

PENNSYLVANIA HOUSING FINANCE AGENCY
PRESERVATION THROUGH SMART REHAB PROGRAM
CONSTRUCTION AGREEMENT
BETWEEN

Pennsylvania Housing Finance Agency ("PHFA" or the "Agency")
Contractor identified in attached AIA Agreement ("Contractor") and
Owner identified in attached AIA Agreement ("Owner")

This Agreement is made this _____ day of _____, 201 to outline requirements, terms and conditions relating to the scope of work set forth in the attached AIA Agreement. The purpose of this Agreement is to memorialize and confirm the direct contracting relationship between PHFA and Contractor for all purposes involving the Department of Energy ("DOE") Weatherization Assistance Program ("WAP"). To the extent of any inconsistent terms and provisions with the underlying attached AIA Agreement, this Agreement shall prevail.

BACKGROUND:

PHFA, as a subgrantee for the Department of Community and Economic Development ("DCED") is administering a weatherization assistance program in the Commonwealth of Pennsylvania to provide funding for qualified energy rehabilitation in multifamily units (the "State Program"). Through the State Program, PHFA has selected the Contractor and worked with its approved professionals to develop and design the scope of work as set forth in the attached.

*This Agreement shall amend the American Institute of Architects Document A101, Standard Form of Agreement Between Owner and Contractor, 2007 Edition ("the AIA Agreement") and the American Institute of Architects Document A201, General Conditions of the Contract for Construction, 2007 Edition, between the parties named herein and PHFA and shall be binding upon all of the parties, including PHFA, the Contractor and the Owner. This Agreement is being used in tandem with the AIA Agreement because the AIA document is a standard document commonly used in commercial construction and the terms and provisions are understood by all parties. In all regards, however, the parties agree that the AIA Agreement is supplemented and amended by the provisions of this Agreement. **This Agreement shall supersede and override any provision in the attached AIA Agreement to the contrary.***

Contractor and Owner agree that the provisions of this Agreement and the AIA Agreement and the rights and obligations of the parties hereunder shall at all times be subject to and in conformity with the provisions of the Housing Finance Agency Law (the "Act") and the rules, regulations and guidelines of PHFA. Further, the provisions hereof are subject to all requirements of the DOE Weatherization Assistance Program, as further detailed herein. These requirements may be amended from time to time throughout the term of this Agreement. All parties agree to cooperate to comply with the provisions of American Recovery and Reinvestment Act of 2009 ("ARRA"), WAP and the State Program, as each may be amended from time to time.

The provisions of this Agreement include certain attachments and appendices which are incorporated herein. Read together as a whole, this Agreement and such attachments supersede and void all inconsistent provisions in the AIA Agreement or in any prior contract between the parties for the services to be performed hereunder.

ARTICLE I – DEFINITIONS

1. **Actual Construction Completion Date** – The date upon which PHFA certifies in writing that the entire Development is completed (except for minor incomplete items) in accordance with the Contract Documents, the scope of work has been completed and all units are ready for occupancy.

2. Contract Documents – AIA Document A101 Standard Form of Agreement Between Owner and Contractor, 2007 Edition, AIA Document A201 General Conditions of the Contract for Construction, 2007 Edition, this PHFA Construction Agreement amending and superseding the AIA Documents A101 and/or A201 as applicable, the drawings/specifications/scope of work, Davis–Bacon wage determination, and all Addenda issued prior to and all modifications issued after execution of this Agreement; and any other items that may be specifically stipulated as being included in the Contract Documents.

Any other agreement or understanding between the parties shall not be considered part of the Contract Documents will not be included in the Contract Sum and will not be eligible for project funds.

Only those costs incurred and approved by PHFA under construction contracts and documents to which PHFA has direct party rights shall be payable out of any WAP funds.

3. Latent Defects – Defects in materials, equipment or completed work which reasonably careful observation could not have discovered.

ARTICLE II – REPRESENTATIONS AND WARRANTIES

Contractor represents and warrants to PHFA and Owner that:

1. Contractor is financially solvent, able to pay his/her debts as they mature, and possesses sufficient working capital to complete the Agreement; that he/she is able to furnish the plant, tools, materials, supplies, equipment, and labor, and is experienced in and competent to perform the work; and that he/she is qualified to do the work and is authorized to do business in the Commonwealth of Pennsylvania; and

2. Contractor holds a license, permit or other special license, to perform the services included in the Agreement, as required by applicable law, or lawfully employs or works under the general supervision of the holder of such license, permit or special license; and

3. Contractor is not currently under suspension or debarment by the Commonwealth of Pennsylvania, any other state, or the federal government; and

4. Contractor has inspected the development site within thirty (30) days of signing this Addendum and represents and warrants that the site conditions have not changed so as to result in an increase in the scope of work or in the Contract Sum; and

5. Contractor understands that the Development under the Agreement is to be financed by WAP funds from PHFA, and that the terms of the WAP Funds are set forth in this Agreement. Contractor further understands that PHFA may as attorney-in-fact for Owner elect to undertake the completion of the Development in accordance with the Contract Documents.

The warranties in the Agreement shall not limit or exclude any other warranties, express or implied, which arise by operation of law.

ARTICLE III – REQUIREMENTS OF CONTRACTOR

1. Where required by local, state or federal authorities, the Contractor shall obtain and pay for all necessary permits required for the completion of the proposed work. Contractor shall provide written notification to PHFA when permits are not required.

2. Contractor further agrees that it will at its own expense provide safe and adequate approaches and assure uninterrupted access to all dwelling units which have been approved for occupancy by PHFA or turned over to and accepted by the Owner. Contractor shall at all times work closely with Owner to ensure careful relocation and minimal disruption to existing residents and to ensure that work is done in a manner which minimizes hazard at the premises.

3. Contractor shall obtain and pay for and keep in effect from the inception of construction, or from such time as PHFA may require, commercial general liability insurance in the amount of \$1,000,000 per occurrence and \$2,000,000 aggregate, and business automobile liability insurance in the amount of \$1,000,000 per accident, unless otherwise approved by Owner and PHFA. If Contractor fails to provide and maintain such insurance, PHFA and/or Owner may, without notice to Contractor, procure such policies and deduct any monies expended from any amount otherwise due to Contractor. Both PHFA and the Owner shall be named as additional insureds on general liability policies.

