

**CITY OF EL PASO, TEXAS
AGENDA ITEM
DEPARTMENT HEADS SUMMARY FORM**

DEPARTMENT: Community and Human Development
AGENDA DATE: December 15, 2009
CONTACT PERSON NAME AND PHONE NUMBER: Bill Lilly (541-4643)
DISTRICT(S) AFFECTED: All Districts

SUBJECT:

AUTHORIZE the City Manager to execute a 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.

BACKGROUND / DISCUSSION:

The City of El Paso of El Paso applied to and received an award of \$4,007,592 for American Recovery and Reinvestment Act (ARRA) funds for the Weatherization Assistance Program. The program is designed to assist low-income families in lowering their energy consumption and subsequently, their energy costs and increasing their health, safety and well being.

Staff is requesting that the City Council authorize the City Manager to execute the contract as provided by TDHCA 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.

PRIOR COUNCIL ACTION:

No previously considered for this item or a closely related one

AMOUNT AND SOURCE OF FUNDING:

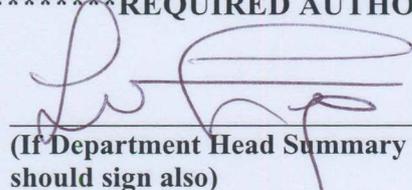
Funding in the amount of \$4,007,592 will come from American Recovery and Reinvestment Act (ARRA) funds via the Texas Department of Housing and Community Affairs

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)

Information copy to appropriate Deputy City Manager

RESOLUTION

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

That the City Manager be authorized to execute a 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.

ADOPTED this _____ day of December, 2009.

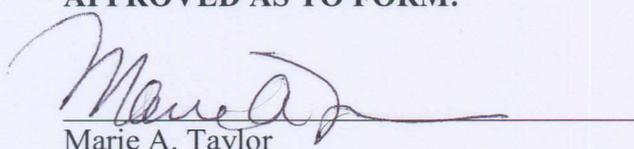
THE CITY OF EL PASO

John F. Cook
Mayor

ATTEST:

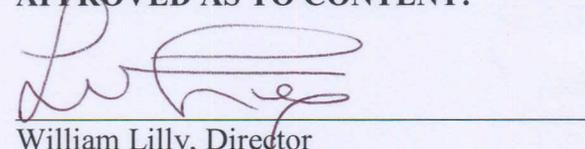
Richarda Duffy Momsen, City Clerk

APPROVED AS TO FORM:



Marie A. Taylor
Assistant City Attorney

APPROVED AS TO CONTENT:



William Lilly, Director
Community and Human Development

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
CONTRACT NUMBER. 16090000704 FOR THE
THE AMERICAN RECOVERY AND REINVESTMENT ACT (ARRA) (CFDA# 81.402)

SECTION 1. PARTIES TO CONTRACT

This contract (hereinafter "Contract") is made by and between the Texas Department of Housing and Community Affairs, an agency of the State of Texas (hereinafter the "Department") and City of El Paso (hereinafter the "Subrecipient"). The term of this Contract shall be for the period identified under Attachment A - Budget and Performance Document (hereinafter the "Attachment A").

SECTION 2. CONTRACT TERM

The period for performance of this contract, unless earlier terminated, is September 01, 2009 through August 31, 2011 (hereinafter the "Contract Term").

SECTION 3. DESIGNATED CONTRACTOR CONTACTS

Subrecipient shall designate, in writing, at the time Subrecipient executes this Contract, one or more responsible and qualified individuals as points of contact with the Department to maintain a flow of current information relating to the receipt, deployment, reporting, management and use of funds received under this Contract.

