

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

Pennsylvania Housing Finance Agency ("PHFA" or the "Agency")
Architect identified in attached AIA Agreement ("Architect") 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 Architect 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 and worked with the Architect to develop and design the scope of work as set forth in the attached.

*This Agreement shall amend the American Institute of Architects Document B101 or B104, Standard Form of Agreement Between Owner and Architect, 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 Architect 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.***

Architect 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, collectively, as amended, these documents are referred to hereinafter as the "Agreement."

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, and all units are ready for occupancy.

2. Contract Documents – AIA Document B101 or B104 Standard Form of Agreement Between Owner and Architect, 2007 Edition, AIA Document A201 General Conditions of the Contract for Construction, 2007 Edition, the PHFA Construction Agreement amending and superseding the AIA Documents B101 or B104 and/or A201 as applicable, the drawings/specifications/scope of work, 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. Substantial Completion - The date, certified by Architect, and accepted by PHFA, when the work or a designated portion thereof is sufficiently complete, in accordance with the Contract Documents, so Owner can occupy the work or a designated portion thereof for the use for which it is intended.

ARTICLE II - PAYMENTS

PHFA will pay the Architect a fee as specified in the Agreement for the work required by the Agreement provided that the work, including but not limited to the drawings and specifications for the Development, is approved by Owner and PHFA. Said amount shall include the fee for Design Services, Bid Procurement, and Construction Contract Administration.

The construction contract administration fee will be paid on monthly requisitions in accordance with the progress payment schedule set forth in the Contract Documents.

ARTICLE III – REPRESENTATIONS AND WARRANTIES

Architect represents and warrants to PHFA and Owner that:

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

4. Architect 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. Architect

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.

ARTICLE IV - DESIGN SERVICE REQUIREMENTS

1. Drawings and specifications as instruments of service are the property of the Architect whether the work for which they are made is executed or not; and their use for any other Development is not authorized. However, if the work for which the drawings and specifications are executed has not been completed, PHFA may use the drawings and specifications to complete construction of the work without additional fee or other costs.

2. Architect and Owner recognize the interests of PHFA and any action, inaction, or determination made pursuant to the Agreement by either Architect or Owner is subject to acceptance or rejection by PHFA. Architect is required to act and serve in a professional capacity without bias or partiality. No portion of Architect's work or responsibility may be assigned, sublet or delegated to any person or entity not acceptable to PHFA.

3. The Architect agrees that, when requested by PHFA or Owner, he/she will provide needed clarification or interpretation of any feature of the drawings and specifications without further charge.

4. The Architect shall provide, in addition to such other drawings and specifications as the contractor shall require two (2) copies of final working drawings and specifications to Owner and PHFA.

ARTICLE V - SPECIFIC WORK REQUIREMENTS

1. After review by PHFA, Architect shall review and certify applications for payment, keep accounts, observe the work during the construction and prepare drawings, specifications and written opinions in connection with reasonable construction changes required by PHFA or Owner.

2. As often as the nature of the work requires but not less than once every two weeks, Architect shall visit the site of the Development and conduct a job meeting and shall promptly furnish reports in writing to PHFA and Owner of the progress, problems, omissions, substitutions, defects and deficiencies noted in the work of contractor. Architect shall periodically observe, as often as the nature of the work requires, but not less than once every two weeks, all materials and items of work identified in the Contract Documents and change orders.

3. Architect is required to assure PHFA and Owner that tests required by specifications are performed properly; evaluate the results of these tests and make recommendations of actions required in the event of unsatisfactory test results.

4. Architect is required to advise PHFA and Owner, in writing, of any special problems or changes necessitated by unforeseen circumstances encountered in the course of construction and/or rehabilitation, and submit appropriate recommendations.

5. Architect shall monitor progress of the construction and/or rehabilitation of the Development against the schedule in the construction contract and recommend action to be taken to achieve compliance with the schedule.

6. Upon Substantial Completion of the Development, Architect shall certify to PHFA and Owner that to the best of his/her knowledge, information, and belief and on the basis of his/her observations, the work has been substantially completed in accordance with the terms and conditions of

the Contract Documents and that the Development is in good and tenable condition, is ready for occupancy and that there are no defects or deficiencies in the Development other than "punchlist" items or incomplete work awaiting seasonal opportunity such as heating or cooling system tests (such expected items to be specified).

ARTICLE VI - INSURANCE

Architect shall maintain a professional liability policy during the period of construction and/or rehabilitation of the Development and for one (1) year following the Actual Construction Completion Date if any such policy is written on a "claims made" basis. The policy shall afford coverage for PHFA and Owner for Architect's errors, omissions or negligence in connection with the work in an amount of at least \$500,000 per claim. Such policy shall be issued by a company in a form acceptable to PHFA. Said insurance shall not be construed as a waiver of any obligations or liabilities that Architect otherwise has to Owner or PHFA in law or equity.

ARTICLE VII - IDENTITY OF INTEREST CERTIFICATE

1. Architect certifies to PHFA and Owner that he/she has been retained for services hereunder as an independent practitioner having no identity of interest with (a) the contractor or (b) any subcontractor or (c) any supplier furnishing labor or materials to the Development.

2. Architect certifies to PHFA and Owner that he/she has no financial interest in the Development or the real estate upon which it is to be constructed other than the fee provided for by the Agreement.

3. Architect further understands that any change in such relationships which will result in Architect having an identity of interest with the contractor (or any subcontractor, material supplier or equipment lessor, will be grounds for termination of the Agreement, unless the identity of interest resulting from the change has been disclosed to the PHFA and Owner prior to its creation and approved in writing by PHFA and Owner.

ARTICLE VIII - MODIFICATION AND TERMINATION OF AGREEMENT

1. The Agreement shall not be modified except by a written statement signed by PHFA and Owner.

2. Any failure to fulfill the requirements of this Agreement in a manner satisfactory to PHFA or Owner shall constitute a breach of the Agreement. Upon the occurrence of a breach the PHFA, with Owner's approval, may terminate the Agreement. Architect shall receive notice of the termination at least three (3) days prior to the effective date of the termination. Architect shall be subject to claims arising out of his/her breach.

3. If, under the Contract Documents, PHFA shall have deemed construction and/or rehabilitation of the Development to have been abandoned or delayed indefinitely PHFA or Owner, with PHFA's approval, may terminate the Agreement in whole or in part. Architect shall receive notice of the termination at least three (3) days prior to the effective date of the termination.

ARTICLE IX - 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”), Architect and all subcontractors shall comply with the following requirements:

1. WAP and ARRA Flow Down Requirement – Architect must comply with all program requirements of WAP as well as the terms and conditions of ARRA. In addition, Architect 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 A 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, Architect will be required to submit the following to PHFA within **five (5) calendar days** after the end of the quarter:

- (a) For the Architect provide:
 - i. Business Name
 - ii. DUNS Number
 - iii. Date of Payment(s)
 - iv. Payment Amount(s)
 - v. Zip + 4 Code of Architect’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. Architect shall be responsible for the full compliance of all employers (Architect, subcontractors and any lower-tier subcontractors) with the labor standards identified therein.

4. Standards for Weatherization Materials - The Architect must certify that all materials specified during the development of the Contract Documents meet published material standards found in *Appendix A to Part 440 – Standards for Weatherization Materials* (Exhibit B).

5. PA Careerlink – To ensure Pennsylvanians have the utmost opportunity to be hired for jobs created through receipt of WAP funding, all recipients of ARRA funding 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. Architects 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 Architect with posting positions and explain how to retrieve resumes for applications within the system. Architect shall provide proof of postings to PHFA.

6. 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.

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

ARTICLE X – ARCHITECT INTEGRITY

A. Definitions for this section are as follows, as applicable:

- 1. Commonwealth means the Commonwealth of Pennsylvania.
- 2. 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 Agency.
- 3. Consent means written permission signed by a duly authorized officer or employee of the Commonwealth and/or Agency, provided that where the material facts have been disclosed, in writing, by prequalification, bid, proposal, or contractual terms, the Commonwealth and/or Agency shall be deemed to have consented by virtue of execution of this Agreement.
- 4. Architect means the individual or entity that has entered into this Agreement with Agency, including directors, officers, partners, managers, key employees, and owners of more than five percent (5%) interest.
- 5. 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.
- 6. 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.
- 7. Immediate family means a spouse and any unemancipated child.
- 8. Political contribution means any payment, gift, subscription, assessment, contract, payment for services, dues, loan, forbearance, advance or deposit of money or any valuable thing, to a candidate for public office or to a political committee, including but not limited to a political

action committee, made for the purpose of influencing any election in the Commonwealth or for paying debts incurred by or for a candidate or committee before or after any election.