4. Contractor further agrees to indemnify and save harmless PHFA, the Owner, and the Commonwealth of Pennsylvania against loss or expense by reason of the liability imposed by law upon Owner, Contractor, the Commonwealth of Pennsylvania or PHFA, for damages because of bodily injuries, including death at any time resulting therefrom, sustained by any person or persons or on account of damage to property arising out of or in consequence of the performance or non-performance of the Agreement, whether such injuries to persons or damage to property are due or claimed to be due as a result of negligence or willful misconduct of Contractor, its subcontractors, employees or agents.

5. Contractor shall abide by all minority and disadvantaged business enterprise outreach programs as required by PHFA, WAP, the State Program, and ARRA throughout the Construction Period.

6. Contractor shall comply with all other applicable federal and state laws, regulations and guidelines required to rehabilitate the Project in accordance with WAP funding.

ARTICLE IV – PAYMENTS

1. All amounts to be paid to Contractor under the Contract Documents shall be paid in accordance with the PHFA Application for Payment (Exhibit A) submitted to PHFA. In the event Contractor fails to comply with all federal, state and local laws, ordinances, rules or regulations, with all PHFA requirements and WAP requirement or guidelines or with all terms and conditions of the Contract Documents, progress payments shall be withheld until Contractor has fully complied with the aforementioned, subject to the approval of PHFA.

2. The period covered by each Application for Payment shall be one month ending on the last day of the month unless otherwise agreed upon by all parties.

3. Subject to the provisions of the Contract Documents, the amount of each progress payment shall be based on:

- (a) The total schedule of values of the work acceptably completed as approved by PHFA, Architect, Owner and any other necessary contract parties; plus
- (b) The value of materials and equipment delivered and suitably stored at the site
- (c) Withholding of retainage from each Application for Payment shall be at the discretion of PHFA and shall be as specified in the AIA Agreement.

4. All payouts are subject to Contractor's compliance with all wage determination processing and record keeping requirements, certifications and warranties. In the event any submitted supporting material is incomplete or deemed to be inaccurate or inconsistent with the requisite processing requirements, Contractor's payouts will be withheld until such discrepancies and processing requirements are met to PHFA's satisfaction. Under no circumstances shall such suspension or withholding of funding relieve Contractor from performance under the AIA Agreement or this Agreement.

ARTICLE V – SCOPE OF AGREEMENT

Changes in the drawings/specifications/scope of work or any terms of the Contract Documents, orders for extra work, alterations or additions to the work or any other changes which materially alter the obligations or alter the design or materially reduce the quality or amenities of the Development shall be submitted to PHFA for written approval. Contractor covenants to fully indemnify PHFA and Owner against losses or damages or suspension of warranties or other possible consequence associated with any changes made without prior written approval of PHFA.

In the event of conflict, PHFA shall have the final right to determine appropriate scope of work adjustments.

ARTICLE VI – TIME

Contractor shall promptly proceed with and complete the Development within the time period specified in the Contract Documents, in accordance with the approved drawings and specifications and the Contract Documents. **Time is of the essence in this Agreement.** The Development may be funded with monies subject to federal spending and disbursement deadlines and no exception will be made for delays in completion by the Required Completion Date.

ARTICLE VII WEATHERIZATION ASSISTANCE PROGRAM REQUIREMENTS

Because funding is being made available through the Weatherization Assistance Program (“WAP”) pursuant to the American Recovery and Reinvestment Act of 2009 (“ARRA”), Contractor and subcontractors shall comply with the following requirements:

1. WAP and ARRA Flow Down Requirement – Contractor must comply with all program requirements of WAP as well as the terms and conditions of ARRA. In addition, Contractor must have those same requirements under WAP and ARRA "flow down" to all subcontractors and suppliers that are providing labor and/or materials for work to be funded by WAP funds. The attached Exhibit B shall be included with all subcontracts entered into as a result of WAP work.

2. Quarterly Project Reporting – For each calendar quarter in which WAP funds are provided to the project, Contractor will be required to submit the following to PHFA within **five (5) calendar days** after the end of the quarter:

- (a) For the Contractor provide:
 - i. Business Name
 - ii. DUNS Number
 - iii. Date of Payment(s)
 - iv. Payment Amount(s)
 - v. Zip + 4 Code of contractor’s headquarters
 - vi. Description of work or products

- (b) Number of jobs created or retained
 - i. Calculate the number of jobs using a “full time equivalent” of 40 hours per week including paid leave
 - ii. “Retained” is used to describe a worker or position that would have otherwise been laid off had it not be for the WAP funded activity

- iii. When describing a job that has been created or retained, use terms that are widely understood and describe the general nature of the work (e.g., job titles, broader labor categories, or the existing practice for describing jobs)
- iv. Report the number of jobs created or retained that directly support the activity paid with WAP
- v. Report the total hours worked during the quarter in jobs created or retained
- vi. Do not include jobs that provide “indirect support” to the activity (e.g., clerical/administrative staff preparing reports, review board staff, departmental administrators)
- vii. Do not include jobs created by material suppliers or central service providers.

3. Federal Labor Standards – The Federal Labor Standards contained in HUD-4010 and incorporated herein by reference. Contractor shall be responsible for the full compliance of all employers (Contractor, subcontractors and any lower-tier subcontractors) with the labor standards identified therein.

4. Davis-Bacon Compliance – The Davis-Bacon Act and regulations promulgated by the U.S. Department of Labor (“DOL”) at Title 29 CFR Parts 1, 3, 5, 6 and 7, as amended, which includes, but is not limited to, compliance with the Davis-Bacon wage decision/determination, requirements for payroll deductions, submission of weekly certified payroll reports and labor standards relating to Davis-Bacon wage rates.

Contractor shall pay prevailing wage rates as established and published by DOL to all laborers and mechanics employed in construction of the Development no less frequently than weekly. The Davis-Bacon wage decision (or wage determination) is a listing of various construction work classifications and the minimum wage rates (and fringe benefits, where prevailing) that people performing work in those classifications must be paid. The Davis-Bacon wage decision/determination applicable to the Development is attached to and incorporated into the Contract Documents and Contractor shall maintain the wage rates identified therein during construction of the Development. For buildings less than five stories in height, the “Weatherization/Residential” rates are applicable. For buildings five or more stories in height, the “Building” rates are applicable.

