



STATE OF DELAWARE  
**DEPARTMENT OF NATURAL RESOURCES  
AND ENVIRONMENTAL CONTROL**  
**DIVISION OF ENERGY & CLIMATE**  
100 W. WATER STREET, SUITE 5A  
DOVER, DELAWARE 19904

Delaware  
Weatherization  
Assistance Program

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**FIRST EXTENSION**  
of the  
**PROFESSIONAL SERVICES AGREEMENT**  
CONTRACT BETWEEN  
**DELAWARE DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL**  
**DIVISION OF ENERGY AND CLIMATE**  
AND  
**CATHOLIC CHARITIES, INC.**

This extension of contract NAT 13001-WAPLOCAL (the Extension) that was made and entered into between the State of Delaware Department of Natural Resources and Environmental Control (the Department), **Division of Energy and Climate** (the Division), and **Catholic Charities, Inc.** (the Contractor), **for the purposes of implementing the Weatherization Assistance Program.**

**WHEREAS**, the **Division** AND the **Contractor** are parties to the provisions of RFP No. **RFP NAT13001-WAPLOCAL**, a component of the Contract No. **NAT13001-WAPLOCAL** provided that the term of the contract may be extended by mutual consent. Per the terms of RFP NAT13001-WAPLOCAL, Section 1.D.Contract Period, DNREC and Catholic Charities mutually agree to an extension of Contract Number NAT13001-WAPLOCAL until March 31, 2018 unless or until a superseding contract is awarded prior to March 31, 2018. In the event of award of a superseding contract, DNREC will provide Catholic Charities with 60 days notice of the revised expiration date for Contract NAT13001-WAPLOCAL.

The Division would like to exercise the option to extend the contract for a period of one year with the following modifications:

**1) Under the Revised Scope of Services at Appendix A:**

- a. At item (1), the revision from 400 homes to weatherize has been changed to 300.
- b. At item (11), the inclusion of the Hancock Home Energy Audit protocols.
- c. At item (14), the revision from \$6,500.00 average cost per dwelling to \$7,000.00.
- d. New item (31), Quality Control Inspector requirements.
- e. New item (32), requirement for weatherization contractors to obtain Delaware Lead-Safe Certified Firm Status.
- f. New item (33), the requirement for each weatherization contractor to have an employee with the Delaware Renovation/Repair/Painting certification.

- g. New item (34), requirement for Catholic Charities to obtain Delaware Lead-Safe Certified Firm Status.
- h. New item (35), the requirement for Catholic Charities to have at least one employee with the Delaware Renovation/Repair/Painting certification.
- i. New item (36), to include the requirement for signed contractor acknowledgements showing that weatherization contractors have received the a copy of the WAP Manual, Delaware Standard Work Specifications, Delaware Field Guide, and Confined Space Program.

**2) Under the Revised Contract Budget at Appendix B:**

- a. Allow the insertion of the approved Program Year 2017 Catholic Charities budget at sheet B-6.

**3) Apply a new appendix to the contract called Appendix D, Confined Space Program.**

**WHEREAS**, all other terms and conditions will remain unchanged. The contract would then continue to be effective through March 31, 2018.

**IN WITNESS THEREOF**, the Parties hereto have caused this Agreement to be duly executed.

Original On File

**FOR THE DEPARTMENT:**  
 DEPARTMENT OF NATURAL RESOURCES AND  
 ENVIRONMENTAL CONTROL/  
 Original On File

Witness \_\_\_\_\_  
 Date: 3/14/17

Name: David S. Small  
 Title: David S. Small, Department Secretary  
 Date: 3/14/17

Original On File

**FOR THE CONTRACTOR:**  
 CATHOLIC CHARITIES  
 Original On File

Name: \_\_\_\_\_  
 Title: Richelle A. Vible, Executive Director,  
Catholic Charities, Inc.  
 Date: 3/10/17

Witness \_\_\_\_\_  
 Date: 3-10-17

Appendix A  
Revised Scope of Services

**Appendix A**  
**Revised Scope of**  
**Services**

**VENDOR:** Catholic Charities  
2601 W. 4<sup>th</sup> Street Wilmington, DE 19805

**SERVICE AREA:** New Castle, Kent and Sussex Counties, Delaware

The VENDOR shall administer the Delaware Weatherization Assistance Program (WAP) in the State of Delaware in accordance with all applicable federal, state and local laws, rules, regulations, procedures and guidance manuals and under the guidance and supervision of the Weatherization Assistance Program within the Division of Energy and Climate of the Delaware Department of Natural Resources and Environmental Control (“DNREC” or “DEPARTMENT”).

VENDOR shall administer the Delaware Weatherization Assistance Program in compliance with this Agreement and all other applicable Federal, State, and local laws, rules, regulations, administrative procedures, guidance manuals and definitions, and any amendments thereto. Specifically, and in addition to any other applicable requirements, VENDOR shall comply with 42 U.S.C. § 6861 *et seq.*; and 10 CFR Part 440 and 2 CFR 200, the approved U.S. Department of Energy Weatherization Assistance Program State Plan for the State of Delaware, the Delaware Weatherization Field Guide, the Delaware Weatherization Policy Manual (WAP Manual), the Delaware Standard Work Specifications, and all other applicable state weatherization Program Updates or directives.

VENDOR shall further administer the weatherization program in compliance with the requirements as specified in State of Delaware Office of Management and Budget (“OMB”) Circular A-110, the “Common Rule,”; OMB Circular A-122, “Cost Principles for Non-Profit Organizations”; and OMB Circular A-133, entitled “Audits of States, Local Governments, and Non-Profit Organizations”.

