES**

All notices required or permitted hereunder shall be in writing and shall be deemed delivered when actually received or, if earlier, on the third day following deposit in a United States Postal Service post office or receptacle with proper postage affixed (certified mail, return receipt requested) addressed to the respective other party at the address prescribed in the preamble of this Contract or at such other address as the receiving party may have theretofore prescribed by written notice to the sending party.

**SECTION 42. COUNTERPARTS**

This Contract may be executed in one or more counterparts; signature pages may be detached from such separately executed counterparts and reattached to other counterparts, each of which counterparts when executed and delivered shall be an original and all of which shall together constitute one and the same instrument.

**IN WITNESS WHEREOF**, the parties hereto have executed this Contract on the date first written above.

**CITY OF EL PASO:**

\_\_\_\_\_  
Joyce A. Wilson  
City Manager

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Marie A. Taylor  
Assistant City Attorney

**APPROVED AS TO CONTENT:**

\_\_\_\_\_  
William L. Lilly, Director  
Community and Human Department

**CONTRACTOR:**

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

Name/Title: \_\_\_\_\_

## EXHIBIT "A"

### SCOPE OF SERVICES

#### I. Contractor's Performance

A. Contractor shall weatherize eligible dwelling units (the "weatherization units"), in accordance with the program regulations of the U.S. Department of Energy (DOE) codified in 10 CFR Parts 440 and 600, any applicable Office of Management and Budget (OMB) Circulars; the Texas ARRA State Plan; State weatherization regulations; Texas Administrative Code 10 TAC §5.10-§5.20; §5.501-§5.508; §5.521-§5.532; and §5.601-§5.609; state and local laws, codes, and regulations and the City's Weatherization Program requirements. Contractor will use the blower door on all weatherization units as per the TDHCA W.A.P. Policy Issuance #92-12.5 entitled "Blower Door Standards." Failure to use this equipment on all units and bring the air exchange into the targeted range will result in contract review and grounds for termination for cause.

B. Contractor agrees to perform weatherization in the following areas:  
Residential units within the city limits of El Paso, Texas.

C. Contractor is responsible for picking up work orders of homes assigned by the City. Subcontractor is also responsible for placing the orders of materials with the vendor.

D. Contractor is responsible for making arrangements with the vendor and the client on the delivery of materials to the home. The Contractor is also responsible for returning the delivery form to the City's Weatherization Program staff before any deliveries are made.

E. Contractor is responsible for receiving and installing all materials in a manner that meets the inspection standards of the Department of Energy (DOE) and the Texas Department of Housing and Community Affairs (TDHCA). Contractor agrees to replace, at his/her own expense, and pay the costs for the associated labor, any materials which upon inspection by the City, are determined by the City to be improperly installed. Corrective work has to be completed within three days of notification from the City.

F. All installed materials must meet the U.S. Department of Energy (DOE) materials specifications (refer to 10 CFR 440) in the Requests for Proposals and must comply with the minimum standards set forth in the Texas Department of Housing & Community Affairs (TDHCA) Texas Weatherization Field Guide, the Texas Mechanical Systems Field Guide and the Lead-Safe Weatherization Minimum Standards.

G. Contractor agrees to contact the City when additional materials (apart from the materials identified in the initial assessment) are needed to complete the work order. Contractor must obtain approval from the City of El Paso before any additional purchases of materials are made.

H. Contractor agrees to provide a one-year warranty to the client and to the City of El Paso for all weatherization work completed. Each residential unit weatherized will be provided a one-year warranty. The warranty form should include the following information: Subcontractor Name, Client Name, addresses and telephone numbers of both Subcontractor and Client, Date of Completion, signatures of both client and Subcontractor, and any related information that pertains to the warranty agreement. The warranty form must be approved by the City of El Paso before it is given to clients for signature.

I. Contractor agrees to make an appointment with the client to review and explain what weatherization measures will be implemented prior to the start of work. Under no circumstance should the Contractor perform or conduct

any additional work that is not addressed in the work write-up that is provided by the City to the Subcontractor without prior approval from the City.

J. Notwithstanding weather or emergency-related delays (all delays need to be agreed to by the City), the Contractor agrees to weatherize each unit within 3 to 5 days from the date of issuance of the work order from the City.

K. Contractor agrees to remove and dispose all debris and any excess material from the home resulting from weatherization work. The removal of debris and excess material must be completed before the unit's final inspection. In case of a dispute, The City reserves the right to remove the debris and excess material at the cost of the Contractor.

L. City shall not pay for any material(s) deemed damaged or for any improperly installed or repaired work when Contractor is at fault.