Contractor shall submit weekly certified payroll reports on DOL Form 1413 (Exhibit C) beginning with the first week Contractor and subcontractors work on the Development and every week thereafter until construction is complete as required by the Davis-Bacon regulations.

Contractor will provide a construction schedule of when subcontractors will be on site to PHFA’s Technical Services Representative for Davis–Bacon compliance monitoring purposes.

5. Standards for Weatherization Materials - The contractor must certify at construction completion that all materials installed during construction meet published material standards found in ***Appendix A to Part 440 – Standards for Weatherization Materials*** (Exhibit D).

6. The Copeland Act – The Copeland (Anti-Kickback) Act prohibits anyone to require any laborer or mechanic to give up or pay back any part of their wages. Contractor and subcontractors shall comply with all requirements of the Copeland Act and any and all regulations promulgated therewith as amended from time to time.

7. Contract Work Hours and Safety Standards Act – The Contract Work Hours and Safety Standards Act requires that no contractor or subcontractor under the Agreement may require or permit laborers or mechanics to work in excess of 40 hours in any workweek unless said laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of 40 hours in such workweek.

8. PA Careerlink – To ensure Pennsylvanians have the utmost opportunity to be hired for jobs created through receipt of WAP funding, all Contractors are required to post jobs they create or seek to fill as a result of WAP funding to the PA Careerlink system at www.pacareerlink.state.pa.us. Contractors may locate their local PA Careerlink office through the same website or by calling 1-866-858-2753. Staff at local PA Careerlink can assist Contractors with posting positions and explain how to retrieve resumes for applications within the system. Contractor shall provide proof of postings to PHFA.

9. Lead Based Paint Requirements – Renovations disturbing painted finishes in any development built prior to 1978 in which children under the age of six may reside, must comply with Environmental Protection Agency’s “Renovation, Repair and Painting” (RRP) final rule, unless the surfaces disturbed can be proven to be lead free or the disturbed area is smaller than the “de minimis” limits established in the rule. The RRP rule requires all firms performing renovations to be certified, all individuals performing renovations to be trained, a Certified Renovator to be assigned to each renovation project, and lead safe work practices to be followed.

In addition, any development meeting the above criteria and which is federally owned or receives federal assistance in the form of multifamily mortgage insurance; project-based rental assistance; rehabilitation assistance; acquisition, leasing, supportive services or operation assistance; tenant-based rental assistance; or is owned by a public housing authority, is subject to HUD’s “Lead Safe Housing Rule”. This rule requires renovation worker certification or on-the-job training from a Certified Renovator/Certified Lead Abatement Supervisor, and lead safe work practices. These requirements do not apply if the surfaces disturbed can be proven to be lead free or the disturbed area is smaller than the “de minimis” limits established in the rule. However, HUD’s training, lead safe work practices, lead based paint testing methods, and “de minimis” requirements are different from those of the EPA.

Both the EPA and HUD rules require pre-renovation tenant notification regarding the potential hazards of lead based paint and lead paint dust.

For more information on the EPA’s Renovation, Repair and Painting rule, see:
<http://www.epa.gov/lead/pubs/renovation.htm>

For more information on HUD’s Lead Safe Housing Rule, see:
<http://www.hud.gov/offices/lead/enforcement/lshr.cfm>

For a comparison of the requirements between the EPA and HUD rules, See:
http://www.hud.gov/offices/lead/enforcement/lshr_rrp_changes.cfm

10. In compliance with Section 106 of the National Historic Preservation Act, the following activities, when performed on a building over fifty years old, require consultation with the State Historic Preservation office (SHPO):

- (a) Changes to the exterior appearance of a building,
- (b) Replacement of original (non-replacement) windows or doors on facades visible from the street,
- (c) Replacement of any window or door with a new window or door of a different size, shape, or placement from the original.

11. Buy American – Use of American Iron, Steel, and Manufactured Goods - Please use subsections **I** and **II** in the alternative, as detailed below:

I. The following shall apply for Projects using ARRA funds for the construction, alteration, maintenance, or repair of a public building or public work when:

- the estimated value of the project is less than \$7,443,000; or

- **the procurement is being conducted by local governments and municipalities; or**
- **the specific item being procured is not covered under the World Trade Organization Agreement on Government Procurement or other international procurement agreement. (e.g. mass transit or highway procurements, dredging service procurements, or national defense-related procurements).**

(a) Requirement. All iron, steel, and other manufactured goods used as construction material for the construction, alteration, maintenance, or repair of a public building or public work must be produced in the United States. This requirement shall be applied in a manner that is consistent with the laws and agreements of the United States and the Commonwealth of Pennsylvania.

(b) Definitions.

1. "Building or work" means construction, maintenance, alteration, or repair. The terms include, without limitation, buildings, structures, and improvements of all types, such as bridges, dams, plants, highways, parkways, streets, subways, tunnels, sewers, mains, power lines, pumping stations, heavy generators, railways, airports, terminals, docks, piers, wharves, ways, lighthouses, buoys, jetties, breakwaters, levees, canals, dredging, shoring, rehabilitation and reactivation of plants, scaffolding, drilling, blasting, excavating, clearing, and landscaping. The manufacture or furnishing of materials, articles, supplies, or equipment (whether or not a Federal or State agency acquires title to such materials, articles, supplies, or equipment during the course of the manufacture or furnishing, or owns the materials from which they are manufactured or furnished) is not "building" or "work" within the meaning of this definition unless conducted in connection with and at the site of such building or work as is described in the foregoing sentence, or under the United States Housing Act of 1937 and the Housing Act of 1949 in the construction or development of the project.

2. "Construction material" means an article, material, or supply brought to the construction site by the recipient, subrecipient or a subcontractor for incorporation into the building or work. The term also includes an item brought to the site preassembled from articles, materials, or supplies. However, emergency life safety systems, such as emergency lighting, fire alarm, and audio evacuation systems, that are discrete systems incorporated into a public building or work and that are produced as complete systems, are evaluated as a single and distinct construction material regardless of when or how the individual parts or components of those systems are delivered to the construction site. Materials purchased directly by the Government are supplies, not construction material.