9. Architect shall maintain the highest standards of integrity in the performance of this 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 Agency.
10. Architect shall establish and implement a written business integrity policy, which includes, at a minimum, the requirements of these provisions as they relate to Architect employee activity with the Commonwealth and Commonwealth employees, and which is distributed and made known to all Architect employees.
11. Architect, its affiliates, agents and employees shall not influence, or attempt to influence, any Commonwealth employee to breach the standards of ethical conduct for Commonwealth employees set forth in the *Public Official and Employees Ethics Act*, 65 Pa.C.S. §§ 1101 et seq.; the State Adverse Interest Act, 71 P.S. § 776.1 et seq.; and the Governor's Code of Conduct, Executive Order 1980-18, 4 Pa. Code § 7.151 et seq., or to breach any other state or federal law or regulation.
12. Architect shall not disclose to others any confidential information gained by virtue of this Agreement.
13. Architect shall not, in connection with this or any other contract with the Commonwealth and/or Agency, 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 Agency.
14. Architect shall not, in connection with this or any other contract with the Commonwealth and/or Agency, 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 Agency.
15. Except with the consent of the Commonwealth and/or Agency, neither Architect 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 this Agreement except as provided therein.
16. Except with the consent of the Agency, Architect shall not have a financial interest in any other contractor, subcontractors or supplier providing services, labor or material on this Project, unless the financial interest is disclosed to the Agency in writing and the Commonwealth and/or Agency consents to Architect's financial interest prior to Agency execution of the Agreement. Architect shall disclose the financial interest to the Agency at the time of bid or proposal submission, or if no bids or proposals are solicited, no later than Architect's submission of the executed Agreement.
17. Architect, its affiliates, agents and employees shall not disclose to others any information, documents, reports, data, or records provided to, or prepared by, Architect under this Agreement without the prior written approval of the Commonwealth and/or Agency, except as required by the *Pennsylvania Right-to-Know Law*, 65 P.S. §§ 67.101-3104, or other applicable law or as otherwise provided in this Agreement. Any information, documents, reports, data, or records secured by Architect from the Commonwealth or a third party in connection with the performance of this Agreement shall be kept confidential unless disclosure of such information is:
 - a. Approved in writing by the Commonwealth and/or Agency prior to its disclosure; or
 - b. Directed by a court or other tribunal of competent jurisdiction unless the contract requires prior Commonwealth approval; or

- c. Required for compliance with federal or state securities laws or the requirements of national securities exchanges; or
 - d. Necessary for purposes of Architect's internal assessment and review; or
 - e. Deemed necessary by Architect in any action to enforce the provisions of this Agreement or to defend or prosecute claims by or against parties other than the Commonwealth and/or Agency; or
 - f. Permitted by the valid authorization of a third party to whom the information, documents, reports, data, or records pertain: or
 - g. Otherwise required by law.
18. Architect certifies that neither it nor any of its officers, directors, associates, partners, limited partners or individual owners has not been officially notified of, charged with, or convicted of any of the following and agrees to immediately notify the Agency in writing if and when it or any officer, director, associate, partner, limited partner or individual owner has been officially notified of, charged with, convicted of, or officially notified of a governmental determination of any of the following:
- a. Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property.
 - b. Commission of fraud or a criminal offense or other improper conduct or knowledge of, approval of or acquiescence in such activities by Architect or any affiliate, officer, director, associate, partner, limited partner, individual owner, or employee or other individual or entity associated with:
 - 1. obtaining;
 - 2. attempting to obtain; or
 - 3. performing a public contract or subcontract.

Architect's acceptance of the benefits derived from the conduct shall be deemed evidence of such knowledge, approval or acquiescence.

- c. Violation of federal or state antitrust statutes.
- d. Violation of any federal or state law regulating campaign contributions.
- e. Violation of any federal or state environmental law.
- f. Violation of any federal or state law regulating hours of labor, minimum wage standards or prevailing wage standards; discrimination in wages; or child labor violations.
- g. Violation of the Act of June 2, 1915 (P.L. 736, No. 338), known as the Workers' Compensation Act, 77 P.S. 1 et seq.
- h. Violation of any federal or state law prohibiting discrimination in employment.
- i. Debarment by any agency or department of the federal government or by any other state.
- j. Any other crime involving moral turpitude or business honesty or integrity.

Architect acknowledges that the Agency may, in its sole discretion, terminate the Agreement for cause upon such notification or when the Agency otherwise learns that Architect has been officially notified, charged, or convicted.

19. Architect shall comply with requirements of the *Lobbying Disclosure Act*, 65 Pa. C.S. § 13A01 et seq., and the regulations promulgated pursuant to that law.

20. When Architect has reason to believe that any breach of ethical standards as set forth in law, the Governor's Code of Conduct, or in these provisions has occurred or may occur, shall immediately notify the Agency's Chief Counsel and the Commonwealth Inspector General in writing.
21. Architect, upon being informed that any violation of these provisions has occurred or may occur, shall immediately notify Agency in writing.
22. Architect, by execution of this 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.
23. Architect shall, upon request of the Office of State Inspector General and/or Agency, reasonably and promptly make available to that office and its representatives, for inspection and copying, all business and financial records of Architect of, concerning, and referring to this Agreement, or which are otherwise relevant to the enforcement of these provisions.
24. If applicable, Architect must immediately notify the Agency of any security breach, which may involve confidential consumer information.

For violation of any of the above provisions, the Commonwealth and/or Agency may terminate this and any other contract with Architect, 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 facility to complete performance hereunder, and debar and suspend the Architect from doing business with Agency and/or the Commonwealth. 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 the Agency and/or the Commonwealth may have under law, statute, regulation or otherwise.

ARTICLE XI – ARCHITECT’S RESPONSIBILITY

1. Architect certifies that it is not currently under suspension or debarment by the Commonwealth, any other state, or the federal government, and if the Architect cannot so certify, then it agrees to submit along with the bid/proposal a written explanation of why such certification cannot be made.
2. Architect certifies that it has no tax liabilities or other outstanding Commonwealth obligations. The Architect's obligations pursuant to these provisions are ongoing from and after the effective date of this Agreement through the termination date hereof. The Architect shall have an obligation to inform the Agency if, at any time during the term of this Agreement, it becomes delinquent in the payment of taxes, or other Commonwealth obligations, or if it or any of its subcontractors are suspended or debarred by the Commonwealth, the federal government, or any other state or governmental entity. Such notification shall be made within 15 days of the date of suspension or debarment. The failure of the Architect to notify the Agency of its suspension or debarment by the Commonwealth, any other state, or the federal government shall constitute an event of default of this Agreement.
3. Architect agrees that the Commonwealth and/or the Agency may offset the amount of any state tax, Agency or Commonwealth liability of the Architect or its affiliates and subsidiaries that is owed to the Commonwealth and/or Agency against any payments due under this or any other contract with the Commonwealth and/or Agency.
4. If Architect enters into subcontracts or employs under this Agreement any subcontractors/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 this Agreement or any extensions or renewals thereof, the

Commonwealth shall have the right to require the Architect to terminate such subcontracts or employment.

5. Architect agrees to reimburse the Commonwealth for the reasonable costs of investigation incurred by the Office of Inspector General for investigations of Architect's compliance with the terms of this or any other contract between Architect and the Commonwealth which result in the suspension or debarment of Architect. Such costs shall include, but not be limited to, salaries of investigators, including overtime; travel and lodging expenses; and expert witness and documentary fees. Architect shall not be responsible for investigative costs for investigations which do not result in Architect suspension or debarment.
6. Architect may obtain the current list of suspended and debarred contractors by contacting the: Department of General Services, Office of Chief Counsel, 603 North Office Building Harrisburg, Pennsylvania 17125; Phone: (717) 783-6472 and Fax: (717) 787-9138.

ARTICLE XII - NONDISCRIMINATION/SEXUAL HARASSMENT CLAUSE

During the term of this Agreement, Architect agrees as follows:

1. Architect shall not discriminate against nor intimidate any employee, applicant for employment, independent Architect, or any other person for the manufacture of supplies, performance of work, or any other activity, under this Agreement or subcontract, because of race, color, religious creed, ancestry, handicap, national origin, age, or gender. Architect 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. Architect shall post in conspicuous places that are available to employees, agents, applicants for employment, and other persons, a notice to be provided by the contracting Agency setting forth the provisions of this nondiscrimination clause.
2. Architect 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. Architect shall send each labor union or workers' representatives with which it has a collective bargaining contract 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 Architect.
4. Architect 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 Architect 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 Architect 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 persons, so that Architect will be unable to meet its obligations under this nondiscrimination clause, Architect shall then employ and fill vacancies through other nondiscriminatory employment procedures.