M. Contractor agrees to provide a progress report to the City of El Paso at least once a week.

N. Contractor agrees to attend Contractor meetings/trainings as required by the City. Contractor also agrees that all hired personnel employed by Contractor who will perform weatherization work under this Contract may be required to undergo training by the City before any work is conducted for weatherization by Contractor. The City will determine if and which training is to be completed by Contractor's personnel.

## II. Request for Finals

A. Contractor agrees to notify the City within two (2) days after each unit's weatherization work has been completed. The notification will be accomplished by completing and returning to the City the Request for Final Inspection Form, to be provided by the City.

B. Contractor agrees to turn in all material and labor invoices along with the Request for Final Inspection Form to the City of El Paso

C. Contractor will be paid only upon successful completion of work as specified in the work write-up/work order. It is expressly understood and agreed to that no payment shall be remitted to the Contractor by the City for units that are only partially completed.

D. The City reserves the right to withhold payment for any work conducted (labor) and/or any materials purchased by the Subcontractor if the work is incomplete, and/or if any violation of this contract was committed by the Subcontractor. The potential of withholding payment to Subcontractor is decided on a per unit basis.

## III. Allowable Expenditures

All weatherization measures installed must be listed on a DOE approved State of Texas Priority List or have an approved State of Texas Energy Audit savings-to-investment ratio (SIR) of one or greater unless otherwise indicated. 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. Contractor shall weatherize eligible dwelling units using only weatherization materials which meet or exceed the standards prescribed by DOE in 10 C.F.R. Part 440, Appendix A, State of Texas adopted International Residential Code (IRC) or in accordance with jurisdiction authorized by State law to adopt later editions.

Allowable WAP expenditures under Attachment A include:

- (1) purchase and delivery of weatherization materials as defined in 10 C.F.R. §440.3, but not to include storm doors;
- (2) labor costs for doors, primary windows and storm windows that will result in approved energy savings with SIR of one or greater in accordance with 10 C.F.R. §440.19;
- (3) weatherization materials and labor for heating and cooling system tune-ups, repairs, modification, or replacements if such will result in improved energy efficiency as demonstrated by SIR of one or better in the approved State of Texas Energy Audit and, 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, equipment, and vehicles (purchase of vehicles must be approved in advance by Department and DOE);
- (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 Attachment A shall not exceed the cost of weatherization measures charged to WAP funds and shall have a whole house SIR of one (1) or greater on the approved State of Texas Energy Audit);
- (11) allowable health and safety measures; and
- (12) allowable base load reduction measures. 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 90 days prior to the end of the Contract term before these funds can be moved.

## ADDENDUM A – EQUAL OPPORTUNITY CLAUSE

(Taken from) §130.15 Equal Opportunity clause.

*Government contracts.* Except as otherwise provided, the following equal opportunity clause contained in section 202 of the Order shall be included in each Government contract entered into by the Department (and modification thereof if not included in the original contract):

During the performance of this contract, the contractor agrees as follows:

- ) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of the non-discrimination clause.
  - ) The contractor will, in all solicitations or advertisements for employees place by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.
  - ) The contractor will send to each labor union or representative of workers with which he/she has a collective bargaining agreement or other contract or understanding, a notice to be provided by the Department's contracting officer, advising the labor union or workers' representative of the contractor's commitments under section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment
  - ) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations and relevant orders of the Secretary of Labor.
  - ) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the Department and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
  - ) In the event of the contractor's non-compliance with the nondiscrimination clauses of the contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- The contractor will include the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the Department may direct as a means of enforcing such provisions including sanctions for noncompliance; *Provided, however,* That in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Department, the contractor may request the United States to enter into such litigation to protect the interests of the United States.
- ) (c) *Subcontracts.* Each nonexempt prime contractor or subcontractor shall include the equal opportunity clause in each of its nonexempt subcontracts.
  - (d) *Incorporation by reference.* The equal opportunity clause may be incorporated by reference in Government bills of lading, transportation requests, contracts for deposit of Government funds, contracts for issuing and paying U.S. savings bonds and notes, contracts and subcontracts less than \$50,000 and such other contracts as the Director may designate.
  - (e) *Incorporation by operation of the order and departmental regulations.* By operation of the order, the equal opportunity clause shall be considered to be a part of every contract and subcontract required by the order, the "rules and regulations" and these regulations to include such a clause whether or not it is physically incorporated in such contracts. The clause is applicable to every nonexempt contract where there is no written contract between the Department and the contractor.
  - (f) *Adaptation of language.* Such necessary changes in language may be made in the equal opportunity clauses as shall be appropriate to identify properly the parties and their undertakings

## ADDENDUM B

### CERTIFICATION REGARDING LOBBYING

#### Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her 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 any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, 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 a Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-ILL, "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 subawards at all tiers (including subcontractors, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of the 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.

\_\_\_\_\_

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

NAME/TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_