**The Scope of Services and requirements under this Agreement are as follows:**

1. **VENDOR shall have a target to weatherize 300 homes statewide for each Program Year. VENDOR shall make every effort to complete half (50%) of the contracted number of weatherized units within New Castle County and the remaining 50% within Kent and Sussex Counties, regardless of clients position on the priority list. Failure to achieve this goal will require the VENDOR to report to Delaware the cause of the failure and develop a work plan in concert with Delaware to achieve the goal in the future.**
2. VENDOR shall provide WAP services to eligible dwelling units in accordance with the WAP Manual and the Delaware Standard Work Specifications and acknowledges and agrees that the funds provided through this Agreement shall be used solely for the purposes of weatherizing homes as defined herein.
3. Any unit weatherized through the Delaware Weatherization Assistance Program on or after September 30, 1994, shall not be eligible for weatherization services pursuant to this Agreement and VENDOR shall not re-weatherize any such unit using any funds related to this Agreement unless specifically authorized in writing to do so by DNREC.

**Appendix A**  
**Revised Scope of Services**

4. The WAP program in Delaware operates on a reimbursement basis, whereby VENDOR engages staff or subcontractors to provide WAP services to eligible clients and then seeks payment or reimbursement from DNREC for all eligible program expenses in accordance with the WAP Manual.
5. VENDOR shall not pay any subcontractor, nor shall VENDOR submit claims for reimbursement of any costs incurred by VENDOR for any work performed, until such time as VENDOR has performed the Final Inspection and has determined in writing that any such work has been performed in a satisfactory manner. DNREC may waive this requirement in its sole discretion. This requirement does not apply to the payment of charges for HVAC servicing or replacement where delays in paying HVAC contractors may delay overall progress of the program.
6. VENDOR may request, and DNREC may grant, a funding advance to initiate program operations and pay staff salaries, operational expenses or subcontractor costs in accordance with the WAP Manual and this Agreement.
7. VENDOR shall follow generally accepted accounting procedures and practices which sufficiently and properly reflect all costs incurred by VENDOR pursuant to this Agreement and shall keep accurate and up-to-date accounting records.
8. VENDOR shall submit a written report to DNREC on a monthly basis, within 20 business days of the end of each month, setting forth its WAP expenditures by budget categories for the preceding month. Said report shall also include year-to-date expenditure totals and explain any past deviations from the budget included with this Agreement.
9. VENDOR and its subcontractors shall not impose any fees or accept any money from the recipients of any services provided through this Agreement except as explicitly authorized in writing by DNREC prior to imposing any such fee or accepting any funds.
10. Any program income earned by VENDOR from activities conducted with funds obtained through this Agreement must be maintained and expended by VENDOR in accordance with the Delaware WAP Manual and all relevant federal and state laws, rules and regulations regarding program income.
11. VENDOR acknowledges and agrees that DNREC will withhold or recover payments made to VENDOR for disallowed costs relating to weatherization measures installed that are not allowed by law including any that are not provided pursuant to a work order that complies with the Delaware Weatherization Priority List, **Hancock Home Energy Audit protocols**, the Delaware Standard Work Specifications, and the Delaware Field Guide or are not specifically authorized by the Delaware WAP Manual.
12. VENDOR shall not use funds provided through this Agreement for the purchase or improvement of land, or for the purchase, construction, or permanent improvements (other than low-income residential weatherization or other energy-related home repairs) of any building or other facility.
13. VENDOR shall comply with the budget set forth in this Agreement and shall limit expenditures within each of the defined budget categories.
14. VENDOR shall maintain an overall average cost per dwelling in "Program Operations" expenditures not to exceed **seven thousand dollars (\$7,000.00)**, over the period of the Agreement for all units completed, i.e., having a passed final inspection, prior to the close of each program year on March 31. **The overall average cost per dwelling must include all administrative costs expended for the Catholic Charities WAP implementation.**
15. Following the expiration or termination of this Agreement, or at such other times as required by federal or state law or rules, or if requested by DNREC, VENDOR shall secure an audit of funds provided by DNREC pursuant to this Agreement. Such audit shall be conducted by an independent public or certified public accountant and performed in accordance with all directives provided by DNREC as well as applicable provisions of the OMB Circular A-133, entitled "Audits of States, Local Governments, and Non-Profit Organizations" and any implementing regulations.
16. VENDOR is provided a goal to achieve the Agreement target number of units within the program year. If VENDOR's production reports indicate difficulties in reaching the contracted unit target, DNREC may require a performance improvement plan be prepared and implemented to address the deficiency.