7. Architect shall comply with all state and federal laws prohibiting discrimination in hiring or employment opportunities. In the event of Architect's noncompliance with the nondiscrimination clause of this Agreement or with any such laws, this Agreement may be terminated or suspended, in whole or in part, and all money due or to become due under this Agreement may be forfeited. In addition, Architect may be declared temporarily ineligible for further Agency or Commonwealth contracts and Agency may proceed with debarment or suspension and may place the Architect in the Contractor Responsibility File and other sanctions may be imposed and remedies invoked.
8. Architect 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 Architect 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. Architect shall actively recruit minority and women subcontractors or subcontractors with substantial minority representation among their employees.
10. Architect shall include the provisions of this Nondiscrimination/Sexual Harassment clause in every subcontract, so that such provisions will be binding upon each subcontractor.
11. Architect's obligations under this clause are limited to Architect'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.
12. The Agency may cancel or terminate this Agreement and all money due or to become due under the Agreement may be forfeited for a violation of the terms and conditions of this Nondiscrimination/Sexual Harassment Clause. In addition, the Agency may proceed with debarment or suspension and may place the Architect in the Contractor Responsibility File.

ARTICLE XIII - EVENTS OF DEFAULT

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

- (1) Architect 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 Architect shall be incorrect in any material respect.
- (3) Architect 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) Architect 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, as a result of an action or inaction attributed to Architect.

(6) Any statements, details, budgets or revisions submitted by Architect 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) Architect 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 Architect 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 Architect, 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 Architect which is not dismissed within sixty (60) days, or a receiver or trustee of any property of Architect is appointed and is not discharged within sixty (60) days, or Architect makes an assignment for the benefit of creditors, or admits in writing its inability to pay its debts, or Architect 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 Architect which is not discharged within sixty (60) days.

ARTICLE XIV - NOTICE OF EVENT OF DEFAULT AND GRACE PERIOD

If the Event of Default consists of any of the items specified in Article XIII, Sections 1, 2, 3, and 6 above, prior to PHFA exercising any remedies hereunder, PHFA shall provide notice to Architect 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 Architect 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 XIII, Sections 4, 5, 7, or 8 above, there shall be no notice or grace periods required prior to PHFA exercising its remedies.

ARTICLE XV - 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 Architect's authority to receive any undisbursed State Program funds (including WAP funds) at any time by written notice to the Architect; 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.

ARTICLE XVI – 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.

The Architect represents and covenants that (a) he/she has not nor shall he/she administer the construction of the Development or any portion thereof, (b) he/she is not a "contractor" within the meaning of the Mechanics' Lien Law of 1963, that it shall not file a mechanics' claim against the Development, and that in the event, however, a lien is filed by or on behalf of the Architect, counsel for PHFA is nominated, designated and appointed its attorney-in-fact by virtue hereof to enter a satisfaction thereof paid from appropriate accounts in the loan proceeds.

This Agreement shall bind, and the benefits inure to, the respective parties hereto, their legal representatives, executors, administrators, successors and assigns.

The invalidity of any clause, part or provision of this Agreement shall not affect the validity of the remaining portions of the Agreement.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement this ____ day of _____, _____.

WITNESS (ATTEST)

PENNSYLVANIA HOUSING FINANCE AGENCY

By: _____

Title: _____

WITNESS (ATTEST)

ARCHITECT:

By: _____

Title: _____

WITNESS (ATTEST)

OWNER:

_____,
a Pennsylvania _____

By: _____

By: _____

Title: _____

Exhibit A: ARRA Terms & Conditions

Exhibit B: Appendix A to Part 440 – Standards for Weatherization Materials

Exhibit C: Anti-Lobbying Certification Form

EXHIBIT A

AGREEMENT ADDENDUM

Implementation of the American Recovery and Reinvestment Act of 2009

Preamble

The American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, ("ARRA") was enacted to preserve and create jobs and promote economic recovery, assist those most impacted by the recession, provide investments needed to increase economic efficiency by spurring technological advances in science and health, invest in transportation, environmental protection, and other infrastructure that will provide long-term economic benefits, stabilize State and local government budgets, in order to minimize and avoid reductions in essential services and counterproductive State and local tax increases.

This agreement addendum addresses additional requirements applicable to ARRA funds. Subject to further guidance by the applicable Federal awarding agency, the following terms and conditions are consistent with the mandatory requirements for agreements funded by ARRA.

Be advised that ARRA funds can be used in conjunction with other funding as necessary to complete projects, but tracking and reporting must be separate to meet the reporting requirements of ARRA and related guidance. For projects funded by other sources in addition to ARRA funds, Contractors must keep separate records for ARRA funds and must ensure those records comply with the requirements of the ARRA.

The federal Government has not fully developed the implementing instructions of ARRA, particularly concerning specific procedural requirements for the new reporting requirements. The Contractor will be provided these details as they become available. The Contractor must comply with all requirements of ARRA. In the event there is any inconsistency between these ARRA requirements and current award terms and conditions, the ARRA requirements will take precedence.

Contractor agrees that in consideration of receipt of Federal ARRA Funds, it will comply with all of the terms, conditions, requirements and limitations set forth below:

Definitions

A. "ARRA funds" means funds expended or obligated from appropriations under the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5.

B. "Contractor" is defined as any person, including, but not limited to, a bidder, offeror, loan recipient, grantee, or subgrantee, who has furnished or seeks to furnish goods, supplies, services, or leased space, or who has performed or seeks to perform construction activity under contract, subcontract, grant, or subgrant with the Commonwealth, or with a person under contract, subcontract, grant, or subgrant with the Commonwealth or its state-affiliated entities, and state-related institutions. The term contractor may include a permittee, licensee, or any agency, political subdivision, instrumentality, public authority, or other entity of the Commonwealth.

ARRA Terms & Conditions

1. **Revisions to Requirements.** Contractor acknowledges that this Addendum may be revised pursuant to ongoing guidance from the relevant Federal or Commonwealth agency regarding requirements for ARRA funds. Contractor agrees to abide by any such revisions upon receipt of written notification from the Commonwealth of the revisions, which will automatically become a material part of this Addendum, without the necessity of either party executing any further instrument.

2. **Reporting Requirements.** Not later than 5 days after the end of each calendar quarter, or more frequently as directed by the Commonwealth, the Contractor shall submit a report to the Commonwealth that contains:

- (a) The total amount of ARRA funds received;
- (b) The amount of ARRA funds received that were expended or obligated to projects or activities;
- (c) A detailed list of all projects or activities for which ARRA funds were expended or obligated, including:
 - i) the name of the project or activity;
 - ii) a description of the project or activity;
 - iii) an evaluation of the completion status of the project or activity;
 - iv) an estimate of the number of jobs created and the number of jobs retained by the project or activity; and
 - v) for infrastructure investments made by State and local governments, the purpose, total cost, and rationale of the agency for funding the infrastructure investment with funds made available under ARRA, and name of the person to contact at the agency if there are concerns with the infrastructure investment;
- (d) Detailed information on any subcontracts or subgrants awarded by the Contractor must include the data elements required to comply with the Federal Funding Accountability and Transparency Act of 2006 (Public Law 109-282), allowing aggregate reporting on awards below \$25,000 or to individuals, as prescribed by the Director of the Office of Management and Budget;
- (e) If required by the Commonwealth, Contractor agrees to separately identify the expenditures for each award funded under ARRA on the Schedule of Expenditures of Federal Awards (SEFA) and the Data Collection Form (SF-SAC) required by Office of Management and Budget Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations." This identification on the

SEFA and SF-SAC shall include the Federal award number, the Catalog of Federal Domestic Assistance (CFDA) number, and amount such that separate accountability and disclosure is provided for ARRA funds by Federal award number consistent with the Contractor reports required by ARRA;

(f) If required by the Commonwealth, Contractor shall submit backup documentation for expenditures of ARRA funds including such items as timecards and invoices. Contractor shall provide copies of backup documentation at the request of the Commonwealth.

3. Registrations and Identification Information

(a) Contractor must maintain current registrations in the Center Contractor Registration (www.ccr.gov) at all times during which they have active federal awards funded with ARRA funds. A Dun and Bradstreet Data Universal Numbering System (DUNS) Number (www.dnb.com) is one of the requirements for registration in the Central Contractor Registration.

(b) If applicable, the Contractor agrees to separately identify to each sub-contractor and document at the time of award of contract or approval of application and at the time of disbursement of funds, the Federal award number, CFDA number, and amount of ARRA funds.

4. Flow Down Requirement. Contractor must include these ARRA Terms and Conditions in any subcontract.

5. Prohibition on Use of Funds. No ARRA funds may be used for any casino or other gambling establishment, aquarium, zoo, golf course, or swimming pool, or any other items prohibited by ARRA.