3. "Domestic construction material" means:

- (i) An unmanufactured construction material mined or produced in the United States; or
- (ii) A construction material manufactured in the United States.

4. "Foreign construction material" means a construction material other than a domestic construction material.

5. "Manufactured good or product" means a good or product used as construction material in a project that is the result of processing materials by way of machinery and/or labor that produce a substantially different article. Where the basic character, function, or kind of material processed remains the same, it is not manufactured.

6. "Manufactured construction material" means any construction material that is not unmanufactured construction material."

7. "Public building or public work" means building or work, the construction, alteration, maintenance, or repair of which, as defined in this award term, is carried on directly by authority of, or with funds of, a Federal agency to serve the interest of the general public regardless of whether title thereof is in a Federal agency.

8. "Steel" means an alloy that includes at least 50 percent iron, between .02 and 2 percent carbon, and may include other elements.

9. "Unmanufactured construction material" means raw material brought to the construction site for incorporation into the building or work that has not been:

- (i) Processed into a specific form and shape; or
 - (ii) Combined with other raw material to create a material that has different properties than the properties of the individual raw materials.
10. “United States” means the 50 States, the District of Columbia, and outlying areas including:

- (i) Commonwealths:
 - (a) Puerto Rico;
 - (b) The Northern Mariana Islands;
- (ii) Territories:
 - (a) American Samoa;
 - (b) Guam;
 - (c) U.S. Virgin Islands; and
- (iii) Minor outlying islands:
 - (a) Baker Island;
 - (b) Howland Island;
 - (c) Jarvis Island;
 - (d) Johnston Atoll;
 - (e) Kingman Reef;
 - (f) Midway Islands;
 - (g) Navassa Island;
 - (h) Palmyra Atoll;
 - (i) Wake Atoll.

(c) Domestic preference.

1. This award term and condition implements Section 1605 of ARRA, by requiring that all iron, steel, and other manufactured goods used as construction material in the project are produced in the United States.
2. The recipient shall use only domestic construction material in performing this project, except as provided in paragraph (c)(3) and (c)(4) of this term and condition.
3. This requirement does not apply to the construction material or components listed by the Government as follows:

[Award official to list applicable excepted materials or indicate “none”]

4. The award official may add other foreign construction material to the list in paragraph (c)(3) of this term and condition if the Federal government determines that—
 - (i) The cost of domestic construction material would be unreasonable. The cost of domestic iron, steel, or other manufactured goods used as construction material in the project is unreasonable when the cumulative cost of such material will increase the cost of the overall project by more than 25 percent;
 - (ii) The construction material is not mined, produced, or manufactured in the United States in sufficient and reasonably available quantities and of a satisfactory quality;or
 - (iii) The application of the restriction of section 1605 of ARRA to a particular construction material would be inconsistent with the public interest.

(d) Request for determination of inapplicability of Section 1605 of ARRA.

1. (i) Any request to use foreign construction material in accordance with paragraph (c)(4) of this clause shall include adequate information for Government evaluation of the request, including—
 - (a) A description of the foreign and domestic construction materials;
 - (b) Unit of measure;
 - (c) Quantity;
 - (d) Price;

- (e) Time of delivery or availability;
 - (f) Location of the construction project;
 - (g) Name and address of the proposed supplier; and
 - (h) A detailed justification of the reason for use of foreign construction materials cited in accordance with paragraph (b)(4) of this clause.
- (ii) A request based on unreasonable cost shall include a reasonable survey of the market and a completed price comparison table in the format in paragraph (e) of this clause.
- (iii) The price of construction material shall include all delivery costs to the construction site and any applicable duty.
- (iv) Any recipient request for a determination submitted after award shall explain why the recipient could not reasonably foresee the need for such determination and could not have requested the determination before award. If the recipient does not submit a satisfactory explanation, the award official need not make a determination.
2. If the Federal government determines after award that an exception to section 1605 of ARRA applies, the award official will amend the award to allow use of the foreign construction material. When the basis of the exception is non-availability or public interest, the amended award shall reflect adjustment of the award amount or redistribution of budgeted funds, as appropriate, to cover costs associated with acquiring or using the foreign construction material. When the basis for the exception is the unreasonable price of a domestic construction material, the award official shall adjust the award amount or redistribute budgeted funds, as appropriate, by at least the differential established in 2 CFR 176.110(a).
3. Unless the Federal government determines that an exception to section 1605 of ARRA applies, use of foreign construction material is noncompliant with section 1605 of ARRA.

(e) Data. To permit evaluation of requests under paragraph (d) of this clause based on unreasonable cost, the Recipient shall include the following information and any applicable supporting data based on the survey of suppliers:

Foreign and Domestic Construction Materials Price Comparison

Construction Material Description	Unit of Measure	Quantity	Price (Dollars)*
Item 1:			
Foreign construction material	_____	_____	_____
Domestic construction material	_____	_____	_____
Item 2:			
Foreign construction material	_____	_____	_____
Domestic construction material	_____	_____	_____

1. [List name, address, telephone number, email address, and contact for suppliers surveyed. Attach copy of response; if oral, attach summary.]
2. [Include other applicable supporting information.]
3. [* Include all delivery costs to the construction site.]

II. The following shall, in addition to the Pennsylvania Steel Products Procurement Act, 73 P.S. Sections 1881-1887, apply for Projects using ARRA funds for the construction, alteration, maintenance, or repair of a public building or public work with an estimated value of \$7,443,000 or more:

(a) Requirement. All iron and steel used in the construction, reconstruction, alteration or repair of a public building or public work must be manufactured in the United States. All other manufactured

goods used as construction material for the construction, alteration, maintenance, or repair of a public building or public work must be produced in the United States or a designated country. This requirement shall be applied in a manner that is consistent with the laws and agreements of the United States and the Commonwealth of Pennsylvania.