**Appendix A**  
**Revised Scope of Services**

17. If deficiencies persist, DNREC may, at its sole discretion, terminate the Agreement pursuant to terms in Section 13 of this Agreement, or take such other action as it may find necessary.
18. Supplies and equipment, as defined in the WAP Manual, purchased by VENDOR in furtherance of this Agreement are property of the VENDOR, however, upon termination of this agreement for any cause, ownership of all supplies and equipment with a value in excess of \$500 and all field equipment with a value of greater than \$100 will be transferred to the Delaware Weatherization Assistance Program and shall be managed, maintained and/or disposed of according to the Delaware WAP Manual and 2 CFR 200.
19. DNREC may withhold payment and issue a defective invoice notification for any claim submitted if it finds errors or omission in file contents or if the work is found to be substandard or has not passed final inspection.
20. DNREC may withhold payment and VENDOR shall repay DNREC for any claim submitted that is inaccurate or if VENDOR has not complied with the claim preparation instructions issued by DNREC, including, but not limited to, following the current price list and costing procedures. Prior to requiring repayment, DNREC will provide VENDOR with reasonable written notice of any error in the claims submitted and allow a reasonable time for VENDOR to make corrections or revisions to the satisfaction of DNREC necessary for payment.
21. Any subcontractors hired by VENDOR to perform weatherization services shall be retained and managed in accordance with the Delaware WAP Manual and shall be approved in writing by DNREC prior to engagement.
22. Any subcontractor hired by the VENDOR to conduct weatherization services shall provide no less than a one year warranty on labor conducted under the program. Warranty for supplies or materials installed in any home shall be for the product warranty from the manufacturer.
23. VENDOR shall hire a WAP Program Manager with experience in running complex governmental regulatory programs involving technical and administrative components. WAP experience is recommended but not essential. DNREC may make recommendations to VENDOR for suitable employees in the program.
24. VENDOR shall furnish to DNREC written job descriptions of each staff position involved in the Program, prior to hiring, noting the position's duties and functions and the necessary educational or experiential qualifications for the position. DNREC shall approve the job description and duties prior to hiring by the VENDOR.
25. VENDOR shall only use properly licensed private subcontractors who have attended required training and have attained the required certifications to provide and install weatherization measures, as detailed in the Delaware WAP Manual and Delaware Standard Work Specifications.
26. VENDOR shall submit weekly performance reports to DNREC on a spreadsheet as provided by DNREC. VENDOR shall use the reporting spreadsheet as a tool to manage progress in weatherizing units and to ensure adequate production to meet the requirements of the Agreement. Weekly reports for weeks normally ending on Friday's are due to DNREC by COB the following work day, and shall include all data and information through COB the previous Friday.
27. VENDOR shall utilize and provide data entry into the Hancock WAP On-Line database for all clients entering the Program. DNREC will provide training for VENDOR's staff as needed.
28. VENDOR shall maintain a computerized master spreadsheet of all training hours, training modules, and training activities conducted through its Training and Technical Assistance funding and attended by its staff and subcontractors.
29. DNREC shall conduct at least one on-site comprehensive monitoring inspection of VENDOR's Administrative operations and field work per year and may conduct additional monitoring at any time, as it deems necessary. Monitoring procedures and requirements are found in the Delaware WAP Manual.

**Appendix A**  
**Revised Scope of Services**

30. VENDOR and its employees, officers, board members, and subcontractors shall cooperate in all monitoring reviews, audits, or inspections conducted by authorized representatives of DNREC or the United State Department of Energy.
31. **The final inspection conducted on each completed weatherization unit must be performed by a Building Performance Institute certified Quality Control Inspector (QCI) and the final inspection form must be signed by the QCI. The form must bear the QCI's printed name, signature and BPI number.**
32. **Each weatherization subcontractor bound by a contract for services to Catholic Charities for weatherization services must obtain Delaware Lead-Safe Certified Firm Status, certification required by the state of Delaware to ensure that the company is Lead-Safe certified.**
33. **Each weatherization contractor bound by a contract for services to Catholic Charities for weatherization services must have at least one person under their employ that has obtained the Delaware Renovation/Repair/Painting certification and the certification is current.**
34. **Catholic Charities must obtain Lead-Safe Certified Firm Status through the state of Delaware.**
35. **Catholic Charities must have at least one person under their employ that has obtained the Delaware Renovation/Repair/Painting certification and the certification is current.**
36. **Each weatherization subcontractor must sign the acknowledgement showing that the subcontractor has received a copy of the Delaware WAP Manual, Delaware Standard Work Specifications, Delaware Field Guide, and the Confined Space Program. Program.**

Appendix B  
Revised Contract Budget

## Appendix B Revised Contract Budget

Attachment B - Budget worksheet  
Weatherization Assistance Program  
Operating Budget - April 1, 2017 - March 31, 2018

Total Budget - By Federal Reporting Category - 4/1/17 thru 3/31/18	
Subgrantee Admin	\$ 126,914
Subgrantee T&TA	\$ 53,000
Fiscal Audit	\$ 12,684
Insurance	\$ 6,500
Program Operations	\$2,605,090
Health and safety	\$ 319,500
<b>Total</b>	<b>\$ 3,123,688</b>

Includes pollution occurrence

WAP Staff Salaries - Program Operations (PO)								
Position	Salary	Medical benefits	long term disability	FICA	MC	Worker's Comp	409B match	Total
Program Manager	\$69,655	\$11,510	\$ 1,724	\$4,366	\$975	\$1,146	\$4,973	\$94,349
Technical Staff	\$54,920	\$17,926	\$ 1,359	\$3,448	\$769	\$904	\$4,038	\$83,364
Technical Staff	\$52,965	\$25,859	\$ 1,359	\$3,448	\$769	\$904	\$3,894	\$89,198
Technical Staff	\$50,429	\$25,859	\$ 1,248	\$3,166	\$706	\$830	\$3,708	\$85,946
Technical Staff	\$48,328	\$25,859	\$ 1,196	\$3,120	\$676	\$795	\$3,553	\$83,527
Support Staff	\$39,114	\$11,510	\$ 968	\$2,525	\$548	\$644	\$2,876	\$58,185
Support Staff	\$29,168	\$11,893	\$ 722	\$1,883	\$409	\$480	\$2,145	\$46,700
Intake	\$29,722	\$26,058	\$ 752	\$1,919	\$416	\$407	\$2,186	\$61,460
Intake	\$29,722	\$26,058	\$ 752	\$1,919	\$416	\$407	\$2,186	\$61,460
Accountant	\$53,844	\$0	\$ 1,333	\$3,476	\$754	\$871	\$3,959	\$64,237
			\$ -					
			\$ -					
<b>Totals</b>	<b>\$457,865</b>	<b>\$182,532</b>	<b>\$11,413</b>	<b>\$29,270</b>	<b>\$6,438</b>	<b>\$7,388</b>	<b>\$33,518</b>	<b>\$728,424</b>