6. Required Job Posting. To ensure Pennsylvanians have the utmost opportunity to be hired for jobs created through the receipt of ARRA funding, all Contractors shall post jobs they create or seek to fill as a result of receiving ARRA funding to the PA CareerLink® system at www.pacareerlink.state.pa.us . Contractors can locate their local PA CareerLink® office through the same website or by calling 1-866-858-2753. Staff at local PA CareerLinks® can assist Contractors with posting positions and explain how to retrieve resumes or applications within the system.

7. Wage Rate Requirements. Section 1606 of ARRA requires that all laborers and mechanics employed by contractors and subcontractors on projects funded directly by or assisted in whole or in part by and through the Federal Government pursuant to ARRA shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the U.S. Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code.

8. Whistleblower Provision.

(a) An employee of any non-Federal employer receiving covered funds may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing, including a disclosure made in the ordinary course of an employee's duties, to an inspector general, the Comptroller General, a member of Congress, a State or Federal regulatory or law enforcement agency, a person with supervisory authority over the employee (or such other person working for the employer who has the authority to investigate, discover, or terminate misconduct), a court or grand jury, the head of a Federal agency, or their representatives, information that the employee reasonably believes is evidence of:

- (1) gross mismanagement of an agency contract or grant relating to covered funds;
- (2) a gross waste of covered funds;
- (3) a substantial and specific danger to public health or safety related to the implementation or use of covered funds;
- (4) an abuse of authority related to the implementation or use of covered funds; or
- (5) a violation of law, rule, or regulation related to an agency contract (including the competition for or negotiation of a contract) or grant, awarded or issued relating to covered funds.

(b) A person who believes that the person has been subjected to a reprisal prohibited by subsection (a) may submit a complaint regarding the reprisal to the appropriate U.S. Office of the Inspector General.

(c) Any employer receiving covered funds under ARRA, shall post notice of the rights and remedies as required by Section 1553 of ARRA. See www.recovery.gov.

9. Duty to Report Fraud. Contractors and subcontractors shall promptly refer to the U.S. Office of Inspector General and Commonwealth Office of Inspector General any credible evidence that a principal, employee, agent, contractor, sub-grantee, subcontractor or other person will or has: 1) submitted a false claim under the False Claims Act; 2) committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, ethics or similar misconduct involving ARRA funds; or 3) engaged in misuse, gross waste, gross mismanagement or abuse of authority related to the use or award of ARRA funds.

10. Environmental and Preservation Requirements. The Contractor shall comply with all applicable Federal, State, and local environmental and historic preservation (EHP) requirements and shall provide any information requested by the awarding Federal agency to ensure compliance with applicable laws including: National Environmental Policy Act, National Historic Preservation Act, Endangered Species Act, the Clean Air Act, the Federal Water Pollution and Control Act, and Executive Orders on Floodplains (11988), Wetlands (11990) and Environmental Justice (12898). Failure of the Contractor to meet Federal, State, and local EHP requirements and obtain applicable permits may jeopardize Federal

funding. The Contractor shall not undertake any project having the potential to impact EHP resources without the prior approval of the awarding Federal agency, including but not limited to communication towers, physical security enhancements, new construction, and modification to buildings that are 50 years old or greater. The Contractor must comply with all conditions placed on the project as a result of the EHP review. Any change to the approved project scope of work will require re-evaluation for compliance with these EHP requirements. If ground disturbing activities occur during project implementation, the Contractor must ensure monitoring of ground disturbance and if any potential archeological resources are discovered, the Contractor will immediately cease construction in that area and notify the awarding Federal agency and the Pennsylvania Historical and Museum Commission. Any construction activities that have been initiated prior to the full environmental and historic preservation review will result in a non-compliance finding.

11. No Contracts with Debarred or Suspended Entities. The Contractor shall not enter into any contract or subcontract with any party that has been debarred or suspended from either:

(a) contracting with the Federal Government or the Commonwealth; or

(b) participating in any Federal or Commonwealth assistance programs.

12. Prohibition on Lobbying.

(a) The Contractor covenants and agrees that it will not expend any funds appropriated by Congress to pay any person for influencing or attempting to influence an officer or employee of any agency, or a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract; the making of any Federal grant; the making of any Federal loan; the entering into of any Agreement; and, the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or Agreement.

(b) Section 319 of Public Law 101-121 (31 U.S.C. Section 1352) and any applicable regulations are incorporated by reference and the Contractor agrees to comply with all the provisions thereof, including any amendments to the Interim Final Rule that may hereafter be issued.

13. Nondiscrimination Provisions. The Contractor covenants and agrees that no person shall be denied benefits of, or otherwise be subjected to discrimination in connection with the Contractor's performance under this Agreement. Accordingly, and to the extent applicable, the Contractor covenants and agrees to comply with the following:

(a) On the basis of race, color or national origin, in Title V I of the Civil Rights Act of 1964 (42 U.S.C. Section 2000d et seq.) as implemented by applicable regulations.

(b) On the basis of race, color, religion, sex, or national origin, in Executive Order 11246 (3 CFR, 1964-1965 Comp. pg. 339), as implemented by applicable regulations.

(c) On the basis of sex or blindness, in Title IX of the Education Amendments of 1972 (20 U.S.C. 1681, et seq.), as implemented by applicable regulations.

(d) On the basis of age, in The Age Discrimination Act of 1975 (42 U.S.C. Section 6101 et seq.), as implemented by applicable regulations.

(e) On the basis of handicap, in Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), as implemented by applicable regulations.

14. Creating Opportunities for Small and Disadvantaged Businesses.

Please use one of the following subsections – I, II, III or IV as detailed below:

- I. *The following shall apply for Projects using ARRA funds associated with an established federal DBE program and the Commonwealth agency and the administering federal agency have determined that only the Federal DBE program requirements shall apply:***

Creating Opportunities for Small and Disadvantaged Businesses

The Contractor shall comply with all applicable federal Disadvantaged Business Enterprises (DBE) requirements related to the DBE program.

- II. *The following shall be included in invitations for bid, requests for proposals, requests for quotes and other Commonwealth solicitations for Projects using ARRA funds and shall be incorporated (along with commitments made) in the resulting contract:***

Creating Opportunities for Small and Disadvantaged Businesses

(a) The Governor, through Executive Order 2009-02, has established, as an overall Commonwealth aspirational goal that at least ten percent (10%) of the funds allotted to the Commonwealth of Pennsylvania through the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, (“ARRA”) should go to small disadvantaged businesses as contractors, subcontractors, grantees, subgrantees, and suppliers.

(b) To assist the Commonwealth in attaining this aspirational goal, each bidder/offeror/contractor is required to make reasonable and good faith efforts to reach out to small disadvantaged businesses to make them aware of subcontracting and supply opportunities and to encourage these businesses to participate as subcontractors and suppliers.

(c) At a minimum, each bidder/offeror/contractor is required to:

- (i) Contact the Department of General Services’ Bureau of Minority and Women Business Opportunities (“BMWBO”) by telephone (717-783-3119)

to discuss potential opportunities for small disadvantaged businesses as subcontractors and suppliers; and

(ii) When notified by the Commonwealth agency or BMWBO, participate in outreach activities and events to increase small disadvantaged business interest and participation in ARRA opportunities; and

(iii) Use the Department of General Services website www.dgsweb.state.pa.us/mbewbe/VendorSearch.aspx to identify DGS-certified Minority Business Enterprises (MBEs) and Women Business Enterprises (WBEs) as potential subcontractors and suppliers; and

(iv) Solicit identified MBEs and WBEs; and

(v) Prepare and keep the following records:

a. Solicitations lists, specifically identifying all small, disadvantaged businesses that were solicited; and

b. Bid tabulations, specifically identifying all small, disadvantaged businesses that submitted a bid, quote or proposal, and the dollar amount of the bid, quote or proposal; and

c. Copies of all bids, quotes and proposals received; and

(vi) If awarded the contract, provide monthly reports to the Department of General Services' Bureau of Minority and Women Business Opportunities on small disadvantaged business utilization.

(d) Bidder/Offeror/Contractor shall comply with all applicable federal Disadvantaged Business Enterprises (DBE) requirements related to DBE programs. To the extent that federal DBE requirements conflict with the requirements of this Paragraph, the federal DBE requirements shall prevail. In the event that Contractor identifies a conflict, Contractor shall verify with the Commonwealth, which shall verify with the administering federal agency, that a conflict exists that would jeopardize ARRA funding.

(e) For purposes of this paragraph, "small disadvantaged businesses" are small businesses that are owned or controlled by a majority of persons, not limited to members of minority groups, who have been deprived of the opportunity to develop and maintain a competitive position in the economy because of social disadvantages. The term includes:

(i) Department of General Services-certified MBEs and WBEs that qualify as small businesses; and

- (ii) United States Small Business Administration certified 8(a) small disadvantaged business concerns; and
- (iii) Businesses that BMWBO determines meet the Small Business Administration criteria for designation as a small disadvantaged business.
- (iv) Small businesses that have been certified as disadvantaged business enterprises (“DBEs”).