SECTION 4. SUBRECIPIENT PERFORMANCE

Subrecipient shall, on an equitable basis throughout its service area, develop and implement a Weatherization Assistance Program (WAP) in accordance with the budget described in Attachment A of this Contract. 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 households with elderly, persons with disabilities, households with young children that are age five (5) or younger, and/or households with a high energy burden and households with high energy consumption. Subrecipient shall implement 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.); the U.S. Department of Energy (DOE) regulations codified in 10 C.F.R. 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. The International Residential Code; International Energy Conservation Code; or in accordance with jurisdictions authorized by State law to adopt later editions; and the terms of this Contract.

SECTION 5. 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 Attachment A of this Contract.
- B. Department's obligations under this Contract are contingent upon the actual receipt by Department of adequate federal funds. If sufficient funds are not available, 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.
- 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 10 C.F.R. §440.22;
 - (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 WAP funds, except as provided for in 10 C.F.R. §440.18(e)(2);

- (4) is for Subrecipient's administrative costs incurred in excess of the maximum limitation set forth in Section 9 of this Contract;
 - (5) is not incurred during the Contract term;
 - (6) is not reported to Department on a monthly ARRA expenditure report and/or a monthly ARRA performance report, within sixty (60) days of the termination of the Contract term;
 - (7) is subject to reimbursement by a source other than Department;
 - (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; or
 - (9) is used for any casino or other gambling establishment, aquarium, zoo, golf course, or swimming pool.
- 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. The Department reserves the right to evaluate the performance and expenditures on this contract and transfer funds at the sole discretion of the Department. Underperformance under this contract may result in subsequent deobligation of funds from this contract.

SECTION 6. METHOD OF PAYMENT/CASH BALANCES

- A. Each month, Subrecipient may request an advance payment of WAP funds under Attachment A by submitting a monthly expenditure Report to Department (through the electronic reporting system) at its offices in Travis County, Texas. Subrecipient must maintain and follow written procedures to minimize the time elapsing between the transfer of funds from Department and the disbursement of such funds by Subrecipient.
- B. Subrecipient's requests for advances shall be limited to the minimum amount needed to perform contractual obligations and timed to be in accordance with actual, immediate cash requirements of the Subrecipient in carrying out the purpose of this Contract. 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, Department reserves the right to use a cost reimbursement method of payment 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 determines that a cost reimbursement method would benefit the program; (4) Department's funding sources require the use of a cost reimbursement method; or (5) 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 recipients of the weatherization assistance program and for the payment of the allowable expenditures identified in Section 9 of this Contract.

SECTION 7. COST PRINCIPLES AND ADMINISTRATIVE REQUIREMENTS

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 Uniform Grant and Contract Management Standards, 1 T.A.C. § 5.141 et seq. (the "Uniform Grant Management Standards"); all references therein to "local government" shall be construed to mean Subrecipient. Uniform cost principles for local governments are set forth in OMB Circular No. 87, and for non-profits in OMB Circular No. 122. Uniform administrative requirements for local governments are set forth in OMB Circular No. 102 and for non-profits in OMB Circular No. 110.

SECTION 8. PREVAILING WAGES AND RATES PAID TO SUBRECIPIENTS AND SUBCONTRACTORS

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 Subrecipient and subcontractors on projects funded directly by or assisted in whole or in part by and through the federal government pursuant to the American Recovery and Reinvestment Act of 2009 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. All implementing regulations, notices, guidance and any other requirements issued by the federal government related to Subrecipient's performance under this Contract.

SECTION 9. 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 10. 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, the Texas Administrative Code: 10 TAC §5.17 (Sanctions and Contract Close Out), any state weatherization regulation and the WAP State Plan. 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. Department shall not be liable for any costs incurred by Subrecipient after termination or during the suspension of this Contract. The termination or suspension of this Contract notwithstanding, Subrecipient shall not be relieved of any liability for damages due to Department by virtue of any prior or future breach of this Contract by Subrecipient. Department may withhold any payment otherwise due to Subrecipient until such time as the exact amount of damages owed to Department by Subrecipient is determined and paid.