Direct Charges		
Expense	Amount	Federal Reporting Category
Staff expenses	\$728,424	Program Operations
Program Operations	\$50,566	Program Operations
Office supplies	\$ 1,500.00	Program Operations
Postage	\$ 1,200.00	Program Operations
Advertising	\$ 2,500.00	Program Operations
Vehicle insurance	\$ 8,900.00	Program Operations
Travel	\$ 3,000.00	T&TA
Field supplies	\$ 10,000.00	T&TA
Training	\$ 40,000.00	T&TA
Admin charge - 15% of above charges	\$ 126,914	Subgrantee Admin
Client Services	\$ 1,812,000	Program Operations

Appendix D  
Confined Space Program



**Delaware  
Department of Natural Resources and  
Environmental Control (DNREC)  
Weatherization Assistance Program (WAP)  
Confined Space Program**

**December 2015**  
Revised August 2016

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## **Acronyms**

<b>CFR</b>	Code of Federal Regulations
<b>IDLH</b>	Immediately Dangerous to Life and Health
<b>LOTO</b>	Lockout/tagout
<b>OSHA</b>	Occupational Safety and Health Administration
<b>PEL</b>	Permissible Exposure Limit
<b>PPE</b>	Personal Protective Equipment
<b>REL</b>	Recommended Exposure Limit
<b>SDS</b>	Safety Data Sheet
<b>WAP</b>	Weatherization Assistance Program

## **Foreword**

Delaware WAP is required by U.S. Code of Federal Regulations (CFR) 29 CFR 1910.146 and 29 CFR 1926 Subpart AA *Permit Required Confined Spaces* to design a confined space program that informs all parties functioning in the Delaware WAP of their responsibilities for compliance with the revised code that includes weatherization workers.

This *Confined Space Program* defines the structure of Delaware's WAP confined space Plan and describes specific procedures that must be followed to satisfy federal safety requirements, and protect workers from injury. The main focus of this Program is to inform the WAP Subgrantee and the weatherization contractors of their responsibilities to comply with all aspects of 29 CFR 1910.146, 29 CFR 1926 Subpart AA, and the Department of Labor Memorandum, dated May 24, 2016, with subject: Confined Spaces Litigation Settlement.

## **Document History**

This *Confined Space Plan* is reviewed routinely and amended as necessary and when:

- Applicable regulations are revised;
- A worker is injured during a confined space project;

All revisions to this *Confined Space Plan* will be shared with the various parties identified in this document. DNREC will provide the latest version to the Subgrantee and the Subgrantee will provide the latest version to the weatherization contractors.

## **1.0 Introduction**

The procedures and guidance provided within this Plan are designed to protect workers from injury when working in or around confined spaces. The Occupational Safety and Health Administration (OSHA) requires that specific activities and forms be completed prior to and during a confined space entry. Delaware's WAP office will provide or make available this *Confined Space Plan* to all supervisors and contractors who conduct activities subject to confined space regulations. This Plan provides guidance on training requirements, how to conduct a confined space entry, and emergency response procedures for the Subgrantee and contractors that are performing work in the Delaware WAP. All details of the Plan directly reflect the requirements contained in 29 CFR 1910.146, 29 CFR 1926 Subpart AA, and the Department of Labor Memorandum, dated May 24, 2016, with subject: Confined Spaces Litigation Settlement.

### **1.1 Purpose**

The purpose of this document is to inform the Delaware WAP Subgrantee and weatherization contractors of their responsibilities to establish practices and procedures that can protect WAP workers from hazards associated with permit and nonpermit required confined space work. In addition to specific requirements for confined space entry, contractors must be trained in other safety programs including, but not limited to, lockout/tagout (LOTO), hazard communication, hot work, and personal protective equipment (PPE) that directly apply to their work at job sites.

### **1.2 Scope**

WAP's *Confined Space Plan* applies to all WAP workers employed on Delaware WAP projects. Contractors must comply with this plan when conducting business on a WAP project whether they are working in a permit required or a nonpermit confined space.

## **2.0 Roles and Responsibilities**

All workers expected to perform confined space work or work around confined spaces are responsible for following the requirements in 29 CFR 1910.146, 29 CFR 1926 Subpart AA, the Department of Labor Memorandum, dated May 24, 2016, with subject: Confined Spaces Litigation Settlement, and the guidance and instructions given by their supervisor. The following individuals, offices, and units are responsible for ensuring that the directives and maintenance of the WAP's Confined Space Program are achieved.

### **2.1 Delaware Weatherization Assistance Program**

The WAP is responsible for the design and maintenance of the DNREC WAP's *Confined Space Plan*. Specific responsibilities are to:

- Assist the WAP Subgrantee in providing the Delaware's WAP *Confined Space Plan* to all of the weatherization contractors and Subgrantee auditors.
- Provide weatherization workers *Confined Space Awareness* training.

