

NORTH CAROLINA WEATHERIZATION ASSISTANCE PROGRAM

SUBCONTRACTOR AGREEMENT - HVAC

This Agreement is hereby entered into by and between (Sub-grantee) (herein “Contractor”) and (Subcontractor) (herein “Subcontractor”). The agreement is subject to the availability of funds from the Award Agreement # DE-EE0007939 and Award Agreement # 20B1NCLIEA & 21B1NCLIEA.

WITNESSETH

WHEREAS, the Contractor has entered into a Weatherization Assistance Program Agreement with the North Carolina Department of Environmental Quality (“DEQ”) (the “WAP Contract”), whereby it has agreed to perform certain weatherization activities pursuant to the Weatherization Assistance Program in North Carolina and;

WHEREAS, the Contractor, as a result of the utilization of its agency procurement procedures determined that the Subcontractor is a good value; and

WHEREAS, the Subcontractor has agreed to undertake the services set forth in Schedule A and to fulfill all responsibilities of this Agreement relating to the Project.

NOW, THEREFORE, in furtherance of the Weatherization Assistance Program, and in consideration and the mutual promises and obligations herein provided, the parties do mutually agree as follows:

1. Use of this Contract Document

The Subcontractor acknowledges and agrees that, unless and until executed by the parties, this contract document is a template that DEQ has provided to the Contractor for guidance purposes only (the “Guidance Template”), and that the Subcontractor alone is ultimately responsible for determining whether this or any other contract document used to effect an agreement with the Contractor is legally sufficient for the Subcontractor’s purposes.

The Subcontractor further acknowledges and agrees that adoption of this Guidance Template to effect an agreement with the Contractor will not provide safe harbor to either the Contractor or the Subcontractor in the event that either party fails to comply with any of the laws, regulations, rules or policies—whether local, state or federal—applicable to the parties and/or their contractual arrangement. Conversely, the Subcontractor acknowledges and agrees that the Contractor and Subcontractor are under no legal obligation whatsoever to adopt this Guidance Template as the requisite contract document memorializing the parties’ agreement. Rather, the Contractor and Subcontractor may elect to execute a different contract document, including any substantive variation of this Guidance Template, so long as such document constitutes a legally binding contract and contains all of the terms, conditions, duties and other contract provisions required under the laws, regulations, rules and policies—whether local, state or federal—applicable to the parties and/or their contractual arrangement.

2. Applicability of WAP Contract

In those instances where services for which the Contractor is responsible under the WAP Contract are to be carried out by the Subcontractor pursuant to the terms of this Agreement, the provisions of the WAP Contract shall be binding on the Subcontractor to the extent applicable under the laws, regulations, rules and policies—whether local, state or federal—governing the parties’ contractual arrangement. Upon request, the Contractor shall provide the Subcontractor with a copy of the WAP Contract within a reasonable period of time.

3. Term of Agreement

This Agreement shall begin on _____ (Commencement Date) and shall terminate on _____ (Termination Date) with the exception of all provisions regarding records retention and guarantees of work which shall survive the termination of this Agreement.

4. Compensation

The Contractor agrees to pay the Subcontractor for services rendered under the terms and conditions of this Contract, subject to any additions and deductions, the reimbursement cost of materials and labor hours set forth in Schedule B (Price Agreement).

5. Entire Agreement

This Agreement and, to the extent applicable, the WAP Contract, together with any attachments appended prior to the execution of the present Agreement, constitutes the entire Agreement between the parties and shall not be changed, modified or altered in any manner except by an instrument in writing executed by the parties.

6. Notices

Any notice to be given pursuant to this Agreement shall be deemed sufficient if given in writing to the address indicated in this Agreement, or such other address as may be specified in writing, and if given by certified mail, return receipt requested, and unless date of receipt is specified herein, such notice shall be deemed given when mailed.