SECTION 11. 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 5 and the regulations set forth in 10 C.F.R. §440.18, subject to the limitations and exceptions set forth in this Section.
- B. To the maximum extent practicable, Subrecipient shall utilize funds provided under this Contract for the purchase of weatherization materials. 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. Subrecipient 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 jurisdictions 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.
- C. 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 Attachment A. Allowable administrative costs may include reasonable costs associated with Subrecipient's administrative personnel, travel 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 / DOE 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 90 days prior to the end of the Contract term before these funds can be moved.
- D. The cost of liability insurance for the weatherization program for personal injury and for property damage, not to exceed Two Thousand Dollars (\$2,000.00) shall be an allowable WAP expenditure under Attachment A. Subrecipient may request in writing a waiver of the limit on liability insurance. The waiver request must provide price quotes from at least three (3) insurance carriers. If subrecipient is allowed to waive the liability insurance limit, amounts in excess of the \$2,000 may be charged to the administrative or program support category. The liability insurance category has increased to enable subrecipient to purchase 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 ensure that lead is covered and if not, secure adequate coverage for all units to be weatherized. Subrecipients' insurance must cover the pollution occurrence insurance coverage for their independent contractors or the independent contractors must obtain the coverage.
- E. Fiscal audit expenses for the weatherization program not to exceed One Thousand Dollars (\$1,000.00) shall be allowed under Attachment A, subject to Section 15.
- F. To the maximum extent practicable, Subrecipient shall secure the services of volunteers to weatherize dwelling units under the direction of qualified supervisors.

SECTION 12. USE OF AMERICAN IRON, STEEL, AND MANUFACTURED GOODS

Contractor shall not use any of the funds provided pursuant to this Contract for a project for the construction, alteration, maintenance, or repair of a public building or public work unless all of the iron, steel, and manufactured goods used in the project are produced in the United States except as provided in Section 1605 of the American Recovery and Reinvestment Act of 2009.

SECTION 13. RECORD KEEPING REQUIREMENTS

- A. Subrecipient shall comply with the record keeping requirements set forth at 10 C.F.R. §440.24 and with such additional record keeping requirements as specified by Department.
- B. For each dwelling unit weatherized with funds received from WAP under this Contract, Subrecipient shall maintain a file containing the following information:
- (1) 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), and persons with disabilities;
 - (2) 12 month customer billing history for utilities or consumption disclosure release form;
 - (3) eligibility documentation (proof of income eligibility shall consist of checks, check stubs, award letters, employer statements, or other similar documents including total income and public assistance payments); no dwelling unit shall be weatherized without documentation that the dwelling unit is an eligible dwelling unit as defined in 10 C.F.R. §440.22. All proof of income must reflect earnings from within 12 months of the start date indicated on the building weatherization report (BWR). Proof of income documentation requirements are the same for both single and multifamily housing; effective January 1, 2005, all new applications must have proof of income or Declaration of Income Statement for the previous 30 days;
 - (4) BWR to include certification of final inspection;
 - (5) invoices of materials purchased and/or inventory removal sheets;
 - (6) invoices of labor;
 - (7) if a rental unit, landlord agreement form (including Exhibits A and B), landlord financial participation form and Permission to Conduct Energy Audit Form (Department form); and all other Landlord forms found in the Energy Assistance Section of the Department's website.
 - (8) Self-help Certification (Department form), if applicable;
 - (9) Notice of Denial (Department form), if applicable;
 - (10) Signed and dated Building Assessment form;
 - (11) Attic Inspection (local design allowed);
 - (12) Wall Inspection (local design allowed);
 - (13) Justification for Omission of Priorities (local design allowed), if applicable;
 - (14) Documentation of pre weatherization carbon monoxide readings for all combustible appliances.;
 - (15) Documentation of post weatherization carbon monoxide readings for all combustible appliances.
 - (16) Blower Door Data Sheet;
 - (17) Copy of the cover sheet, SIR page, and Suggested Repairs and Measures page for the approved State of Texas Energy Audit;
 - (18) A complete approved State of Texas Energy Audit on disk and a disk back-up for all units weatherized (unless using computer based audit);

- (19) Signed client receipt of Lead Safe Information (for homes built in 1978 or prior); and
 - (20) Refrigerator replacement form (if applicable).
- C. Materials standards documentation for weatherization materials purchased under this Contract must be maintained. These standards must meet the requirements according to Appendix A of 10 CFR 440.
- D. 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.
- E. All 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, TEXAS GOVERNMENT CODE ANNOTATED. Chapter 552.
- F. All subrecipients must conduct a full household assessment addressing all possible allowable weatherization measures.