“Small businesses” are businesses in the United States that are independently owned, are not dominant in their field of operation, employ no more than 100 full-time or full-time equivalent employees and earn less than \$20 million in gross annual revenues (\$25 million in gross annual revenues for those businesses in the information technology sales or service business).

III. The following shall be included in contracts for Projects using ARRA funds where there was no solicitation document that included the clause is Subsection II above:

Creating Opportunities for Small and Disadvantaged Businesses

(a) The Governor, through Executive Order 2009-02, has established, as an overall Commonwealth aspirational goal that at least ten percent (10%) of the funds allotted to the Commonwealth of Pennsylvania through the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, (“ARRA”) should go to small disadvantaged businesses as contractors, subcontractors, grantees, subgrantees, and suppliers.

(b) To assist the Commonwealth in attaining this aspirational goal, Contractor is required to make reasonable and good faith efforts to reach out to small disadvantaged businesses to make them aware of subcontracting and supply opportunities and to encourage these businesses to participate as subcontractors and suppliers.

(c) At a minimum, Contractor is required to:

(i) Contact the Department of General Services’ Bureau of Minority and Women Business Opportunities (“BMWBO”) by telephone (717-783-3119) to discuss potential opportunities that may exist for small disadvantaged businesses as subcontractors and suppliers; and

(ii) When notified by the Commonwealth agency or BMWBO, participate in outreach activities and events to increase small disadvantaged business interest and participation in subcontracting and supply contract opportunities; and

(iii) Use the Department of General Services website

www.dgsweb.state.pa.us/mbewbe/VendorSearch.aspx to identify DGS-certified Minority Business Enterprises (MBEs) and Women Business Enterprises (WBEs) as potential subcontractors and suppliers; and

(vi) Solicit identified MBEs and WBEs for subcontracting and supply contract opportunities; and

(vii) Prepare and keep the following records:

a. Solicitations lists, specifically identifying all small, disadvantaged businesses that were solicited; and

b. Bid tabulations, specifically identifying all small, disadvantaged businesses that submitted a bid, quote or proposal, and the dollar amount of the bid, quote or proposal; and

c. Copies of all bids, quotes and proposals received; and

(vi) Provide monthly reports to the Department of General Services' Bureau of Minority and Women Business Opportunities on small disadvantaged business utilization.

(d) To the extent that this Contract imposes specific small, disadvantaged business solicitation and document submission requirements, Contractor shall comply with those requirements.

(e) Contractor shall comply with all applicable federal Disadvantaged Business Enterprises (DBE) requirements related to DBE programs. To the extent that federal DBE requirements conflict with the requirements of this Paragraph, the federal DBE requirements shall prevail. In the event that Contractor identifies a conflict, Contractor shall verify with the Commonwealth, which shall verify with the administering federal agency, that a conflict exists that would jeopardize ARRA funding.

(f) For purposes of this paragraph, "small disadvantaged businesses" are small businesses that are owned or controlled by a majority of persons, not limited to members of minority groups, who have been deprived of the opportunity to develop and maintain a competitive position in the economy because of social disadvantages. The term includes:

(i) Department of General Services-certified MBEs and WBEs that qualify as small businesses; and

(ii) United States Small Business Administration certified 8(a) small disadvantaged business concerns; and

(iii) Businesses that BMWBO determines meet the Small Business Administration criteria for designation as a small disadvantaged business.

(iv) Small businesses that have been certified as disadvantaged business enterprises (“DBEs”).

“Small businesses” are businesses in the United States that are independently owned, are not dominant in their field of operation, employ no more than 100 full-time or full-time equivalent employees and earn less than \$20 million in gross annual revenues (\$25 million in gross annual revenues for those businesses in the information technology sales or service business).

IV. The following shall be included in grants for Projects using ARRA funds:

Creating Opportunities for Small and Disadvantaged Businesses

(a) The Governor, through Executive Order 2009-02, has established, as an overall Commonwealth aspirational goal that at least ten percent (10%) of the funds allotted to the Commonwealth of Pennsylvania through the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, (“ARRA”) should go to small disadvantaged businesses as contractors, subcontractors, grantees, subgrantees, and suppliers.

(b) To assist the Commonwealth in attaining this aspirational goal, Grantee is required to make reasonable and good faith efforts to reach out to small disadvantaged businesses to make them aware of subcontracting and supply opportunities and to encourage these businesses to participate as subgrantees, contractors, subcontractors and suppliers.

(c) At a minimum, Grantee is required to:

(i) Contact the Department of General Services’ Bureau of Minority and Women Business Opportunities (“BMWBO”) by telephone (717-783-3119) to discuss potential opportunities that may exist for small disadvantaged businesses as subgrantees, contractors, subcontractors and suppliers; and

(ii) When notified by the Commonwealth agency or BMWBO, participate in outreach activities and events to increase small disadvantaged business interest and participation in subgrant, contract, subcontract and supply contract opportunities; and

(iii) Use the Department of General Services website www.dgsweb.state.pa.us/mbewbe/VendorSearch.aspx to identify DGS-certified Minority Business Enterprises (MBEs) and Women Business Enterprises (WBEs) as potential subgrantees, contractors, subcontractors and suppliers; and

- (iv) Solicit identified MBEs and WBEs for subgrant, contract, subcontract and supply contract opportunities; and
 - (v) Prepare and keep the following records:
 - a. Solicitations lists, specifically identifying all small, disadvantaged businesses that were solicited; and
 - b. Bid tabulations, specifically identifying all small, disadvantaged businesses that submitted a bid, quote or proposal, and the dollar amount of the bid, quote or proposal; and
 - c. Copies of all bids, quotes and proposals received; and
 - (vi) Provide monthly reports to the Department of General Services' Bureau of Minority and Women Business Opportunities on small disadvantaged business utilization.
- (d) To the extent that the grant imposes specific small, disadvantaged business solicitation and document submission requirements, Grantee shall comply with those requirements.
- (e) Grantee shall comply with all applicable federal Disadvantaged Business Enterprises (DBE) requirements related to DBE programs. To the extent that federal DBE requirements conflict with the requirements of this Paragraph, the federal DBE requirements shall prevail. In the event that Grantee identifies a conflict, Grantee shall verify with the Commonwealth, which shall verify with the administering federal agency, that a conflict exists that would jeopardize ARRA funding.
- (f) For purposes of this paragraph, "small disadvantaged businesses" are small businesses that are owned or controlled by a majority of persons, not limited to members of minority groups, who have been deprived of the opportunity to develop and maintain a competitive position in the economy because of social disadvantages. The term includes:
- (i) Department of General Services-certified MBEs and WBEs that qualify as small businesses; and
 - (ii) United States Small Business Administration certified 8(a) small disadvantaged business concerns; and
 - (iii) Businesses that BMWBO determines meet the Small Business Administration criteria for designation as a small disadvantaged business.

- (iv) Small businesses that have been certified as disadvantaged business enterprises (“DBEs”).

“Small businesses” are businesses in the United States that are independently owned, are not dominant in their field of operation, employ no more than 100 full-time or full-time equivalent employees and earn less than \$20 million in gross annual revenues (\$25 million in gross annual revenues for those businesses in the information technology sales or service business).

15. Access to Records. Contractor agrees that with respect to each agreement using, in whole or in part, ARRA funds, any representative of an appropriate U.S. Inspector General appointed under section 3 or 8G of the Inspector General Act of 1988 (5 U.S.C. App.) or of the U.S. Comptroller General is authorized:

- (a) to examine any records of the Contractor, any of its subcontractors, or any state or local agency administering such contract that pertain to, and involve transactions relating to the contract; and
- (b) to interview any officer or employee of the contractor, subcontractor or agency regarding such transactions.

16. Records Retention. The Contractor shall retain all such contract records intact in a form, if not original documents, as may be approved by the Federal Government, for at least three (3) years following termination of a project funded by ARRA or for such longer period of time as required by the Commonwealth.

17. Access to Information. This contract and any records or expenditures related thereto may be subject to disclosure under the Pennsylvania Right to Know Law 65 P.S. 67.101 *et seq.* and the Freedom of Information Act, 5 U.S.C. §552.