7. Subcontractor's Obligations

The Subcontractor agrees:

- A. To perform the services provided for in Schedule A (Scope of Services) attached. The services provided by the Subcontractor may not be contracted out to any other organization or company.
- B. To comply with all applicable laws, ordinances, codes and regulations of local, state and federal governments, including the obtaining of all required permits and licenses and the requirements of this Agreement, at no additional cost to the Contractor, except that that actual permit and license fees specific to a site of work may be charged to the Contractor.
- C. To use lead safe weatherization in all homes built prior to December 31, 1978, where the possibility of generating dust, both indoors and outdoors, exists. There is no *de minimus* level recognized; however, the preparation area and clean up area should be sized appropriately for the job. Pictures of the lead safe set up must be taken and provided to the Contractor in electronic form when the invoice is submitted.
- D. To provide and maintain commercial insurance during the term of the contract. This insurance shall be maintained at the sole cost of the Subcontractor and with such terms and limits as may be reasonably associated with the contract. The Subcontractor must list the Contractor as a certificate holder on all relevant policies. At a minimum, the Subcontractor shall provide and maintain the following coverage and limits:
 - (1) **Worker's Compensation** – The Subcontractor shall provide and maintain Worker's Compensation Insurance as required by the laws of North Carolina, as well as employer's liability coverage and minimum limits of \$300,000.00, covering all of Subcontractor's employees who are engaged in any work under the contract. Sole proprietorships and partnerships with less than three (3) employees, in addition to the sole proprietor or partners, are not required to have Worker's Compensation.
 - (2) **Commercial General Liability** – General Liability Coverage on a Comprehensive Broad Form on an occurrence basis in the minimum amount of \$100,000.00 Combined Single Limit of Limit. (Defense cost shall be in excess of the limit of liability.)

- (3) **Automobile** – Automobile Liability Insurance, to include liability coverage, covering all owned, hired and non-owned vehicles used in performance of the contract. The minimum combined single limit shall be \$500,000.00 bodily injury and property damage; \$500,000.00 uninsured/under insured motorist; and \$1,000.00 medical payment.

Providing and maintaining adequate insurance coverage is a material obligation of the Subcontractor. The Subcontractor may meet its requirements of maintaining specified coverage and limits by demonstrating to the Contractor that there is in force insurance with equivalent coverage and limits that will offer a least the same protection to the Contractor. All such insurance shall meet all laws of the State of North Carolina. Such insurance coverage shall be obtained from companies that are authorized to provide such coverage and that are authorized by the Commissioner of Insurance to do business in North Carolina. The Contractor shall at all times comply with the terms of such insurance policies, and all requirements of the insurer under any such insurance policies, except as they may conflict with existing North Carolina laws or this contract. The limits of coverage under each insurance policy maintained by the Subcontractor shall not be interpreted as limiting the Subcontractor's liability and obligations under the contract.

- E. To indemnify and hold harmless the Contractor and any of its officers, agents and employees, from any claims of third parties arising out of any act or omission of the Subcontractor in connection with the performance of this Agreement.
- F. To perform the work in a workmanlike manner acceptable to the Contractor. The Subcontractor shall promptly correct all work rejected as defective or non-conforming as identified by the Contractor during any inspection, within fifteen (15) days of receipt of the written notice of the defect by the Subcontractor, but in no event later than the Termination Date of this Agreement, at no additional cost to the Contractor.
- G. To guarantee all materials installed and labor performed to be free from defects for a period of one year from the date of final acceptance of all the work required by this Agreement on the unit, or the building containing the unit, if later.

At any time up to one (1) year from the date of installation and upon written notice from the Contractor, the Subcontractor shall correct any faulty workmanship in regard to mechanical equipment and weatherization measures. Any manufacturer warranties are in addition to this stated warranty. This one-year warranty provided by the Subcontractor shall run concurrent with the first year of the manufacturer's warranty and does not in any way extend the period of the manufacturer's warranty.