SECTION 14. REPORTING REQUIREMENTS

- A. On or before the fifth (5th) day of the month, Subrecipient shall electronically submit a Performance Report and Expenditure Report to the Department reporting all activities up to the last day of the previous month. These reports are due each month even if Subrecipient has no new activity to report during the month. Subrecipient must submit the first Performance Report and Expenditure Report no later than October 5, 2009 regardless of whether Subrecipient makes a fund request.
- B. Subrecipient shall electronically submit to Department no later than sixty (60) days after the end of the Contract term of this Contract a final expenditure and programmatic 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.
- C. Subrecipient shall submit to Department no later than sixty (60) 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 vehicles, tools, and equipment on hand as of the last day of the Contract term.
- D. Subrecipient shall submit other reports, data, and information on the performance of this Contract as may be required by DOE pursuant to 10 C.F.R. §440.25, or by Department.
- E. 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 Weatherization Program 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.

SECTION 15. ASSISTANCE IN PREPARING REPORTS ON USE OF FUNDS

Subrecipient shall track all funds under this Contract and their projected statuses separately from all other funds, and shall assist Department in preparing and filing the Department's recipient reports required by Section 1512(c) of the American Recovery and Reinvestment Act of 2009. Subrecipient shall provide to the Department, not later than five (5) calendar days after the end of each calendar quarter, the following information:

- A. An estimate of the number of jobs created and the number of jobs retained by the project or activity;
- B. For infrastructure investments, the purpose, total cost, and rationale of the agency for funding the infrastructure investment with funds made available under this Contract, and the name of the person to contact, and contact information, if there are concerns with the infrastructure investment;
- C. The names and total compensation of the five most highly compensated officers of the entity if:
 - (1) the recipient in its preceding fiscal year received:
 - a. 80 percent or more of its annual gross revenues in Federal awards; and
 - b. \$25,000,000 or more in annual gross revenues from Federal awards; and
 - (2) the public does not have access to information about the compensation of the senior executives of the entity through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986 [26 U.S.C. §6104];
- D. Vendor information including description of product or service, name, zip code, DUNS number, payment amount; and
- E. Any other information requested by the Department related to the Contract.

SECTION 16. 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 subrecipient is on constructive notice of this change whether actual notice is provided. Except as otherwise specifically provided herein any other change in the terms of this Contract shall be by amendment in writing and signed by both parties to this Contract.

SECTION 17. NON-BINDING GUIDANCE

Department may issue non-binding guidance to explain the rules and provide directions on the terms of this Contract.

SECTION 18. 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 19. PROCUREMENT STANDARDS & SUBCONTRACTS

- A. Subrecipient shall develop and implement procurement procedures, which conform to the uniform administrative requirements referenced in Section 6 of this Contract. Subrecipient shall not procure supplies, equipment, materials, or services for this Contract except in accordance with its procurement procedures and the Texas Administrative Code: 10 TAC §5.10-§5.12 and §5.608. All procurement contracts, other than "small purchases" shall be in writing and shall contain the required provisions. Subrecipient must obtain advance written permission from DOE through Department before purchasing any vehicle. Subrecipient shall include language in any subcontract that provides the Department the ability to directly review, monitor, and/or audit the operational and financial performance and/or records of work performed under this Contract.
- B. In addition to following any applicable state or local procurement laws, Subrecipient shall timely provide the Department with an electronic version of any notice of procurement opportunity for posting on the Department's website.