- Inform the Subgrantee of the requirements for detailed training for the roles of confined space compliance.
- Subgrantee is required to inform the weatherization contractors of their role and responsibilities as per 29 CFR 1910.146, 29 CFR 1926 Subpart AA, and the Department of Labor Memorandum, dated May 24, 2016, with subject: Confined Spaces Litigation Settlement through the Plan.
- Update, revise, and edit this *Confined Space Plan* as necessary.

## 2.2 Contractor Crew Leaders

Crew Leaders are responsible for ensuring that DNREC WAP's *Confined Space Plan* is implemented and followed by workers under their supervision. Specific responsibilities are to:

- Be informed of the contents of this *Confined Space Plan* and how it applies to work areas under their responsibility and authority.
- Approve all monitoring equipment, safety equipment, and work materials that will be used during a permit required confined space project.
- Conduct inspections of confined spaces, confined space signage, and review confined space entry permits to evaluate compliance, identify deficiencies, and maximize safety.
- Maintain confined space inspection records as required in 29 CFR 1910.146, 29 CFR 1926 Subpart AA, and the Department of Labor Memorandum, dated May 24, 2016, with subject: Confined Spaces Litigation Settlement.
- Post and maintain appropriate warning signage on confined space entrances.
- Ensure workers are in compliance with the federal regulations.
- Ensure that workers are provided with and use appropriate PPE.
- Ensure that emergency responders are informed of all permit required confined spaces and have access to those spaces.
- Responsible for ensuring that their personnel are: capable of performing the work they are required to do, and follow all relevant OSHA health and safety regulations and standards.
- Ensure that workers under their supervision receive appropriate confined space training commensurate with their duties. Approve and appoint workers to serve as competent person, entry supervisors, attendants, and entrants based on their training.
- Ensure that *Confined Space Entry Permits* are completed correctly.
- Post completed *Confined Space Entry Permits* at the entrance of the confined space while conducting operations.
- Develop equipment-specific procedures for unique confined spaces and equipment within their work area(s).
- Determine permit required confined spaces where standard retrieval systems may not be effective or would create additional hazards.
- Assist in the investigation of injuries and incidents involving confined spaces. Inform the Delaware WAP immediately to report any injuries.
- Take prompt and corrective action when unsafe conditions or practices are observed.

## 2.3 WAP Workers

Delaware WAP workers who work in confined spaces are expected to comply with this *Confined Space Plan*. Worker responsibilities are:

- Attend *Confined Space Entry Training* if they are expected to be an entry supervisor, attendant, or entrant for confined space work.
- Attend *Confined Space Awareness Training* if they are expected to work around confined spaces.
- Follow the directives and guidance provided to them by their supervisor.
- Notify their Crew Leader if dangerous work conditions are observed, the *Confined Space Plan* is not followed, or an accident involving a confined space occurs.
- Complete *Confined Space Entry Permits* prior to beginning work in a confined space.
- Use appropriate PPE and follow all relevant safety measures.

## 2.4 Subgrantee Program Auditors

Weatherization Assistance Program Auditors' specific responsibilities required by this *Confined Space Plan* are to:

- Notify contract personnel of known hazards within or around a confined space and any precautions or procedures that should be implemented, to the best of their knowledge, for the protection of workers. This notification is best communicated on the home energy audit and work order.
- In the event that the WAP Subgrantee and contractor personnel will be working in a confined space simultaneously, the weatherization contractor will coordinate all entry operations.

## 3.0 Confined Spaces

As per 29 CFR 1910.146 a confined space is any space which meets all of the following criteria:

- Large enough and so configured that an employee can bodily enter and perform assigned work; and
- Has limited or restricted means for entry or exit; and
- It is not designed for continuous employee occupancy.

Confined spaces can either be classified as either non-permit or permit required confined spaces depending on hazards that are or have the potential to be present in the confined space.

### 3.1 Non-permit Confined Space

A non-permit confined space is a space that meets the definition of a confined space but does not possess or have the potential to possess any hazardous conditions. All non-permit confined spaces must be evaluated for hazards and documentation of the absence of hazardous conditions must be maintained so long as work is performed within the confined space. This documentation

must be executed and maintained by the weatherization contractor.

### **3.1.1 Non-permit Confined Space Entry Procedures**

Confined spaces that do not contain or have the potential to contain hazards, as determined by the competent person, do not require a *Confined Space Entry Permit*, however, if the confined space has not been previously identified as a non-permit confined space, a permit must be completed by the competent person and monitoring must be conducted to ensure a safe and hazard-free atmosphere.

All non-permit confined space work must be conducted in teams of two or more workers to ensure that at least one worker is able to request help should the entrant encounter unforeseen problems or suffer an injury which prevents them from exiting the space.

### **3.2 Permit Required Confined Space**

A permit required confined space is one that meets all of the conditions of a confined space and has one or more of the following hazardous characteristics:

- Contains or has a potential to contain a hazardous atmosphere;
- Contains a material that has the potential for engulfing an entrant;
- Has an internal configuration such that an entrant could be trapped or asphyxiated by inwardly converging walls or by a floor which slopes downward and tapers to a smaller cross-section; or
- Contains any other recognized serious safety or health hazard.

#### **3.2.1 Hazardous Conditions**

The competent person shall evaluate all confined spaces to identify permit required confined spaces. Examples of hazards that elevate a confined space to a permit required confined space include but are not limited to:

- Gases or vapors which can displace oxygen;
- A potential for low or high levels of oxygen, 19.5% and below or 23.5% and above;
- Flammable gases at or above 10% of the lower explosive limit;
- The presence of hazardous chemicals at or above the permissible exposure limit (PEL), short-term exposure limit, ceiling, or recommended exposure limit (REL);
- Any condition that can be interpreted as immediately dangerous to life or health (IDLH);
- Temperatures that can contribute to heat stress;
- Liquids, steam, or flowable solids which can engulf an entrant;
- Sources of radiation;
- Bare, exposed, or ungrounded conductive parts of electrical equipment, machinery, wiring, fixtures, or installations;
- Sewer systems that have the potential to contain a hazardous atmosphere, low oxygen, or contain high pressure/temperature pipes; or
- Any other recognized hazard.