Defective work or materials shall be repaired or replaced, at the election of the Contractor, within thirty (30) days of receipt of the written notice of the defect by the Subcontractor, at no additional cost to the Contractor.

- H. Acceptance of faulty work, or failure on the part of the Contractor to discover defects, will not relieve the Subcontractor of responsibility to correct the defects as set forth herein within the guarantee period.
1. All work assigned to the Subcontractor will be identified by a Job Number and the Subcontractor shall similarly label all invoices, work orders, etc. with the same number for purposes of identification.
 2. The Subcontractor shall provide all required information on forms supplied by the Contractor, or shall supply to the Contractor the information necessary for the completion of such forms.

- I. To provide all labor, tools and equipment necessary to perform this Agreement in an efficient, workmanlike and expeditious manner.
- J. To ensure employees do not smoke or use other tobacco products (including, but not limited to, pipes, cigars, snuff, or chewing tobacco) on any part of the jobsite. A weatherization jobsite includes the home and the property in which the home is located.

8. Payment Schedule

- A. That the Subcontractor shall not be entitled to any partial payment. Payment will be upon completion of all (100%) of services performed on each home. The Subcontractor must submit Contractor's Invoice that specifies measure labor & material costs for payment.
 - 1. If the Subcontractor Invoice does not separate sales tax, then a certified statement of sales taxes paid must accompany the Invoice.
- B. The Contractor agrees to make payment within sixty (60) working days after the Contractor's receipt of all billing documentation above.
- C. Assignment
This Agreement is intended to secure the services of the Subcontractor because of its ability and reputation and none of the Subcontractor's services or obligations under this Agreement shall be assigned, subcontracted or transferred.
- D. Records
The Subcontractor shall retain all papers and records in connection with work performed for a minimum of three (3) years and access will be provided to DEMLR, the US Department of Energy and any of its authorized agents or representatives, or other Federal or State representatives for the purpose of audit, examination, excerpts or transactions.

9. Contractor's Obligations

The Contractor agrees:

- A. To provide work orders specifying the quantity and method of all work requested of the Subcontractor in conformance with the Divisions policies.
- B. To conduct a timely post-inspection to determine the acceptability of the services performed by the Subcontractor no later than ten (10) business days after notification by the Subcontractor of completion (the "Final Inspection").
- C. To pay the Subcontractor promptly according to this Agreement.
- D. Not to condition payment under this Agreement on the Division certification or approval.

10. Conduct of Agreement

- A. Solicitation
The Subcontractor shall not actively solicit business from the clients during the course of the Subcontractor's performance of this Agreement. This provision shall not prevent Subcontractor from providing additional services to the clients at the request of the clients, which additional services shall be performed at the sole cost of the clients. The Contractor is not obligated to

pay for any work not initiated by the Contract and outside the scope of work provided on a work order.

B. Delays

When good cause is shown for delay in the work by the Subcontractor, the Contractor shall make a determination specifying alternative payment procedures and/or an extension of time allocated for performance of this Agreement based on confirmation of the delay. Such delays may include, but are not limited to, any of the following: changes in the work, labor disputes, fire, flood, unavoidable casualty or damage to materials, an act or neglect of the property owner or such cause beyond the control of the Subcontractor.

C. Liquidated Damages

It is understood that actual damages due to delay in the performance of the work are uncertain and difficult to ascertain. The reasonably foreseeable damages due to such delay are agreed to be the sum of one hundred dollars (\$100) per day per dwelling unit. The Contractor may withhold and retain such liquidated damages out of any monies due to the Subcontractor under this Agreement.

D. Termination

1. For Fault

If the Contractor determines that the Subcontractor has failed to perform or will fail to perform all or any part of the Subcontractor's services or obligations required under this Agreement, the Contractor may terminate or suspend this Agreement in whole or in part upon written notice by certified mail to the Subcontractor specifying the portions of this Agreement terminated, suspended or reduced. Such notice shall specify the violation(s) of this Agreement, and, in the case of termination, shall specify a reasonable period of not more than ten (10) days nor less than five (5) days from receipt of the notice, at which time the Agreement shall be deemed terminated. In the event of such termination, any materials, supplies, tools or equipment provided by the Contractor shall be returned forthwith by the Subcontractor.