- C. To the maximum extent possible, subcontracts funded under this Contract shall be awarded as fixed-price contracts through the use of competitive procedures. Subrecipient shall post a summary of any contract awarded with such funds that is not fixed-price and not awarded using competitive procedures on the federal website established pursuant to Section 1526 of the American Recovery and Reinvestment Act of 2009.
- D. Subrecipient shall ensure that its subcontractors comply with all applicable terms of this Contract as if the performance rendered by the subcontractor was being rendered by Subrecipient. 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.
- E. It is the sole responsibility of Subrecipient's authorized weatherization staff to perform every initial assessment, every approved State of Texas Energy Audit, and every final inspection. In an emergency situation, Subrecipient may request in writing that the Department waive this requirement. The Department will review each request separately to determine whether a waiver will be granted, the conditions for the waiver, and the maximum time allotted for the waiver. Under no circumstances will a waiver be granted for longer than six months. Failure to strictly adhere to this policy will result in disallowed costs.

SECTION 20. 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 Department's supplemental audit guide, the Single Audit Act Amendments of 1996, 31 U.S.C. 7501 et seq. and OMB Circular No. 133 - Revised June 27, 2003, "Audits of States, Local Governments, and Non-Profit Organizations." For purposes of this Section 15, "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 the report of such audit to Department within thirty (30) days after the completion of the audit, and no later than nine (9) months after the end of the audit period. However, for fiscal years beginning on or before June 30, 1998, the audit shall be completed and submitted within the earlier of 30 days after receipt of the auditor's report or 13 months after the end of the audit period. Subrecipient shall ensure that the audit report is made available for public inspection within thirty (30) days after completion of the audit. Audits performed under this Section 16 are subject to review and resolution by Department or its authorized representative.
 - (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 the contract year.
- B. Subsection A 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 §16(A)(4).
- C. Subsection A 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. 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.
- 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 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.

SECTION 21. PROPERTY MANAGEMENT

- A. Subrecipient acknowledges that any 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, 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 \$5,000.00 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 Dollars (\$5,000.00) or more.
- E. In addition to the inventory of vehicles, 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 22. INSURANCE REQUIREMENTS

Subrecipient shall maintain adequate personal injury and property damage liability insurance or, if Subrecipient is a unit of local government, shall maintain sufficient reserves to protect against the hazards arising out of or in connection with the performance of this Contract. Subrecipient may 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 shall review existing policies to ensure that lead contamination is covered and if not, secure adequate coverage for all units to be weatherized. Additional liability insurance costs may be paid from administrative or program support categories. 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.

If Subrecipient is not a unit of local government, Subrecipient shall provide Department with certificates of insurance evidencing Subrecipient's current and effective insurance coverage. Subrecipient agrees to notify the Department immediately upon receipt of notification of the termination, cancellation, expiration, or modification of any insurance coverage or required policy endorsements. Subrecipient agrees to suspend the performance of all work performed under this Contract until Subrecipient satisfies the coverage requirements and obtains the policy endorsements, and has delivered to Department certificates of insurance evidencing that such coverage and policy endorsements are current and effective, and has been notified by Department that such performance of the work under this Contract may recommence. Subrecipients must also require all contracting 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 23. 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 24. TECHNICAL ASSISTANCE AND MONITORING

Department or its designee may conduct periodic technical assistance visits, desk and on-site monitoring to evaluate the efficiency, economy, and effectiveness of Subrecipient's performance of this Contract. Department will advise Subrecipient in writing of any deficiencies noted during such monitoring. Department may provide technical assistance to Subrecipient and may require changes in Subrecipient's accounting, personnel, procurement, and management procedures in order to correct any deficiencies noted. Subrecipient may be required by Department to return to dwelling units to correct identified problems. Department may further review and assess the efforts Subrecipient has made to correct previously noted deficiencies. Department may withhold funds, place Subrecipient on a cost reimbursement basis, deobligate funds, suspend performance, terminate this Contract, or invoke other remedies in the event monitoring reveals material deficiencies in Subrecipient's performance or if Subrecipient fails to correct any deficiency within a reasonable period of time.