18. Compliance. The Contractor shall comply with all applicable laws, regulations and program guidance. A non-exclusive list of statutes, regulations and/or guidance commonly applicable to Federal funds follows:

General

- Drug-Free Workplace Act of 1988 (Public Law 100-690, Title V, Subtitle D; 41 U.S.C. 701 *et seq.*; 32 CFR part 26, Subpart B
- Copeland “Anti-Kickback Act”, 18 U.S.C. Section 874; 29 CFR Part 3
- Contract Work Hours and Safety Standards Act, 40 U.S.C. §§327-330; 29 CFR Part 5
- Americans with Disabilities Act of 1990, as amended; 42 U.S.C. Chapter 126; 28 C.F.R. §35.101 *et seq.*

Administrative Requirements

- OMB Circular A-102, State and Local Governments (10/07/94, amended 08/28/07) (44 CFR Part 13)

- OMB Circular A-110, Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations (11/19/93, amended 09/30/99) (2 CFR Part 215)

Cost Principles

- OMB Circular A-87, State and Local Governments (05/10/04) (2 CFR Part 225)
- OMB Circular A-21, Educational Institutions (5/10/04) (2 CFR Part 220)
- OMB Circular A-122, Non-Profit Organizations (5/10/04) (2 CFR Part 230)

Audit Requirement

- OMB Circular A-133, Audits of States, Local Governments, and Non-Profit Organizations (6/24/97, includes revisions published in the Federal Register 6/27/03)

19. 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 \$7,804,000; 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)*
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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 \$7,804,000 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, Canada, 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 \$7,804,000 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 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 Measure	Quantity	Price (Dollars)*
<i>Item 1:</i> Foreign construction material	_____	_____	_____

Domestic construction material _____
Item 2:
Foreign construction material _____
Domestic construction material _____

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

EXHIBIT B

APPENDIX A—STANDARDS FOR WEATHERIZATION MATERIALS

If the standards listed in this appendix conflict with those required by current local codes, the local code shall have precedence and a copy of the applicable section will be retained with procurement records.

The following Government standards are produced by the Consumer Product Safety Commission and are published in title 16, Code of Federal Regulations:

Thermal Insulating Materials for Building Elements Including Walls, Floors, Ceilings, Attics, and Roofs Insulation—organic fiber—conformance to Interim Safety Standard in 16 CFR part 1209;

Fire Safety Requirements for Thermal Insulating Materials According to Insulation Use—Attic Floor—insulation materials intended for exposed use in attic floors shall be capable of meeting the same flammability requirements given for cellulose insulation in 16 CFR part 1209;

Enclosed spaces—insulation materials intended for use within enclosed stud or joist spaces shall be capable of meeting smoldering combustion requirements in 16 CFR part 1209.

The following standards which are not otherwise set forth in part 440 are incorporated by reference and made part of part 440. The following standards have been approved for incorporation by reference by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. These materials are incorporated as they exist on January 3, 2002 and a notice of any change in these materials will be published in the FEDERAL REGISTER. The standards incorporated by reference are available for inspection at the Office of the Federal Register Information Center, 800 North Capitol Street, Suite 700, Washington, DC 20001.

The standards incorporated by reference in part 440 can be obtained from the following sources:

Air Conditioning and Refrigeration Institute, 4301 N. Fairfax Drive, Suite 425, Arlington, VA 22203; (703) 524-8800.
American Architectural Manufacturers Association, 1827 Walden Office Square, Suite 104, Schaumburg, Illinois 60173-4268; (847) 303-5664.
American Gas Association, 400 N. Capitol Street, NW, Washington, DC 20001; (202) 824-7000.
American National Standards Institute, Inc., 11 West 42nd Street, New York, NY 10036; (212) 642-4900.
American Society of Mechanical Engineers, Three Park Avenue, New York, NY 10016-5990; (212) 591-7722.

American Society for Testing and Materials, 100 Bar Harbor Drive, West Conshohocken, PA 19428-2959; (610) 832-9585.

Association of Home Appliance Manufacturers, 1111 19th Street, NW, Suite 402, Washington DC, 20036; (202) 872-5955.

Federal Specifications, General Services Administration, General Services Administration, Federal Supply Service, Office of the CIO and Marketing Division, Room 800, 1941 Jefferson Davis Hwy., Arlington, VA 22202; (703) 305-6288.

Gas Appliance Manufacturers Association, 2107 Wilson Boulevard, Suite 600, Arlington, Virginia 22201; (703) 525-7060.

National Electrical Manufacturers Association, 1300 North 17th Street, Suite 1847, Rosslyn, VA 22209; (703) 841-3200.

National Fire Protection Association, 1 Batterymarch Park, P.O. Box 9101, Quincy, MA 02269-9101; (617) 770-3000.

Sheet Metal and Air Conditioning Contractors Association, 4201 Lafayette Center Drive, Chantilly, Virginia 20151-1209; (703) 803-2980.

Solar Rating and Certification Corporation, c/o FSEC, 1679 Clearlake Road, Cocoa, FL 32922-5703; (321) 638-1537.

Steel Door Institute, 30200 Detroit Road, Cleveland, OH 44145-1967; (440) 899-0010.

Steel Window Institute, 1300 Sumner Avenue, Cleveland, OH 44115-2851; (216) 241-7333.

Tubular Exchanger Manufacturers Association, 25 North Broadway, Tarrytown, NY 10591; (914) 322-0040.

Underwriters Laboratories, Inc., 333 Pfingsten Road, Northbrook, IL 60062-2096; (847) 272-8800.

Window & Door Manufacturers Association, 1400 East Touhy Avenue, Suite 470, Des Plaines, IL 60018; (800) 223-2301.

More information regarding the standards in this reference can be obtained from the following sources:

Environmental Protection Agency, 401 M Street, NW, Washington, DC 20006; (202) 554-1080.

National Institute of Standards and Technology, U.S. Department of Commerce, Gaithersburg, MD 20899; (301) 975-2000.

Weatherization Assistance Program, Office of Building Technology Assistance, Energy Efficiency and Renewable Energy, 1000 Independence Avenue, SW, EE-42, Washington, DC 20585-0121; (202) 586-4074.

**THERMAL INSULATING MATERIALS FOR
BUILDING ELEMENTS INCLUDING WALLS,
FLOORS, CEILINGS, ATTICS, AND ROOFS**
[Standards for conformance]

Insulation--mineral fiber:	
Blanket insulation	ASTM ¹ C665-98.
Roof insulation board	ASTM C726-00a.
Loose-fill insulation	ASTM C764-99.
Insulation--mineral cellular:	
Vermiculite loose-fill insulation	ASTM C516-80 (1996)e1.
Perlite loose-fill insulation .	ASTM C549-81 (1995)e1.
Cellular glass insulation block	ASTM C552-00.
Perlite insulation board . . .	ASTM C728-97.
Insulation--organic fiber:	
Cellulosic fiber insulating board	ASTM C208-95.
Cellulose loose-fill insulation	ASTM C739-00.
Cellulose wet-spray insulation	ASTM C1149-97.
Insulation--organic cellular:	
Preformed block-type polystyrene insulation	ASTM C578-95.
Rigid preformed polyurethane insulation board	ASTM C591-00.
Polyurethane or polyisocyanurate insulation board face with aluminum foil on both sides	FS ² HH-I-1972/1 (1981).
Polyurethane or polyisocyanurate insulation board face with felt on both sides	FS HH-I-1972/2 (1981) and Amendment 1, October 3, 1985).
Insulation--composite boards:	
Mineral fiber insulation board	ASTM C726-00a.
Perlite board	ASTM C728-97.
Gypsum board and polyurethane or polyisocyanurate composite board	FS HH-I-1972/4 (1981).

¹ ASTM indicates American Society for Testing and Materials.

² FS indicates Federal Specifications.

**THERMAL INSULATING MATERIALS FOR
BUILDING ELEMENTS INCLUDING WALLS,
FLOORS, CEILINGS, ATTICS, AND
ROOFS--Continued**
[Standards for conformance]

Materials used as a patch to reduce infiltration through the building envelope	Commercially available.
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**THERMAL INSULATING MATERIALS FOR PIPES,
DUCTS, AND EQUIPMENT SUCH AS BOILERS
AND FURNACES**
[Standards for conformance]

Insulation--mineral fiber:	
Preformed pipe insulation .	ASTM ¹ C547-00.
Blanket and felt insulation (industrial type)	ASTM C553-00.
Blanket insulation and blanket type pipe insulation (metal-mesh covered, industrial type)	ASTM C592-00.
Block and board insulation	ASTM C612-00.
Spray applied mineral fiber thermal and sound absorbing insulation	ASTM C1014-99ae1.
High-temperature fiber blanket insulation	ASTM C892-00.
Duct work insulation	ASTM C1290-00.
Insulation--mineral cellular:	
Calcium silicate block and pipe insulation	ASTM C533-95.
Cellular glass insulation . .	ASTM C552-00.
Expanded perlite block and pipe insulation	ASTM C610-99.
Insulation--organic cellular:	
Preformed flexible elastomeric cellular insulation in sheet and tubular form	ASTM C534-99.
Unfaced preformed rigid cellular polyurethane insulation	ASTM C591-00.
Insulation skirting	Commercially available.