2. Not for Fault

Whenever the Contractor determines that termination of this Agreement in whole or in part is in the best interest of the Contractor or the Division, or in the event that termination is required by a Federal Subgrantee, the Contractor may terminate this Agreement by written notice to the Subcontractor specifying the services terminated and the effective date of the termination. Upon termination, the Subcontractor shall be entitled to and the Contractor shall pay, the eligible costs incurred in compliance with this Agreement until the date of the termination, plus any costs the Subcontractor incurs directly resulting from such termination, provided however, that the total amount paid to the Subcontractor shall not be more than the amount of Total Compensation specified in this Agreement.

3. Termination for Circumstances Beyond the Control of the Subcontractor

The Subcontractor shall be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of the Subcontractor and without its fault or negligence, such as acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Subcontractor shall notify the Contractor in writing as soon as it is reasonably possible after the commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such

occurrence with all reasonable dispatch, and shall promptly give written notice to the Contractor of the cessation of such occurrence.”

SCHEDULE A

Scope of Services

The Subcontractor agrees to provide the services and/or materials described in detail below:

1. **Evaluate, clean and tune (ECT)** heating/cooling equipment per ANSI/ACCA Standard 4 (Maintenance of Residential HVAC Systems) and North Carolina Weatherization Assistance Program Guidelines, providing full documentation of tests performed, conditions observed and recommended actions.
 - a. Evaluation should include a visual inspection of existing ductwork, and, if applicable, notifying the Contractor of any deficiencies noted.
 - b. Evaluation should include combustion and safety testing, if applicable.
 - c. Conduct minor repairs to the heating/cooling system as determined by the ECT. For the purposes of this agreement, minor repairs are defined those repairs that and may be performed by Subcontractor performing the ECT service at the time of the initial service at no additional cost.
 - d. Specify any additional work needed by electrician and/or plumber to achieve efficient, safe and code compliant operation of the unit. Any electrical and/or plumbing services must be separately contracted with by the Contractor; if the Subcontractor has a preference for a specific electrical or plumbing service provider, he/she may submit that request to the Contractor.
 - e. Follow procedures for servicing, repairing, and disposing of any and all refrigerant-containing devices, units, and systems as outlined by federal, state, and local laws and regulations now in effect or hereinafter enacted which pertain to the Federal Clean Air Act of 1990.
 - f. Remove any and all non-functioning equipment and parts associated with system, including obsolete ductwork, unless otherwise specified by the Contractor.
2. Replace non-functioning HVAC equipment with equipment of comparable size and type according to Manual J calculations and having an efficiency rating meeting or exceeding Section 7610 of the NC Weatherization Installation Standards. New System must use the same fuel type (oil, propane, electric, etc) as the existing system unless prior approval is granted by Contractor to convert fuel type. If provided, the air filters for the new system shall be rated at MERV 6. Installation must meet ANSI/ACCA Standard 5 (Installation of Residential HVAC Systems) and North Carolina Weatherization Assistance Program Guidelines.
 - a. Specify any additional work needed by electrician and/or plumber to achieve efficient, safe and code compliant operation of the unit. Any electrical and/or plumbing services must be separately contracted with by the Contractor; if the Subcontractor has a preference for a specific electrical or plumbing service provider, he/she may submit that request to the Contractor.
 - b. Remove any and all non-functioning HVAC equipment and parts associated with system, including obsolete ductwork.
 - c. Follow procedures for servicing, repairing, and disposing of any and all refrigerant-containing devices, units, and systems as outlined by federal, state, and local laws and regulations now in effect or hereinafter enacted which pertain to the Federal Clean Air Act of 1990.
 - d. Provide original documentation of the Manual J calculation, new HVAC system operation manual and warranty information to the Contractor with the invoice.

