

WEATHERIZATION ASSISTANCE PROGRAM

WEST VIRGINIA
MULTI-FAMILY OWNER AGREEMENT

This Agreement applies to buildings containing rental dwellings units, located in the State of West Virginia.

This Agreement is made and entered into by and between:

the "Subgrantee" also known as _____ Agency

and

the "owner" also known as

for the "premises to be weatherized"
also known as

_____ Apartments

_____ Street

_____ City

_____ County

_____ Project ID

NOW THEREFORE, the parties agree as follows:

I. DEFINITIONS: As used in this Agreement:

A. SUBGRANTEE shall mean an entity or subgrantee which contracts with and receives a grant of DOE Weatherization Assistance Program (WAP) funds from WV State WAP Office to provide residential weatherization assistance to eligible households.

B. OWNER shall mean and includes the owners of the freehold of the premises or lesser estate therein, mortgagee or vendee in possession, assignee of rents, receiver, executor, trustee, lessee, agent or any other person, firm or corporation, directly or indirectly in control of the building located at _____, WV _____ (herein after the Premises) which contains a total of _____ dwelling unit(s).

C. DWELLING UNIT shall mean a house, apartment, a group of rooms or a single room occupied as separate living quarters.

D. HOUSEHOLD shall mean any individual or group of individuals who are living together as one economic unit in a dwelling unit and who make undesignated payments for their primary heating source in the form of rent and/or maintenance charges or pay for their heat directly.

E. ELIGIBLE HOUSEHOLD shall mean a household whose income is less than or equal to maximum limit established by the WAP each program year.

F. ELIGIBLE DWELLING UNIT shall mean:

1. A dwelling unit occupied as of the effective date of this Agreement by a weatherization eligible household. The Subgrantee shall not consider any unit to be an income eligible unit unless it has received sufficient written documentation indicating that the dwelling unit is occupied by an income eligible household in the form required by the Subgrantee. The name and income of the income eligible household must remain confidential in accordance with state or federal law. A schedule of the documented eligible dwelling units and the rents charged therefore is Exhibit A; or
2. A dwelling unit that is vacant as of the effective date of this Agreement designated by the Owner as a dwelling unit that will be rented to or occupied by an income eligible household within 180 days of the certification date of the completion of the work. The Owner shall include in Exhibit A dwelling units which have been so designated, noting them as vacant-eligible.

G. COMMON AREA shall include, but not be limited to, stairwells, hallways, basements, roofs and boiler rooms.

H. WEATHERIZATION MATERIALS shall mean any and all materials that meet or exceed (1) the standards prescribed by the 10 CFR section 440* (as amended)[*the Code of Federal Regulations (CFR) for the Title 10 (Energy) Section 440 for the Department of Energy, Weatherization Assistance for low-income persons] or (2) higher standards as established by WAP.

I. WEATHERIZATION LABOR shall mean the costs incurred by the Subgrantee to employ labor or to engage a subcontractor to install the Weatherization Materials set forth in subparagraph (H) of this Section.

J. PROGRAM SUPPORT shall mean the costs incurred by the Subgrantee, including audit and in-house labor costs, in weatherizing the unit other than those outlined in paragraphs H and I of this Section.

K. WORKSCOPE shall mean the entire scope of the actual work projects as set forth in Exhibit B.

L. CERTIFICATION shall mean the written and signed attestation by a WAP Subgrantee that the Workscope for a particular eligible dwelling unit has been satisfactorily performed and meets the WV WAP Installation Standards.

II. LIQUIDATED DAMAGES

The parties agree that for the purpose of this Agreement, in the event of a Breach by the Owner, liquidated damages shall be equal to the amount of expenses the Subgrantee has incurred at the time of the breach.

III. OWNER'S OBLIGATIONS

A. The Owner Agrees to contribute 25% of the total cost of weatherization to the subgrantee performing the work.

C. The Owner agrees that the rents for eligible dwelling units, as set forth in Exhibit A, shall not be increased for a period of one year, solely due to the weatherization improvements paid for by owner investment funds and Weatherization Assistance Program Funds (10 CFR Part 440, Sec. 440.22).

D. The Owner agrees that the terms, promises and obligations of this Agreement shall supersede and be superior to any inconsistent provision of any oral or written lease or other agreement affecting the rents collected for the eligible dwelling units listed in Exhibit A.

E. The Owner agrees that dwelling units identified in Exhibit A which are designated as vacant-eligible as of the effective date of this Agreement, shall be rented to or occupied by an DOE WAP income eligible household within 180 days of the certification date. The Owner further agrees to submit, or cause to have submitted to the Subgrantee, written proof of that household's eligibility, prior to lease or occupancy of such vacant "Eligible Dwelling Unit".