(b) Definitions. As used in this award term and condition:

1. "Building or work" includes, without limitation, buildings, structures, and improvements of all types, such as bridges, dams, plants, highways, parkways, streets, subways, tunnels, sewers, mains, power lines, pumping stations, heavy generators, railways, airports, terminals, docks, piers, wharves, ways, lighthouses, buoys, jetties, breakwaters, levees, canals, dredging, shoring, rehabilitation and reactivation of plants, scaffolding, drilling, blasting, excavating, clearing, and landscaping. The manufacture or furnishing of materials, articles, supplies, or equipment (whether or not a Federal or State agency acquires title to such materials, articles, supplies, or equipment during the course of the manufacture or furnishing, or owns the materials from which they are manufactured or furnished) is not "building" or "work" within the meaning of this definition unless conducted in connection with and at the site of such building or work as is described in the foregoing sentence, or under the United States Housing Act of 1937 and the Housing Act of 1949 in the construction or development of the project.
2. "Construction material" means iron, steel, and other manufactured goods used as construction material brought to the construction site by the recipient, subrecipient, or subcontractor for incorporation into the building or work. The term also includes an item brought to the site preassembled from articles, materials, or supplies. However, emergency life safety systems, such as emergency lighting, fire alarm, and audio evacuation systems, that are discrete systems incorporated into a public building or work and that are produced as complete systems, are evaluated as a single and distinct construction material regardless of when or how the individual parts or components of those systems are delivered to the construction site. Materials purchased directly by the Government are supplies, not construction material.
3. "Designated country" means: Aruba, Australia, Austria, Belgium, Bulgaria, Chile, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea (Republic of), Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, and United Kingdom.
4. "Designated country construction material" means a construction material that
 - (i) Is wholly the growth, product, or manufacture of a designated country; or
 - (ii) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a designated country into a new and different construction material distinct from the materials from which it was transformed.
5. "Domestic construction material" means:
 - (i) An unmanufactured construction material mined or produced in the United States; or
 - (ii) A construction material manufactured in the United States.
6. "Foreign construction material" means a construction material other than a domestic construction material.
7. "Manufactured construction material" means any construction material that is not unmanufactured construction material."
8. "Public building or public work" means building or work, the construction, alteration, maintenance, or repair of which, as defined in this Subpart, is carried on directly by authority of, or with funds of, a Federal agency to serve the interest of the general public regardless of whether title thereof is in a Federal agency.

9. "Steel" means an alloy that includes at least 50 percent iron, between .02 and 2 percent carbon, and may include other elements.

10. "Unmanufactured construction material" means raw material brought to the construction site for incorporation into the building or work that has not been--

(i) Processed into a specific form and shape; or

(ii) Combined with other raw material to create a material that has different properties than the properties of the individual raw materials.

11. "United States" means the 50 States, the District of Columbia, and outlying areas.

(c) Construction materials.

1. This award term and condition implements

(i) Section 1605(a) of the American ARRA, by requiring that all iron, steel, and other manufactured goods used as construction material in the project are produced in the United States; and

(ii) Section 1605(d), which requires application of the Buy American requirement in a manner consistent with U.S. obligations under international agreements. The restrictions of section 1605 of ARRA do not apply to designated country construction materials. The Buy American requirement in section 1605 shall not be applied where the iron, steel or manufactured goods used as construction material in the project are from a Party to an international agreement that obligates the recipient to treat the goods and services of that Party the same as domestic goods and services, or where the iron, steel or manufactured goods used as construction material in the project are from a least developed country. This obligation shall only apply to projects with an estimated value of \$7,443,000 or more.

2. The recipient shall use only domestic or designated country construction material in performing the work funded in whole or part with this award, except as provided in paragraphs (c)(3) and (c)(4) of this term and condition.

3. The requirement in paragraph (c)(2) of this term and condition does not apply to the construction materials or components listed by the Government as follows:

[Award official to list applicable excepted materials or indicate "none"]

4. The award official may add other construction material to the list in paragraph (c)(3) of this award term and condition if the Federal government determines that:

(i) The cost of domestic construction material would be unreasonable. The cost of domestic iron, steel, or other manufactured goods used as construction material in the project is unreasonable when the cumulative cost of such material will increase the overall cost of the project by more than 25 percent;

(ii) The construction material is not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality; or

(iii) The application of the restriction of section 1605 of ARRA to a particular construction material would be inconsistent with the public interest.

(d) Request for determination of inapplicability of section 1605 of ARRA or the Buy American Act.

1. (i) Any recipient request to use foreign construction material in accordance with paragraph(c)(4) of this term and condition shall include 15 adequate information for Government evaluation of the request, including—

(a) A description of the foreign and domestic construction materials;

(b) Unit of measure;

(c) Quantity;

(d) Price;

(e) Time of delivery or availability;

(f) Location of the construction project;

- (g) Name and address of the proposed supplier; and
 - (h) A detailed justification of the reason for use of foreign construction materials cited in accordance with paragraph(c)(4) of this clause.
 - (ii) A request based on unreasonable cost shall include a reasonable survey of the market and a completed price comparison table in the format in paragraph (e) of this clause.
 - (iii) The price of construction material shall include all delivery costs to the construction site and any applicable duty.
 - (iv) Any recipient request for a determination submitted after award shall explain why the recipient could not reasonably foresee the need for such determination and could not have requested the determination before award. If the recipient does not submit a satisfactory explanation, the award official need not make a determination.
2. If the Federal government determines after award that an exception to section 1605 of ARRA applies and the award official will amend the award to allow use of the foreign construction material. When the basis of the exception is nonavailability or public interest, the amended award shall reflect adjustment of the award amount or redistribution of budgeted funds, as appropriate, to cover costs associated with acquiring or using the foreign construction material. When the basis for the exception is the unreasonable price of a domestic construction material, the award official shall adjust the award amount or redistribute budgeted funds, as appropriate, by at least the differential established in paragraph (c)(4)(i) of this term and condition.
3. Unless the Federal government determines that an exception to the section 1605 of ARRA applies, use of foreign construction material other than designated country construction material is noncompliant with the applicable Act.
- (e) Data. To permit evaluation of requests under paragraph (d) of this clause based on unreasonable cost, the applicant shall include the following information and any applicable supporting data based on the survey of suppliers:

Foreign and Domestic Construction Materials Price Comparison

Construction Material Description	Unit of Measure	Quantity	Price (Dollars)*
Item 1:			
Foreign construction material	_____	_____	_____
Domestic construction material	_____	_____	_____
Item 2:			
Foreign construction material	_____	_____	_____
Domestic construction material	_____	_____	_____

- 1. [List name, address, telephone number, email address, and contact for suppliers surveyed. Attach copy of response; if oral, attach summary.]
- 2. [Include other applicable supporting information.]
- 3. [* Include all delivery costs to the construction site.]