SECTION 25. LEGAL AUTHORITY

- A. Subrecipient represents that it possesses the practical ability and the legal authority to enter into this Contract, receive and manage the funds authorized by this Contract, and to perform the services Subrecipient has obligated itself to perform under this Contract.
- 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 bind Subrecipient to all terms 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 to enter into this Contract or to render performances hereunder. Should such suspension or termination occur, subrecipient is liable to Department for any money it has received for performance of the provisions of this Contract.

SECTION 26. 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 weatherization program. 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. Department will notify the funding source upon identification of possible instances of waste, fraud, and abuse or other serious deficiencies.
- D. 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 27. HB 1196 CERTIFICATION

Subrecipient / Local Operator certifies that it, or a branch, division, or department of Subrecipient / Local Operator 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 / Local Operator, or a branch, division, or department of Subrecipient / Local Operator is convicted of a violation under 8 U.S.C. Section 1324a, Subrecipient / Local Operator shall repay the public subsidy with interest, at a rate of 5% per annum, not later than the 120th day after the date TDHCA notifies Subrecipient / Local Operator of the violation.

SECTION 28. SB 608 CERTIFICATION

Under Section 2261.053, Texas Government Code, Subrecipient / Local Operator 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 29. CONFLICT OF INTEREST/NEPOTISM

- A. Subrecipient 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 Subrecipient or appointed as a member of Subrecipient's governing body.
- B. Subrecipient 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. Subrecipient 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 Subrecipient 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 30. POLITICAL ACTIVITY AND LOBBYING PROHIBITED

- A. None of the funds provided under this Contract shall 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. No 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.
- C. If any funds other than federally 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 Contract, Subrecipient shall complete and submit a Certification Regarding Lobbying form in accordance with its instructions. No state funds may be given to persons who are required to register under TX GOV'T CODE ANN. 305.
- D. None of the funds provided under this Contract shall be paid to any official or employee who violates any of the provisions of this section.

SECTION 31. REQUIREMENT TO POST NOTICE OF WHISTLEBLOWER RIGHTS AND REMEDIES

Any employer 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 32. NON-DISCRIMINATION AND EQUAL OPPORTUNITY

No person shall on the ground(s) of race, color, religion, sex, national origin, age, disability, political affiliation or belief 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.

SECTION 33. JOB POSTINGS ON WORKINTEXAS.COM

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

SECTION 34. SPECIAL COMPLIANCE PROVISIONS

Subrecipient shall comply with the requirements of all applicable laws and regulations, including those specified in 10 C.F.R. Part 600.

SECTION 35. TRAINING AND TECHNICAL ASSISTANCE FUNDS

- A. Training and technical assistance funds shall be used for State sponsored, DOE sponsored, and other relevant workshops and conferences provided the agenda includes topics directly related to administering WAP in accordance with the Texas Administrative Code: 10 TAC §5.532. For Training and Technical Assistance other than State or DOE sponsored Subrecipient must receive prior written approval from the Department.
- B. Allowable travel costs under this Contract shall be determined in accordance with OMB Circulars A-122 or A-87, as applicable, any Department Issuance on travel, and with Subrecipient's written travel policy. Subrecipient's written travel policy shall delineate the rates which Subrecipient shall use in computing the travel and per diem expenses of its board members and employees. Prior to incurring any costs for travel, subrecipient must provide Department with a copy of its travel policy and evidence that such policy has been approved by Subrecipient's governing body. If Subrecipient has no established written travel policy, the travel regulations applicable to Department employees shall apply.
- C. Department may, from time to time, provide funds in this category that are for the sole purpose of purchasing designated weatherization equipment.