F. The Owner hereby swears or affirms that the premises is not presently being offered for sale and further agrees to notify the Subgrantee 30 calendar days prior to the sale or purchase or conversion of premises. At least 10 business days prior to the closing, the Owner agrees to obtain, in writing, the purchaser's consent to assume the Owner's obligations under this Agreement.

G. The Owner hereby swears or affirms that the premises have not previously received weatherization assistance under any program administered by the WV Weatherization Assistance Program after September 30, 1994. Failure to disclose such previous weatherization shall be a breach of this Agreement. In the event of such breach the Owner shall pay the Subgrantee the full cost of weatherization work under this Agreement.

H. The Owner hereby affirms that undertakings that involve properties greater than forty five years old at the time of signing of this agreement are subject to review under Section 106 of the National Historic Preservation Act, 16 U.S.C 470f (NHPA) and its implementing regulations at 36 CFR part 800 and include rehabilitation, energy efficiency retrofits, renewables, and weatherization (undertakings) and agrees to work with the Subgrantee to fulfill the stipulations of Section 106 compliance in accordance with 36 CFR 800.2 (c)(4) as fully described in Attachment D of this contract, which represents the Letter of Agreement between the West Virginia State Historic Preservation Office (SHPO) and the Governor's Office of Economic Opportunity (GOEO) Weatherization Program.

I. The Owner affirms and agrees that wages paid to the Subgrantee and/or its subcontractors are to be paid in compliance with the Davis-Bacon Act and relevant DOL regulations (29 C.F.R. Part 5, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction"). The Owner agrees to pay laborers and mechanics working on stimulus funded projects at local prevailing wage rates as determined by the U.S. Department of Labor ("DOL") under the Davis-Bacon Act and to provide weekly certified payrolls as fully described in Attachment C of this contract.

J. Owner affirms and agrees that all renovations are to be performed by documented EPA Certified Renovators and in full accordance with the Environmental Protection Subgrantee's work practice standards outlined in 40 CFR Section §745.85 and the associated recordkeeping requirements in §745.86(b)(6) and (b)(7) in target housing or child-occupied facilities as fully described in Attachment E of this contract. On HUD Housings Projects owner agrees to provide a Certificate of Lead-Based Paint Compliance to Subgrantee prior to any work beginning.

K. Owner agrees, in instances where tenant does not pay for energy directly, to provide in significant detail how the benefits of weatherization work will accrue primarily to low-income tenants as required by 10 CFR 440.22(b)(3)(i). The documentation must be part of the job documentation and must be signed by both parties.

L. Owner insures that the Subgrantee Agency will have access to all dwelling units and common areas to be weatherized upon seven days notice of a date certain by the Subgrantee.

M. Owner insures that Subgrantee Agency will have access to post work inspect all weatherization installed measures upon completion of Dwelling Unit(s).

N. Owner shall provide Subgrantee Agency with fuel consumption data for building(s) for one year of total energy consumption data (electrical and heating fuel). If tenant is responsible for paying fuel costs, owner shall provide the Subgrantee Agency with releases to obtain energy usage data directly from the utility.

O. Owner agrees to maintain all installed weatherization materials, including new heating systems in a manner consistent with optimum performance, save for normal wear and tear and in conformance with all relevant codes regarding maintenance.

IV. SUBGRANTEE'S OBLIGATIONS

A. The Owner hereby affirms that undertakings that involve properties greater than forty-five years old at the time of signing of this agreement are subject to review under Section 106 of the National Historic Preservation Act, 16 U.S.C 470f (NHPA) and its implementing regulations at 36 CFR part 800 and include rehabilitation, energy efficiency retrofits, renewables, and weatherization (undertakings) and agrees to work with the Subgrantee to fulfill the stipulations of Section 106 compliance in accordance with 36 CFR 800.2 (c)(4) and the WV SHPO/GOEO Letter of Understanding "weatherization undertakings exempt from Section 106 measures "as fully described in Attachment D of this contract.

B. The Subgrantee agrees to inspect and evaluate the installation of weatherization materials upon completion of project and/or building prior to requesting reimbursement from the Grantee.

C. The Subgrantee agrees to accept and retain the documentation required from the Owner pursuant to paragraphs III, V (if applicable), and Amendment Page (Exhibit D) of this Agreement for five years from the effective date of this agreement.