### **3.2.2 Signage**

Permit required confined space must be identified by posted warning signage notifying all workers of the existence and location of the confined space. The sign designating a confined space must contain the following text:

**DANGER – PERMIT REQUIRED CONFINED SPACE - DO NOT ENTER**

### 3.3 Permit Required Confined Spaces Entry Procedures

All entries into permit required confined spaces must be conducted by a minimum of two workers. Workers will be identified as the entry supervisor, attendant, or entrant. Respective responsibilities of each position are:

- **Competent Person** – Through training and/or experience, the person is knowledgeable of applicable confined space standards, capable of identifying existing and predictable hazards in the surroundings or working conditions. Has the authorization to take prompt corrective measures to eliminate hazards.
- **Entry Supervisor** – The trained individual with the responsibility to oversee the project and ensure that all provisions of this *Confined Space Plan* are met.
- **Attendant** – The trained individual stationed immediately outside the confined space who monitors entrants and records entry activities.
- **Entrant** – The trained individual(s) authorized by their supervisor who enters the confined space to conduct work.

#### 3.3.1 Entry Supervisor

The entry supervisor has the primary role in evaluating and controlling access and activities within the permit required confined space. Specific procedures for this role are to:

1. Survey the confined space without entering, review the work to be performed, and identify existing or potential atmospheric, chemical, and physical hazards.
2. Determine the actions necessary prior to entry to eliminate or control the hazards, and record them on the *Confined Space Entry Permit*.
  - a. Eliminate engulfment and any other serious hazards by utilizing LOTO methods such as blanking, binding, double block and bleed, line braking, or other effective ways and means.
  - b. Control traffic, isolate the confined space from inflow of personnel, and only allow authorized individuals near the permit space.
  - c. Guard the opening of the confined space by installing temporary covers or barriers to prevent accidental falls through the opening and prevent foreign objects from entering the space and injuring the entrant(s).
3. Conduct atmospheric testing prior to entry in addition to the continuous monitoring being conducted by entrant.
  - a. Test for atmospheric hazards in the following order: oxygen content, combustible/flammable gases and vapors, carbon monoxide, and then any other potential toxic air contaminant(s).
  - b. Obtain and list the PEL and REL for each identified air contaminant.
  - c. Test for each identified or suspected air contaminant.
  - d. Determine if the atmospheric hazard can be eliminated or controlled by continuous forced-air ventilation. If the only hazard in a space is a hazardous atmosphere and alternate entry procedures (Section 3.3) are acceptable, they may be used.

4. Determine and record the required PPE, extraction, and work equipment necessary for entry.
  - a. PPE must be used to protect against health and/or physical hazards that cannot be effectively eliminated or controlled. All workers expected to wear respiratory protection must be properly fitted and trained to use the respirator.
  - b. Monitoring equipment must be available and used to test oxygen, flammable gases, and carbon monoxide.
  - c. Monitoring equipment designed to test levels of identified airborne contaminants shall be required where airborne contaminants are suspected or have been identified.
  - d. Other permits, training, procedures necessary to safely enter and work within the confined space must be in place or completed prior to beginning work.
  - e. Emergency equipment necessary to summon rescue assistance must be available.
  - f. Equipment such as ladders required for safe ingress and egress must be utilized whenever possible.
  - g. Mechanical retrieval devices shall be used for vertical entries into spaces deeper than 5 feet. Wristlets may be used where body harnesses are not feasible.
  - h. Communication equipment is required when the entrant(s) will be out of voice range of the attendant. Communication equipment must be intrinsically safe dependent upon the conditions existing in the space.
  - i. Provide other equipment, PPE, and safety equipment, as necessary.
5. Identify the attendant and at least one entrant and record their names on the *Confined Space Entry Permit*.
6. Verify that entry conditions are acceptable before signing the permit and allowing entry.
7. Sign and issue the *Confined Space Entry Permit*, effective upon the date issued and expiring on the date indicated on the permit. A permit may not be issued for a period longer than 24 hours. The permit may be extended up to 24 hours upon recertification of conditions. Upon a change in shifts, the entry supervisor shall brief the incoming supervisor and/or shift on potential hazards, equipment, PPE, rescue, LOTO, and safe work procedures in the space.
8. Post the *Confined Space Entry Permit* at the entrance to the confined space.
9. Terminate the entry and cancel the permit when entry operations are finished or if a prohibited condition arises.
10. Keep the permit on file for one year.

### **3.3.2 Attendant**

1. Understand the hazards associated with the space and review the posted *Confined Space Entry Permit*.
2. Be stationed outside the permitted space at the opening and remain in place throughout

- the duration of the entry or until relieved by another authorized attendant.
3. Perform no other duties beyond those stated for attendants.
  4. Maintain the identity and an accurate count of entrants within and outside of the space on the *Confined Space Entry Permit*.
  5. Assist with atmospheric monitoring of spaces containing hazardous atmospheres, and record results on the *Confined Space Entry Permit*.
  6. Periodically communicate with the entrant(s) to assure that all is well or relay information.
  7. Monitor activities inside and outside of the confined space and order an immediate evacuation of the space whenever;
    - a. A prohibited condition is identified;
    - b. An entrant exhibits behavior effects of exposure to chemicals, physical hazards, or a hazardous atmosphere;
    - c. A situation outside of the confined space endangers the entrant(s); or
    - d. The attendant is unable to complete all attendant responsibilities.
  8. Perform nonentry rescues or summon rescue services if needed.
  9. Warn unauthorized persons to stay out of confined spaces and inform the client of the dangers.