¹ ASTM indicates American Society for Testing and Materials.

FIRE SAFETY REQUIREMENTS FOR INSULATING MATERIALS ACCORDING TO INSULATION USE

[Standards for conformance]

Attic floor	Insulation materials intended for exposed use in attic floors shall be capable of meeting the same smoldering combustion requirements given for cellulose insulation in ASTM ¹ C739-00.
Enclosed space	Insulation materials intended for use within enclosed stud or joist spaces shall be capable of meeting the same smoldering combustion requirements given for cellulose insulation in ASTM C739-00.
Exposed interior walls and ceilings	Insulation materials, including those with combustible facings, which remain exposed and serve as wall or ceiling interior finish, shall have a flame spread classification not to exceed 150 (per ASTM E84-00a).
Exterior envelope walls and roofs	Exterior envelope walls and roofs containing thermal insulation shall meet applicable local government building code requirements for the complete wall or roof assembly.
Pipes, ducts, and equipment	Insulation materials intended for use on pipes, ducts, and equipment shall be capable of meeting a flame spread classification not to exceed 150 (per ASTM E84-00a).

¹ ASTM Indicates American Society for Testing and Materials.

STORM WINDOWS

[Standards for conformance]

Storm windows:	
All storm windows . .	AAMA/NWWDA ¹ 101/I.S. 2-97.
Aluminum frame storm windows	AAMA ² 1002.10-93.
Rigid vinyl frame storm windows	ASTM ³ D4726-00.
Frameless plastic glazing storm	Required minimum thickness for windows is 6 mil (0.006 inches). Commercially available.
Movable insulation systems for windows	

¹ AAMA/NWWDA indicates American Architectural Manufacturers Association/National Wood Window & Door Association (now the Window & Door Manufacturers Association).

² AAMA indicates American Architectural Manufacturers Association.

³ ASTM indicates American Society for Testing and Materials.

REPLACEMENT WINDOWS

[Standards for conformance]

Replacement windows:	
All windows	AAMA/NWWDA ¹ 101/I.S. 2-97.
Steel frame windows	Steel Window Institute recommended specifications for steel windows, 1990.
Rigid vinyl frame windows	ASTM ² D4726-00.

¹ AAMA/NWWDA indicates American Architectural Manufacturers Association/National Wood Window & Door Association (now the Window & Door Manufacturers Association).

² ASTM indicates American Society for Testing and Materials.

STORM DOORS

[Standards for conformance]

Storm doors:	
All storm (glass) doors	AAMA/NWWDA ¹ 101/I.S. 2-97.
Aluminum frame storm doors	AAMA ² 1102.7-89.
Sliding glass storm doors	AAMA 1002.10-93.
Rigid vinyl storm doors	ASTM ³ D3678-97 and D4726-00..
Vestibules:	
Materials to construct vestibules	Commercially available.

¹ AAMA/NWWDA indicates American Architectural Manufacturers Association/National Wood Window & Door Association (now the Window & Door Manufacturers Association).

² AAMA indicates American Architectural Manufacturers Association.

³ ASTM indicates American Society for Testing and Materials.

REPLACEMENT DOORS

[Standards for conformance]

Replacement doors:	
All replacement doors	AAMA/NWWDA ¹ 101/I.S. 2-97.
Steel doors	ANSI ² A250.8-98.
Wood doors:	
Flush doors	ANSI/NWWDA ³ I.S. 1-97 (Amendment, exterior door provisions).
Stile and rail doors	NWWDA ⁴ I.S. 6-97.

¹ AAMA/NWWDA indicates American Architectural Manufacturers Association/National Wood Window & Door Association (now the Window & Door Manufacturers Association).

² ANSI indicates American National Standards Institute.

³ ANSI/NWWDA indicates American National Standards Institute/National Wood Window & Door Association (now the Window & Door Manufacturers Association).

⁴ NWWDA indicates National Wood Window & Door Association (now the Window & Door Manufacturers Association).

CAULKS AND SEALANTS

[Standards for conformance]

Caulks and sealants:	
Glazing compounds for metal sash	ASTM ¹ C669-00.
Oil and resin base caulks	ASTM C570-00.
Acrylic (solvent types) sealants	ASTM C920-98e1.
Butyl rubber sealants	FS ² Commercial Item Description A-A-272 (6/7/95).
Chlorosulfonated polyethylene sealants	ASTM C920-98e1.
Latex sealing compounds	ASTM C834-00e1.
Elastomeric joint sealants (normally considered to include polysulfide, polyurethane, and silicone)	ASTM C920-98e1.
Preformed gaskets and sealing materials	ASTM C509-00.
Duct sealing mastic	UL ³ 181A-M, Second Edition, 1994 and UL 181B-M, First Edition, 1995.

¹ ASTM indicates American Society for Testing and Materials.

² FS indicates Federal Specifications.

³ UL indicates Underwriters Laboratories.

WEATHERSTRIPPING

[Standards for conformance]

Weatherstripping	Commercially available. Selected according to the provisions cited in ASTM ¹ C755-97. Permeance not greater than 1 perm when determined according to the desiccant method described in ASTM E96-00.
Vapor retarders	
Items to improve attic ventilation	Commercially available.

¹ ASTM indicates American Society for Testing and Materials.

HEAT EXCHANGERS

[Standards for conformance]

Heat exchangers, water-to-water and steam-to-water	ASME ¹ Boiler and Pressure Vessel Code, 1998, Sections II, V, VIII, IX, and X, as applicable to pressure vessels. Standards of Tubular Exchanger Manufacturers Association, Eighth Edition, 1999.
Heat exchangers with gas-fired appliances ²	ANSI/UL ³ 462, Ninth Edition, approved by ANSI February 28, 1997.

¹ ASME indicates American Society for Mechanical Engineers.

² The heat reclaimer is for installation in a section of the vent connector from appliances equipped with draft hoods or appliances equipped with powered burners or induced draft and not equipped with a draft hood.

³ ANSI/UL indicates American National Standards Institute/Underwriters Laboratories.

BOILER/FURNACE CONTROL SYSTEMS

[Standards for conformance]

Automatic set back thermostats	Listed by UL ¹ . Conformance to NEMA ² DC3-1989 (R1996).
Line voltage or low voltage room thermostats	Listed by UL. Conformance to NEMA DC3-1989 (R1996).
Clock thermostats	Listed by UL. Conformance to NEMA DC3-1989 (R1996).
Automatic gas ignition systems	ANSI ³ Z21.21-2000. AGA ⁴ Laboratories Certification Seal.
Energy management systems	Listed by UL.
Hydronic boiler controls	Listed by UL.
Other burner controls . .	Listed by UL.

¹ UL indicates Underwriters Laboratories.

² NEMA indicates National Electrical Manufacturers Association.

³ ANSI indicates American National Standards Institute.

⁴ AGA indicates American Gas Association.

WATER HEATER MODIFICATIONS

[Standards for conformance]

Insulate tank and distribution piping	(See insulation section of this appendix)
Install heat traps on inlet and outlet piping	Applicable local plumbing code.
Install/replace water heater heating elements	Listed by UL ¹ .
Electric, freeze-prevention tape for pipes	Listed by UL.
Install stack damper, gas-fueled	ANSI ² Z21.66-1996, including Exhibits A & B, and ANSI Z223.1-1999 (same as NFPA ³ 54-1999).
Install stack damper, oil-fueled	UL 17, Third Edition, 1994, NFPA 31-2001, NFPA 211-2000 (same as ANSI A52.1), and ANSI/NFPA 70-1999 (same as IEEE ⁴ National Electrical Code).
Install water flow modifiers	Commercially available.

¹ UL indicates Underwriters Laboratories.

² ANSI indicates American National Standards Institute.

³ NFPA indicates National Fire Prevention Association.

⁴ IEEE indicates Institute of Electrical and Electronics Engineers.

REPLACEMENT WATER HEATERS

[Standards for conformance]

Electric (resistance) water heaters	10 CFR ¹ 430 and UL ² 174.
Heat pump water heaters	UL 1995, Second Edition, 1995. Electrical components to be listed by UL.
Gas water heaters: Rated ≤ 75 kBtu/hr . . .	10 CFR 430 and ANSI ³ Z21.10.1-1998.
Rated ≥ 75 kBtu/hr . . .	ANSI Z21.10.3-1998.
Oil water heaters	UL 732, Fifth Edition, 1995.

¹ CFR indicates Code of Federal Regulations.

² UL indicates Underwriters Laboratories.

³ ANSI indicates American National Standards Institute.