V. BREACH: THE FOLLOWING SHALL CONSTITUTE EVENTS OF BREACH

A. Subgrantee failure to install, or cause to have installed, to the extent that funds are available, the Weatherization Materials listed in Exhibit B in a timely and workmanlike manner; provided Subgrantee gained access to the weatherization eligible dwelling units upon seven days notice by Subgrantee to the Owner.

B. The Owner's failure in a timely manner to submit to Subgrantee the documentation required in paragraph III, (if applicable) to this Agreement.

C. The Owner's failure to rent or place in occupancy an income eligible household in a vacant "Eligible Dwelling Unit" specified in Exhibit A within 180 calendar days of the certification date. The Owner's failure to meet this deadline and to fail to provide supporting documentation within ten (10) business days of this deadline to Subgrantee shall constitute prima facie proof of breach.

D. The Owner's attempt to increase the rent charged a weatherization eligible household occupying an eligible dwelling unit, except as noted in paragraph III.

E. The Owner will pay for all cost incurred by the subgrantee in the event the owner backs out of the project.

VI. REMEDIES

A. In the event that the Owner fails to submit in a timely manner to Subgrantee the documentation required in paragraph III, (if applicable) of this Agreement, Subgrantee shall notify the Owner in writing by registered mail of the nature of the breach. If the Owner does not, within seven business days from receipt of notification, commence to pursue diligent cure of such breach or provide Subgrantee with reasonable notice that such default does not, in fact, exist, the Owner shall pay Subgrantee the actual costs incurred at the time of the breach.

B. In event that the Owner fails to rent or place in occupancy an income eligible household in a vacant "Eligible Dwelling Unit" specified in Exhibit A within 180 calendar days of the certification date, Subgrantee shall notify the Owner in writing by registered mail of the nature of the breach. If the Owner does not, within seven business days from receipt of notification, commence to pursue diligent cure of such breach or provide this Subgrantee with reasonable notice that such breach does not, in fact, exist, the Owner shall pay this Subgrantee the per dwelling unit liquidated damages.

C. In the event that the Owner is in breach of paragraph III.D (increases the rent charged to an eligible household occupying an Eligible Dwelling Unit), the occupant(s) of the Agreement can assert any direct claim against the Owner in any action or special proceeding in any Court of appropriate jurisdiction.

VII. INDEMNIFICATION

Neither Subgrantee nor Owner shall be held responsible or liable in any way for the failure to provide work, labor, service, or materials provided for by the terms of this Agreement by reason of federal, state or municipal requirements or regulations prohibiting the provision of such work, labor, service, or materials.

VIII. ACCESS TO DOCUMENTS

Owner and/or Subgrantee shall provide any occupant of an eligible dwelling unit access to this document in accordance with federal and state laws regarding confidentiality and privacy.

IX. EXHIBITS

All Exhibits relevant to this Agreement shall be initialed by both parties and become a part of this Agreement upon signing of both parties.

X. SEVERABILITY

The provisions of this Agreement are severable. If any provision of this Agreement is found invalid, such finding shall not affect the validity of this Agreement as a whole or any part or provision hereof other than the provision so found to be invalid.

The parties acknowledge that this Agreement is under seal.

Owner or Authorized Representative (Print)

Date:

Owner or Authorized Representative (Sign)

Date:

Subgrantee or Authorized Representative (Print)

Date:

Subgrantee or Authorized Representative (Sign)

Date:

Weatherization Assistance Program Multi-Family Owner Amendments
Exhibit C

Attached is a copy of the U.S. Department of Labor (DOL) Davis-Bacon requirements that must be followed by everyone responsible for work completed with Weatherization funds as per the American Recovery and Reinvestment Act funded Weatherization grant agreement between the Subgrantee and the West Virginia Governors Office of Economic Opportunity .

Weatherization Assistance Program Multi-Family Owner Amendments
Exhibit D

Attached is a copy of: 1) the Letter of Agreement between the West Virginia State Historic Preservation Office (SHPO) and the Governor's Office of Economic Opportunity Weatherization Office, and 2) the two page "Weatherization Undertakings Exempt from Section 106" review guidelines reached as part of the agreement, that must be followed by every party responsible for work completed with Federal Weatherization funds as per all guidance and contract agreements between the Subgrantee and the West Virginia Governors Office of Economic Opportunity.

Weatherization Assistance Program Multi-Family Owner Amendments
Exhibit E

Attached is a copy of the U.S. Environmental Protection Subgrantee (EPA) Lead-Safe Repair, Renovator and Painting Program Rule requirements that must be followed by everyone responsible for work completed with Weatherization funds as per the American Recovery and Reinvestment Act funded Weatherization grant agreement between the Subgrantee and the West Virginia Governors Office of Economic Opportunity.