### **3.3.3 Entrant**

1. Understand the hazards associated with a confined space and review the posted *Confined Space Permit Entry*.
2. Enter the space and perform the assigned work as expediently and as safely as possible.
3. Wear and use all PPE required by the permit.
4. Notify the attendant periodically or upon request of work progress and entrant safety.
5. Immediately alert the attendant and evacuate the space whenever any of the following occurs:
  - a. The development of a condition not in compliance with the documented conditions in the *Confined Space Entry Permit* or *Alternate Entry Procedure Certification Form*;
  - b. The development of a sign or symptom of exposure or injury to any worker involved with the entry;
  - c. Failure of any required safety or work equipment; or
  - d. The attendant or entry supervisor orders an evacuation.

### **3.3.4 Entry Completion or Termination**

1. The attendant shall assure that the entrant(s) have exited the confined space following an evacuation or completed project.
2. If the confined space was evacuated prior to the completion of work, the entry supervisor or shall:
  - a. Immediately terminate the permit by checking the appropriate box and describe the reasons for evacuation on the permit;
  - b. Immediately notify the WAP office and Subgrantee of any worker injuries or exposures; and

- c. Determine if reentry is required to complete work, eliminate a hazard, or return the confined space to normal operation.
3. If reentry is required:
  - a. The confined space must be investigated to determine the cause of the evacuation.
  - b. A new *Confined Space Entry Permit*, which includes the elimination or control of the hazard causing the evacuation, must be completed.
4. If the entry was successfully completed, the attendant shall:
  - a. Oversee the completion of post-entry actions indicated on the permit.
  - b. Add any pertinent information concerning the entry on the permit.
  - c. Return the completed permit to the entry supervisor.
5. The entry supervisor will terminate the *Confined Space Entry Permit* with their signature and retain a copy of the permit for a period of at least one year.

### 3.3.5 Alternate Entry Procedures

Alternate entry procedures may be used to enter confined spaces in which the only hazard is atmospheric and where continuous forced air ventilation alone will eliminate the hazardous condition(s) and maintain a safe atmosphere. Only the Crew Leader, or person on site that is a competent person, can determine that a confined space may be entered using an alternate entry procedure. Similar to permit required confined spaces, the alternate entry space must be clearly posted on the confined space signage. In order to implement alternate entry procedures the competent person must observe the following;

- Work with the competent person to demonstrate that continuous forced-air ventilation alone is sufficient to maintain a safe atmosphere and provide monitoring or inspection data to support alternate entry procedures.
- Complete an *Alternate Entry Procedure Certification Form* prior to conducting an entry using alternate entry procedures and maintain a copy on file with the *Confined Space Entry Permit*.
- The entry supervisor must be able to demonstrate that the only hazard posed by the confined space is an actual or potential hazardous atmosphere and is free from all other health or physical hazards.
- If entry is required to collect data or conduct an inspection to determine if alternate entry procedures can be followed, a permit required confined space entry will be conducted and a *Confined Space Entry Permit* must be completed prior to entering.

The completed *Alternate Entry Procedure Certification Form* must be posted at the entry point in addition to the *Confined Space Entry Permit* and be available for review for the duration of the confined space project. The following steps must be observed:

1. The entry supervisor shall identify any conditions making it unsafe to remove an entrance cover and identify any steps required to eliminate or mitigate the hazardous atmosphere before the entrance cover is removed.
2. The atmosphere must be tested with a calibrated direct-reading instrument for oxygen content (19.5-23.5%), flammable gases and vapors, and potential toxic air contaminants

- in this order, and results must be recorded on the *Confined Space Entry Permit*.
3. Any entrant expected to enter the confined space must be provided the opportunity to observe preentry testing and results.
  4. If forced-air ventilation is used, it must be:
    - a. Set up prior to entering the confined space and capable of eliminating the hazardous atmosphere;
    - b. Directed so as to ventilate the immediate area where a worker(s) is or will be present and continue operating throughout the duration of the entry;
    - c. The air supplied by forced-air ventilation must be from a clean source and cannot increase the hazard(s) within the confined space; and
    - d. All air ventilation equipment, vents, power, and auxiliary systems must be provided with a failsafe or backup system to protect workers in the event of a mechanical or power failure.
  5. Testing must be continuous to ensure that a hazardous atmosphere does not exist or form. Test results must be recorded on the *Confined Space Entry Permit* periodically.
  6. If a hazardous atmosphere is detected during entry:
    - a. All entrants shall evacuate the space immediately.
    - b. The space must be reevaluated to determine how the hazardous atmosphere developed. This reevaluation must involve the Subgrantee auditor who is a competent person.
    - c. Measures shall be implemented to protect workers from the hazards before any subsequent entry takes place. Reentry is not permitted until the Subgrantee auditor has conducted its evaluation and approved new procedures to mitigate the hazardous atmosphere.