12. Byrd Anti-Lobbying Certification- Contractor and any subcontractor who receives more than \$100,000 in federal funds must submit an executed certification in form attached as (Exhibit E) regarding compliance with 24 CFR part 87 with each request for payment.

ARTICLE VIII – GUARANTEE PERIOD

Contractor covenants that it shall correct, at its sole expense, any of the work that is found to be not in accordance with the requirements of the Contract Documents, including any Latent Defects resulting from

faulty materials or workmanship which appear within one (1) year from the Actual Construction Completion Date (the "Guarantee Period"). Upon written notice from Owner or PHFA, Contractor shall proceed with due diligence, at his or her expense, to replace any defective material or perform any labor necessary to correct any defect in the work. In case Contractor fails to correct defects within seven (7) days after receipt of written notice to replace defective materials or perform any labor required, Owner or PHFA may furnish whatever material or labor it deems necessary in its sole opinion. If Owner or PHFA determines that the condition poses a threat to the health, safety or welfare of the occupants, Contractor shall correct any defects within forty-eight (48) hours of written notice. Contractor agrees to make prompt reimbursement upon demand.

ARTICLE IX – RECEIPTS AND RELEASES OF LIENS

Contractor hereby specifically agrees to pay the expenses of and do what is necessary to promptly remove or bond (to PHFA's and Owner's satisfaction) any mechanic's claim or lien against the Development for or on account of any work or labor done or materials furnished under the Contract Documents or otherwise, for, toward, in or about the erection and construction of the Development. In addition, Contractor shall not, at any time, suffer or permit any claim, lien, attachment, or other encumbrance, under the laws of the Commonwealth of Pennsylvania or pursuant to federal law, by any person or persons whomsoever, to remain on file against any money due or to become due, for any work done or materials furnished under the Agreement and, until such claim, lien, attachment, or other encumbrance, is removed, PHFA shall have the right to preclude any payment to Contractor. If payment and performance bonds are required by PHFA, Contractor shall execute a waiver of liens that shall be recorded in the Office of the Prothonotary of the county in which the Development is located.

ARTICLE X – RIGHT OF ENTRY

PHFA and Owner or their agents or assigns, shall, at all times during construction have the right of entry and free access to the Development and the right to inspect all work done and materials, equipment and fixtures furnished, installed or stored in and about the Development.

ARTICLE XI – ASSIGNMENTS AND SUBCONTRACTORS

1. The Agreement shall not be assignable by any party, except that Owner may assign any of its rights under the AIA Agreement, or any rights hereunder, to PHFA, at all times subject to the rights of PHFA. Owner shall be deemed to have made such assignment of the Agreement to PHFA upon PHFA sending written notice to Owner setting forth cause under the Agreement and invoking said assignment.

2. Contractor understands that the Development under the Agreement is to be funded by WAP funds . Contractor further understands that , PHFA may as attorney-in-fact for Owner elect to undertake the completion of the Development in accordance with the Contract Documents.

3. Contractor shall not employ any subcontractors that Owner or PHFA object to as incompetent, unfit or objectionable for any other reason.

4. Contractor agrees that it is fully responsible to PHFA and Owner for the acts and omissions of its subcontractors, suppliers and persons directly or indirectly employed by it. Nothing contained in the Contract Documents shall create privity of contract between any subcontractor and Owner or PHFA.

5. All work performed for Contractor by a subcontractor shall be pursuant to an appropriate agreement between Contractor and subcontractor (and where appropriate, between subcontractor and subcontractor). All such agreements are subject to PHFA review and approval, and must contain the requirement that all WAP requirements "flow down" to such subcontractor.

ARTICLE XII – CONTRACTOR INTEGRITY

1. Definitions for this section are as follows:

(a) Confidential information means information that is not public knowledge, or available to the public on request, disclosure of which would give an unfair, unethical, or illegal advantage to another desiring to contract with the Commonwealth and/or PHFA.

(b) Consent means written permission signed by a duly authorized officer or employee of the Commonwealth and/or PHFA, provided that where the material facts have been disclosed, in writing, by prequalification, bid, proposal, or contractual terms, the Commonwealth and/or PHFA shall be deemed to have consented by virtue of execution of the Agreement.

(c) Contractor means the individual or entity that has entered into the Agreement with PHFA and Owner, including directors, officers, partners, managers, key employees, and owners of more than five percent (5%) interest.

(d) Financial interest means ownership of more than a five percent (5%) interest in any business or holding a position as an officer, director, trustee, partner, employee, or the like, or holding any position of management.

(e) Gratuity means any payment of more than nominal monetary value in the form of cash, travel, entertainment, gifts, meals, lodging, loans, subscriptions, advances, deposits of money, services, employment, or contracts of any kind.

2. Contractor shall maintain the highest standards of integrity in the performance of the Agreement and shall take no action in violation of state or federal laws, regulations, or other requirements that govern contracting with the Commonwealth and/or PHFA.

3. Contractor shall not disclose to others any confidential information gained by virtue of the Agreement.

4. Contractor shall not, in connection with this or any other Agreement with the Commonwealth and/or PHFA, directly or indirectly, offer, confer, or agree to confer any pecuniary benefit on anyone as consideration for the decision, opinion, recommendation, vote, other exercise of discretion, or violation of a known legal duty by any officer or employee of the Commonwealth and/or PHFA.

5. Contractor shall not, in connection with this or any other Agreement with the Commonwealth and/or PHFA, directly or indirectly offer, give, or agree or promise to give to anyone any gratuity for the benefit of or at the direction or request of any officer or employee of the Commonwealth and/or PHFA.

6. Except with the consent of the Commonwealth and/or PHFA, neither Contractor nor anyone in privity with it shall accept or agree to accept from, or give or agree to give to, any person, any gratuity from any person in connection with the performance of work under the Agreement except as provided therein.

7. Except with the consent of the Commonwealth and/or PHFA, Contractor shall not have a financial interest in any other contractor, subcontractor or supplier providing services, labor or material on this Development.

8. Contractor, upon being informed that any violation of these provisions has occurred or may occur, shall immediately notify PHFA in writing.