SECTION 36. 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 37. DEBARRED AND SUSPENDED PARTIES

- (1) Subrecipient must not make any award (subgrant or contract) to any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549, "Debarment and Suspension and 45 CFR Part 76."
- (2) Subrecipient certifies that neither it or its principles is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
- (3) Where Subrecipient is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this Contract.
- (4) Subrecipient shall include in any subcontracts that failure to adequately perform under this Contract may result in penalties up to and including Debarment from performing additional work for the Department.

SECTION 38. 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 39. PRIOR ORAL AND WRITTEN AGREEMENTS

All prior oral or written agreements between the parties hereto relating to the subject matter of this Contract have been reduced to writing and are contained herein.

SECTION 40. LEGAL USE OF FUNDS CERTIFICATION

Subrecipient hereby certifies, as a condition to receiving funds from the Department under this Contract, that the funds will be used in accordance with state and federal laws.

SECTION 41. COMMENCEMENT OF ACTIVITY

Prior to the commencement of any home related weatherization expenditures, Subrecipients must attend the September, 2009 Weatherization 101 training conducted by the Department.

SECTION 42. 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.

SIGNED this day of

City of El Paso

By:

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

By:

This Contract is not effective unless signed by the Executive Director of the Department or their authorized designee.

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
 CONTRACT NUMBER 16090000704 FOR THE
 THE AMERICAN RECOVERY AND REINVESTMENT ACT (ARRA) (CFDA# 81.402)

ATTACHMENT A - BUDGET AND PERFORMANCE DOCUMENT

SUBRECIPIENT NAME: City of El Paso

DEPARTMENT FINANCIAL OBLIGATIONS

\$ 3,948,131.00	ARRA FUNDS CURRENTLY AVAILABLE
\$ 59,461.00	TRAINING & TECHNICAL ASSISTANCE FUNDS CURRENTLY AVAILABLE
\$ 3,948,131.00	TOTAL ANTICIPATED ARRA FUNDS
\$ 59,461.00	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
² Administration	\$ 197,407.00
³ Liability / Pollution Occurrence Insurance	\$ 16,981.00
Fiscal Audit	\$ 1,000.00
Materials / Program Support / Labor	\$ 2,986,195.00
⁴ Health and Safety	\$ 746,548.00
SUB-TOTAL	\$ 3,948,131.00
⁵ Training and Technical Assistance	\$ 59,461.00
TOTAL	\$ 4,007,592.00

FOOTNOTES TO BUDGET FOR AVAILABLE ALLOCATIONS:

- ¹ Denotes that the subrecipient must request in writing any adjustment needed to a budget category before TDHCA will make any adjustments to the budget categories. The only categories that can be reduced are the Administration, Insurance, Fiscal Audit and/or in the Health and Safety categories. Subrecipients are limited to two (2) requested budget revisions during the current contract term. Only those written request(s) from the subrecipients received at least 120 days prior to the end of the contract term (by April 30, 2011) will be reviewed. TDHCA may decline to review written requests received during the final 90 days of the contract term.
- ² Denotes maximum for administration based on 5.00% of the total allowable expenditures excluding travel for training.
- ³ Denotes \$4,000 for liability insurance and the remaining balance for pollution occurrence insurance.
- ⁴ Denotes the maximum allowed for Health and Safety expenditures.
- ⁵ Department approved training / travel only.

PERFORMANCE

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

EL PASO

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

EL PASO

Subrecipient shall provide weatherization program services sufficient to expend the contract funds during the contract term. ARRA costs per unit, excluding health and safety expenses, shall not exceed \$6,500.00 without prior written approval from the Department.

By signing this Contract the parties expressly understand and agree to the terms set forth word for word therein. This Contract shall be binding upon the parties hereto and their respective successors and assigns.

Effective Date of Budget: 09/01/2009

City of El Paso

By:

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

By:

This Contract is not effective unless signed by the Executive Director of the Department or their authorized designee.