**SCHEDULE B
Subcontractor Compensation**

All labor rates quoted must include all overhead cost including travel, worker compensation, equipment, maintenance, administrative costs, and worker pay. These price categories should be adequate for installing insulation in most weatherization situations. If a particular category will not apply, indicate by stating (N/A) "not applicable" in the price sections. Please avoid adding unnecessary price categories.

TASK 1: Evaluate, clean and tune (ECT) heating/cooling equipment per ACCA/ANSI Standard 4 and North Carolina standards, providing full documentation of tests performed and recommendations.

Set Price per unit	
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TASK 2: Diagnose heating/cooling equipment with repairs and/or parts replacement, as necessary. Task 2 is only to evaluate an inoperable system, not to clean and tune it.

Set Price per unit	
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TASK 3: Replace existing non-functioning heating/cooling equipment with new HVAC equipment. The cost should include labor for sizing central systems using ACCA Manual J. Ensure that efficiency meets or exceeds the requirements in section 7610 of the NC WAP SWS.

Replacement of an air handler or outdoor condenser ONLY, as opposed to a complete system, can be performed only after NC WAP approval on a case-by-case basis and both units must meet efficiency standards.

		Option 1*	Option 2*	Option 3*
Electric Heat Pump (split)	Make/Model			
	Size/Rating			
	Efficiency (HSPF)			
	Material Cost			
	Labor Cost			
Natural Gas Furnace	Make/Model			
	Size/Rating			
	Efficiency			
	Material Cost			
	Labor Cost			
Natural Gas Package	Make/Model			
	Size/Rating			
	Efficiency			
	Material Cost			
	Labor Cost			
Packaged Heat Pump	Make/Model			
	Size/Rating			
	Efficiency (HSPF)			
	Material Cost			
	Labor Cost			
Natural Gas Vented Space Heater	Make/Model			
	Size/Rating			
	Efficiency			
	Material Cost			
	Labor Cost			

Fuel Oil Furnace	Make/Model			
	Size/Rating			
	Efficiency			
	Material Cost			
	Labor Cost			
	AC included?			
Propane Vented Space Heater	Make/Model			
	Size/Rating			
	Efficiency			
	Material Cost			
	Labor Cost			
Fuel Oil Vented Space Heater	Make/Model			
	Size/Rating			
	Efficiency			
	Material Cost			
	Labor Cost			
Electric Mini Split	Make/Model			
	Size/Rating			
	Efficiency (HSPF)			
	Material Cost			
	Labor Cost			
Central AC	Make/Model			
	Size/Rating			
	Efficiency			
	Material Cost			
	Labor Cost			
Propane Furnace	Make/Model			
	Size/Rating			
	Efficiency			
	Material Cost			
	Labor Cost			
Vented Solid Fuel Oven (Wood/Coal)	Make/Model			
	Size/Rating			
	Efficiency			
	Material Cost			
	Labor Cost			
Unit Natural Gas Boiler	Make/Model			
	Size/Rating			
	Efficiency			
	Material Cost			
	Labor Cost			

* Please consider options for variously sized site-built vs. manufactured homes. Note that the Weatherization Assistance Program **does not** install electric furnaces and the heating efficiencies requirements are often **greater** than the mechanical code.

** Labor Cost can be Flat Rate **or** Hourly Rate.

IN WITNESS THEREOF, the parties have executed this Agreement

SUBCONTRACTOR

SIGNED: _____ DATE: _____

NAME (PRINTED): _____ TITLE: _____

BUSINESS: _____

ADDRESS: _____

CITY, STATE, ZIP: _____

TELEPHONE: _____ EMAIL: _____

LICENSE #: _____

CONTRACTOR – To be signed after state review

SIGNED: _____ DATE: _____

NAME (PRINTED): _____ TITLE: _____

BUSINESS: _____