9. Contractor, by execution of the Agreement and by the submission of any bills or invoices for payment pursuant thereto, certifies and represents that it has not violated any of these provisions.

10. Contractor shall, upon request of the Office of State Inspector General, reasonably and promptly make available to that office and its representatives, for inspection and copying, all business and financial records of Contractor of, concerning, and referring to the Agreement, or which are otherwise relevant to the enforcement of these provisions.

11. For violation of any of the above provisions, the Commonwealth and/or PHFA may terminate this and any other Agreement with Contractor, claim liquidated damages in an amount equal to the value of anything received in breach of these provisions, claim damages for all expenses incurred in obtaining another contractor to complete performance hereunder, and debar and suspend the contractor from doing business with PHFA. These rights and remedies are cumulative, and the use or nonuse of any one shall not preclude the use of all or any other. These rights and remedies are in addition to those PHFA may have under law, statute, regulation or otherwise.

ARTICLE XIII – CONTRACTOR RESPONSIBILITY

1. Contractor certifies that it is not currently under suspension or debarment by the Commonwealth, any other state, or the federal government, and if the Contractor cannot so certify, then it agrees to submit along with the bid/proposal a written explanation of why such certification cannot be made.

2. If Contractor enters into subcontracts or employs under the Agreement any subcontracts/individuals who are currently suspended or debarred by the Commonwealth or the federal government or who become suspended or debarred by the Commonwealth or federal government during the term of the Agreement or any extensions or renewals thereof, the Commonwealth shall have the right to require the Contractor to terminate such subcontracts or employment.

3. Contractor agrees to reimburse the Commonwealth for the reasonable costs of investigation incurred by the Office of Inspector General for investigations of the Contractor's compliance with the terms of this or any other agreement between Contractor and the Commonwealth which result in the suspension or debarment of the Contractor. Such costs shall include, but not be limited to, salaries of investigators, including overtime; travel and lodging expenses; and expert witness and documentary fees. The Contractor shall not be responsible for investigative costs for investigations which do not result in the Contractor's suspension or debarment.

4. Contractor may obtain the current list of suspended and debarred contractors and subcontractors by contacting both:

Department of General Services
Office of Chief Counsel
North Office Building Room 603
Harrisburg, Pennsylvania 17125
Phone: (717) 783-6472
Fax: (717) 787-9138

and:

Excluded Parties List System
General Services Administration
<https://www.epls.gov/>

ARTICLE XIV – NONDISCRIMINATION/SEXUAL HARASSMENT CLAUSE

During the term of the Agreement, Contractor agrees as follows:

1. Contractor shall not discriminate against nor intimidate any employee, applicant for employment, independent contractor, or any other person for the manufacture of supplies, performance of work, or any other activity because of race, color, religious creed, ancestry, handicap, national origin, age, or sex. Contractor shall take affirmative action to insure that applicants are employed, and that employees or agents are treated during employment, without regard to their race, color, religious creed, handicap, ancestry, national origin, age, or sex. Such affirmative action shall include, but is not limited to: employment, upgrading, demotion or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training. Contractor shall post in conspicuous places,

available to employees, agents, applicants for employment, and other persons, a notice (Exhibit F) to be provided by the contracting agency setting forth the provisions of this nondiscrimination clause.

2. Contractor shall, in advertisements or requests for employment placed by it or on its behalf, state that all qualified applicants will receive consideration for employment without regard to race, color, religious creed, handicap, ancestry, national origin, age, or sex.

3. Contractor shall send each labor union or workers' representatives with which it has a collective bargaining agreement or other contract or understanding, a notice advising said labor union or workers' representative of its commitment to this nondiscrimination clause. Similar notice shall be sent to every other source of recruitment regularly utilized by Contractor.

4. Contractor and any subcontractors shall establish and maintain a written sexual harassment policy and shall inform their employees of the policy. The policy must contain a notice that sexual harassment will not be tolerated and employees who practice it will be disciplined.

5. It shall be no defense to a finding of noncompliance with this Nondiscrimination/Sexual Harassment Clause that Contractor had delegated some of its employment practices to any union, training program, or other source of recruitment which prevents it from meeting its obligations. However, if the evidence indicates that the Contractor was not on notice of the third-party discrimination or made a good faith effort to correct it, such factor shall be considered in mitigation in determining appropriate sanctions.

6. Where the practices of a union or any training program or other source of recruitment will result in the exclusion of minority group persons, so that Contractor will be unable to meet its obligations under this nondiscrimination clause, Contractor shall then employ and fill vacancies through other nondiscriminatory employment procedures.

7. Contractor shall comply with all state and federal laws prohibiting discrimination in hiring or employment opportunities. In the event of Contractor's noncompliance with the nondiscrimination clause of the Agreement or with any such laws, the Agreement may be terminated or suspended, in whole or in part, and all money due or to become due under the Agreement may be forfeited. In addition, Contractor may be declared temporarily ineligible for further PHFA or Commonwealth contracts and PHFA may proceed with debarment or suspension and may place the Contractor in the Contractor Responsibility File and other sanctions may be imposed and remedies invoked.

8. Contractor shall furnish all necessary employment documents and records to, and permit access to its books, records, and accounts by the contracting agency and the Department of General Services' Bureau of Contract Administration and Business Development for purposes of investigation to ascertain compliance with the provisions of this Nondiscrimination/Sexual Harassment clause. If Contractor does not possess documents or records reflecting the necessary information requested, it shall furnish such information on reporting forms supplied by the contracting agency or the Department of General Services' Bureau of Contract Administration and Business Development.

9. Contractor shall actively recruit disadvantaged, minority and women business entities subcontractors or subcontractors with substantial minority representation among their employees. Contact information for firms meeting these designations is available by searching databases maintained by the Pennsylvania Department of General Services¹, Commonwealth Bureau of Minority and Women Owned Businesses² and PHFA³.

10. Contractor shall include the provisions of this Nondiscrimination/Sexual Harassment clause in every subcontract, so that such provisions will be binding upon each subcontractor.

¹ <http://www.dgsweb.state.pa.us/mbewbe/VendorSearch.aspx>

² <http://www.portal.state.pa.us/portal/server.pt/community/bureau%20of%20minority%20and%20women%20business%20opportunities/1358>

³ <http://mwbe.phfa.org/>

11. Contractor obligations under this clause are limited to Contractor's facilities within Pennsylvania or, where the contract is for purchase of goods manufactured outside of Pennsylvania, the facilities at which such goods are actually produced.