SOLAR WATER HEATING SYSTEMS

[Standards for conformance]

Solar water heating systems including forced circulation, integral collector storage, thermo-syphon, and self-pumping systems	System must be certified per SRCC ¹ OG 300, July 16, 1998.
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¹ SRCC indicates Solar Rating and Certification Corporation.

WASTE HEAT RECOVERY DEVICES

[Standards for conformance]

Desuperheater/water heaters	ARI ¹ 470-1995 and UL 1995, Second Edition, 1995.
Condensing heat exchangers	Commercially available components installed per manufacturers' specifications. NFPA ² 211-2000 (same as ANSI A52.1) may apply in certain instances. See also the Heat Exchangers section of this appendix.
Heat pump water heating heat recovery systems	UL 1995, Second Edition, 1995. Electrical components to be listed by UL.
Energy recovery equipment	Energy Systems Analysis and Management, 1997 (SMACNA ³).

¹ ARI indicates Air Conditioning and Refrigeration Institute.

² NFPA indicates National Fire Prevention Association.

³ SMACNA denotes Sheet Metal and Air Conditioning Contractors' National Association.

BOILER REPAIR AND

Install gas conversion burners	ANSI ¹ Z21.8-1994 (for gas- or oil-fired systems), ANSI Z21.17-1998, and ANSI Z223.1-1999 (same as NFPA 54-1999). AGA ² Laboratories Certification Seal.
Replace oil burner	UL ³ 296, Ninth Edition, 1994 and NFPA 31-2001.
Install burners (oil/gas)	ANSI Z223.1-1999 for gas equipment and NFPA ⁴ 31-2001 for oil equipment.
Re-adjust boiler water temperature or install automatic boiler temperature reset control	ASME ⁵ CSD-1-1998, ANSI Z223.1-1999, and NFPA 31-2001.
Replace/modify boilers	ASME Boiler and Pressure Vessel Code, 1998, Section II, IV, V, VI, VIII, IX, and X. Boilers must be Hydronics Institute Division of GAMA equipment. Per manufacturers' instructions.
Clean heat exchanger, adjust burner air shutter(s), check smoke no. on oil-fueled equipment. Check operation of pump(s) and replacement filters.	
Replace combustion chambers	Refractory linings may be required for conversions.

BOILER REPAIR AND MODIFICATIONS/EFFICIENCY IMPROVEMENTS—Continued

[Standards for conformance]

Replace heat exchangers, tubes	Protection from flame contact with conversion burners by refractory shield. Commercially available.
Install/replace thermostatic radiator valves	One-pipe steam systems require air vents on each radiator; see manufacturers' requirements.
Install boiler duty cycle control system	Commercially available. ANSI/NFPA 70-1999 (same as IEEE National Electrical Code) and local electrical code provisions for wiring.

¹ ANSI indicates American National Standards Institute.
² AGA indicates American Gas Association.
³ UL indicates Underwriters Laboratories.
⁴ NFPA indicates National Fire Prevention Association.
⁵ ASME indicates American Society for Mechanical Engineers.

**HEATING AND COOLING SYSTEM REPAIRS AND
TUNE-UPS/EFFICIENCY IMPROVEMENTS**

[Standards for conformance]

Install duct insulation . .	ASTM ¹ C612-00 (see insulation sections of this appendix).
Reduce input of burner; derate gas-fueled equipment	Local utility company and procedures if applicable for gas-fueled furnaces and ANSI ² Z223.1-1999 (same as NFPA ³ 54-1999) including Appendix H.
Repair/replace oil-fired equipment	NFPA 31-2001.
Replace combustion chamber in oil-fired furnaces or boilers	NFPA 31-2001.
Clean heat exchanger and adjust burner; adjust air shutter and check CO ₂ and stack temperature. Clean or replace air filter on forced air furnace	ANSI Z223.1-1999 (same as NFPA 54-1999) including Appendix H.
Install vent dampers for gas-fueled heating systems	Applicable sections of ANSI Z223.1-1999 (same as NFPA 54-1999) including Appendix H, I, J, and K. ANSI Z21.66-1996 and Exhibits A&B for electrically operated dampers.
Install vent dampers for oil-fueled heating systems	Applicable sections of NFPA 31-2001 for installation and in conformance with UL ⁴ 17, Third Edition, 1994.

**HEATING AND COOLING SYSTEM REPAIRS AND
TUNE-UPS/EFFICIENCY IMPROVEMENTS—Continued**

[Standards for conformance]

Reduce excess combustion air:	
A: Reduce vent connector size of gas-fueled appliances	ANSI Z223.1-1999 (same as NFPA 54-1999) part 9 and Appendices G & H.
B: Adjust barometric draft regulator for oil fuels	NFPA 31-2001 and per furnace and boiler manufacturers' instructions.
Replace constant burning pilot with electric ignition device on gas-fueled furnaces or boilers	ANSI Z21.71-1993.
Readjust fan switch on forced air gas-or oil-fueled furnaces	Applicable sections and Appendix H of ANSI Z223.1-1999 (same as NFPA 54-1999) for gas furnaces and NFPA 31-2001 for oil furnaces.
Replace burners	See install burners (oil/gas).
Install/replace duct furnaces (gas)	ANSI Z223.1-1999 (same as NFPA 54-1999).
Install/replace heat pumps	ARI ⁵ 210/240-1994. UL 1995, Second Edition, 1995. Commercially available.
Replace air diffusers, intakes, registers, and grilles	Commercially available.
Install/replace warm air heating metal ducts	UL 181, Ninth Edition 1996, including UL 181A, Second Edition 1994 and 181B, First Edition, 1995.
Filter alarm units	Commercially available.

¹ ASTM indicates American Society for Testing and Materials.

² ANSI indicates American National Standards Institute.

³ NFPA indicates National Fire Prevention Association.

⁴ UL indicates Underwriters Laboratories.

⁵ ARI indicates Air Conditioning and Refrigeration Institute.

**REPLACEMENT FURNACES, BOILERS, AND
WOOD STOVES**

[Standards for conformance]

Chimneys, fireplaces, vents and solid fuel burning appliances	NFPA ¹ 211-2000 (same as ANSI ² A52.1).
Gas-fired furnaces	ANSI Z21.47-1998 and ANSI Z223.1-1999 (same as NFPA 54- 1999).
Oil-fired furnaces	UL ³ 727, Eighth Edition, 1994 and NFPA 31- 2001.
Liquefied petroleum gas storage	NFPA 58-2001.
Ventilation fans: Including electric attic, ceiling, and whole-house fans	UL 507, Ninth Edition, 1999.

¹ NFPA indicates National Fire Prevention Association.

² ANSI indicates American National Standards Institute.

³ UL indicates Underwriters Laboratories.

**SCREENS, WINDOW FILMS, AND REFLECTIVE
MATERIALS**

[Standards for conformance]

Insect screens	Commercially available.
Window films	Commercially available.
Shade screens:	
Fiberglass shade screens	Commercially available.
Polyester shade screens	Commercially available.
Rigid awnings:	
Wood rigid awnings	Commercially available.
Metal rigid awnings .	Commercially available.
Louver systems:	
Wood louver awnings	Commercially available.
Metal louver awnings	Commercially available.
Industrial-grade white paint used as a heat- reflective measure on roofs, awnings, window louvers, doors, and exterior duct work (exposed)	Commercially available.

AIR CONDITIONERS AND COOLING EQUIPMENT

[Standards for conformance]

Air conditioners: Central air conditioners Room size units	ARI ¹ 210/240-1994. ANSI/AHAM ² RAC 1- 1992.
Other cooling equipment: Including evaporative coolers, heat pumps, and other equipment	UL ³ 1995, Second Edition, 1995.

¹ ARI indicates Air Conditioning and Refrigeration Institute.

² ANSI/AHAM indicates American National Standards Institute/Association of Home Appliance Manufacturers.

³ UL indicates Underwriters Laboratories.

REFRIGERATORS

[Standards for conformance]

Refrigerator/freezers (does not include freezer-only units)	UL ¹ 250. Replaced units must be disposed of properly per Clean Air Act 1990, Section 608, as amended by 40 CFR ² 82, May 14, 1993.
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¹ UL indicates Underwriters Laboratories.

² CFR indicates Code of Federal Regulations.

FLUORESCENT LAMPS AND FIXTURES

[Standards for conformance]

Compact fluorescent lamps	ANSI/UL ¹ 542, Seventh Edition, February 6, 1997 and UL 1993, First Edition, 1993.
Fluorescent lighting fixtures	UL 1570, Fourth Edition, 1995.

¹ ANSI/UL indicates American National Standards Institute/Underwriters Laboratories.

EXHIBIT C

Lobbying Certification

CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Statement for Loan Guarantees and Loan Insurance

The undersigned states, to the best of his or her knowledge and belief, that:

If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions. Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required statement shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Signature

Title

Organization