ARTICLE XV - EVENTS OF DEFAULT

The occurrence of any one or more of the following shall constitute an event of default hereunder ("Event of Default"):

(1) Contractor fails to perform or observe any term, covenant, condition or obligation contained in this Agreement.

(2) If at any time any representation or warranty made by Contractor shall be incorrect in any material respect.

(3) Contractor fails to comply with any of the covenants, terms and conditions contained in any agreement through which financial assistance is to be provided to assist in the rehabilitation of the Development and such noncompliance jeopardizes the continued security and interest of PHFA, in its sole judgment.

(4) Contractor assigns this Agreement or any interest in this Agreement without the prior written consent of PHFA.

(5) The Scope of Work cannot be expected to be placed in service on or before March 31, 2012, for any reason.

(6) Any statements, details, budgets or revisions submitted by Contractor to PHFA indicate, in the opinion of PHFA, that the estimated cost of the Scope of Work is in excess of the amount of funds available to complete and pay for such rehabilitation.

(7) Contractor fails to comply with any requirement of any Governmental Authority within the time period provided by the Governmental Authority or within thirty (30) days after notice in writing of such requirement shall have been given to Contractor by such Governmental Authority, or fails to furnish to PHFA upon request official reports made by any such Governmental Authority and PHFA reasonably believes such failure jeopardizes its WAP funds or its interest in the Development.

(8) A petition in bankruptcy or for reorganization or for an arrangement under any bankruptcy or insolvency law or for a receiver or trustee for any of its property is filed by Contractor, or a petition in bankruptcy or for reorganization or for an arrangement under any bankruptcy or insolvency law or for a receiver or trustee of any of its property is filed against Contractor which is not dismissed within sixty (60) days, or a receiver or trustee of any property of Contractor is appointed and is not discharged within sixty (60) days, or Contractor makes an assignment for the benefit of creditors, or admits in writing its inability to pay its debts, or Contractor is adjudged insolvent by any State or Federal court of competent jurisdiction, or an attachment of execution is levied against any substantial portion of the property of Contractor which is not discharged within sixty (60) days.

(9) Contractor fails to rehabilitate the Development in accordance with the Scope of Work.

(10) Contractor fails to apply the WAP funds to eligible costs of the Development as set forth in the State Program.

ARTICLE XVI - NOTICE OF EVENT OF DEFAULT AND GRACE PERIOD

If the Event of Default consists of something other than the those items specified in Article XV, Sections 1-6 and 9-10 above, prior to PHFA exercising any remedies hereunder, PHFA shall provide notice to Contractor and a grace period that shall be thirty (30) days from the date on which the notice is given or, if the Event of Default cannot be cured within the said thirty (30) day period and delay in the exercise of a remedy would not (in PHFA's sole judgment) cause any material harm to PHFA or of the Development, the period required to cure the Event of Default may be extended by PHFA, in its sole discretion, provided that Contractor shall commence to cure the Event of Default within the said thirty (30) day period and actively, diligently and in good faith proceed with and continue the curing of the Event of Default.

Notwithstanding PHFA's agreement to provide grace period or notice, PHFA may immediately suspend any pending disbursements of unexpended WAP funds and may withhold payment until compliance is achieved.

If the Event of Default as set forth Article XV, Sections 7 or 8 above, there shall be no notice or grace periods required prior to PHFA exercising its remedies.

ARTICLE XVI - ACTIONS IN THE EVENT OF DEFAULT

(a) Upon the occurrence of any Default, PHFA may:

(1) Require the immediate repayment of the entire outstanding amount of the State Program funds (including WAP funds) disbursed to date;

(2) At any time proceed to protect and enforce all rights and remedies available to PHFA under this Agreement or by law, by any other proceedings, whether for specific performance of any agreement contained in this Agreement, damages, or other relief;

(3) Suspend or terminate the Contractor's authority to receive any undisbursed State Program funds (including WAP funds) at any time by written notice to the Contractor; and

(4) Exercise any of its rights and remedies under any of the State Program documents.

(b) All remedies provided for in this Agreement or by law are cumulative and are in addition to any other rights and remedies available to PHFA under any law. The exercise of any right or remedy by PHFA shall not constitute a cure or waiver of any Event of Default, nor invalidate any act done pursuant to any notice of Event of Default, nor prejudice PHFA in the exercise of those rights.

(c) The failure of PHFA to insist upon performance of any term of this Agreement shall not constitute a waiver of any term of this Agreement. No act of PHFA shall be construed as an election to proceed under any one provision in this Agreement to the exclusion of any other provision.

(d) If PHFA suspends or terminates this Agreement, the rights and remedies available to PHFA shall survive the suspension or termination.

(e) In no event shall Contractor's total liability to PHFA be greater than the actual amount of State Program funds (including WAP funds) disbursed by PHFA to Contractor for the Project under this Agreement.

ARTICLE XVII – MISCELLANEOUS

1. The Agreement shall be governed by the laws of the Commonwealth of Pennsylvania and may be amended only in writing signed by the parties hereto.
2. The invalidity of any clause, part or provision of this Agreement and the AIA Agreement shall not affect the validity of the remaining portions thereof.

[Intentionally Left Blank]

IN WITNESS WHEREOF, the parties hereto, intending to be legally bound, have executed this Agreement on the ____ day of _____, 20__.

WITNESS (ATTEST)

PENNSYLVANIA HOUSING FINANCE AGENCY

By: _____

Title: _____

WITNESS (ATTEST)

CONTRACTOR:

_____ ,

By: _____

Title: _____

WITNESS (ATTEST)

OWNER:

a Pennsylvania _____

By: _____

By: _____

Title: _____

- Exhibit A: PHFA Application for Payment
- Exhibit B: ARRA Terms & Conditions
- Exhibit C: DOL Form 1413 – Davis-Bacon Certified Payroll Report
- Exhibit D: Appendix A to Part 440 – Standards for Weatherization Materials
- Exhibit E: Anti-Lobbying Certification Form
- Exhibit F: Equal Employment Opportunity Notice