### **3.4 Confined Space Reclassification**

A confined space may be reclassified as a non-permit, alternate entry, or permit required confined space whenever the condition, design, or environment of a confined space changes. Entry supervisors have the ultimate responsibility for ensuring that the correct entry procedure is followed based upon the configuration of the space, hazards, and testing results. A permit required confined space may be reclassified by the contractor as a non-permit confined space whenever the permit required confined space:

- Poses no actual or potential atmospheric hazards and if all the hazards within the space are eliminated without entry into the space; or
- Testing and inspection are conducted to verify that hazards have been eliminated.

If it is necessary to enter the space to eliminate the hazards that make it a permit required confined space, entry must be made using permit required confined space entry procedures. All details of reclassifying a confined space are contained under 29 CRF 1910.146 (c)(6) through (c)(7)(iv).

## 4.0 Monitoring

Monitoring must be conducted prior to entering a confined space, continuously during entry operations, and any time a confined space is reclassified. Monitoring may require multiple instruments, specialized equipment, and specific training. All monitoring equipment used to evaluate confined spaces must be calibrated and used as directed by the manufacturer's user's manual. This requirement applies to the WAP Subgrantee auditors and contractors; contract personnel may choose to use an alternate monitoring method so long as it is consistent with 29 CFR 1910.146, 29 CFR 1926 Subpart AA, and the Department of Labor Memorandum, dated May 24, 2016, with subject: Confined Spaces Litigation Settlement.

### 4.1 Toxic Air Contaminants

If a potential or actual toxic air contaminant exists in a confined space, the Subgrantee auditor must be notified prior to beginning work to coordinate testing and evaluation. The Crew Leader will conduct initial monitoring and determine the appropriate equipment, PPE, and periodic testing schedule. The Crew Leader will then conduct, oversee, or instruct workers on how to conduct periodic monitoring depending upon the circumstances, worker training, and identified toxic air contaminants.

### 4.2 Monitoring Procedures

The following procedures have been adopted from 29 CFR 1910.146 Appendix B and are appropriate for confined spaces. Testing conducted during the course of a routine confined space project must be completed by a competent and trained entry supervisor, entrant or attendant.

***Evaluation testing:*** The atmosphere of a confined space must be analyzed using equipment of sufficient sensitivity and specificity to identify and evaluate hazardous atmospheres that may exist or arise so that appropriate entry procedures can be developed for the space. Evaluation and development of the entry procedure should be done or reviewed by a technically-qualified professional based on the evaluation of all serious hazards.

***Verification testing:*** A permit required confined space that contains a hazardous atmosphere must be tested for residues of all identified contaminants to determine that residual concentrations at the time of testing and entry are within the range of permissible exposure limits. Results of testing must be recorded on the *Confined Space Entry Permit*.

***Duration of testing:*** Testing must be conducted continuously for the duration of the entry.

***Testing stratified atmospheres:*** Entry involving a descent into atmospheres that may be stratified requires testing at a distance of approximately 4-feet in the direction of travel and 4-feet to each side. If a sampling probe is used, the entrant's rate of progress should be slowed to accommodate the sampling speed and detector response. Testing should be done at 2-foot increments when testing the air by lowering a meter or probe vertically into a confined space.

**Order of testing:**

- Oxygen must be performed first because most combustible gas meters are oxygen- dependent and will not provide reliable readings in an oxygen-deficient atmosphere.
- Combustible gases are tested next because the threat of fire or explosion is both more immediate and more life threatening, in most cases, than exposure to toxic gases and vapors.
- Toxic gases and vapors are performed last. Equipment used by the Subgrantee workers often test for these hazardous air conditions simultaneously, however a multigas meter may not detect all toxic gases and additional air monitoring equipment may be required.

## 5.0 Training

Confined space training is required for two types of workers; those working around confined spaces and those working within confined spaces either as a competent person, attendant, entrant, or entry supervisor.

### 5.1 Confined Space Awareness Training

All workers expected to work around or above confined spaces are required to attend *Confined Space Awareness Training*. Awareness training provides a cursory understanding of what constitutes a confined space, associated hazards, confined space entry procedures, and precautions that should be observed when working around confined spaces. *Confined Space Awareness Training* is required once.

### 5.2 Confined Space Entry Training

*Confined Space Entry Training* that is specific to the assigned duties of a weatherization worker shall be provided before workers are assigned tasks which require confined space entry. Weatherization contractors and Subgrantee auditors must obtain *Confined Space Entry Training* prior to entry. Training provides those with the knowledge to:

- Identify a confined space and be able to determine if a confined space is a non-permit or permit required confined space.
- Calibrate, use, care, and clean monitoring equipment used during entry operations.
- Understand monitoring requirements and monitoring results.
- Set up retrieval equipment.
- Understand the duties and responsibilities of the entry supervisor, attendant, and entrant.
- Select and attend additional safety training as assessed and required to perform confined space work, including but not limited to *Respiratory Protection, Hazard Communication, and Lockout/Tagout Training*.
- Identify signs and symptoms of exposure, injury, and hazardous conditions.
- Understand emergency exit and rescue procedures.

### 5.3 Retraining

Supervisors are responsible for ensuring that workers attend *Confined Space Entry Training* once every three years and whenever one of the following situations occurs:

- There is a change in permit required space operations that presents a hazard in which a worker has not been previously trained; or
- A supervisor has reason to believe that a worker's knowledge of their responsibilities as defined in 29 CFR 1910.146, 29 CFR 1926 Subpart AA, and the Department of Labor Memorandum, dated May 24, 2016, with subject: Confined Spaces Litigation Settlement are inadequate.

## **6.0 Rescue and Emergency Services**

Retrieval systems or rescue services must be employed for all permit required confined space entry projects. Nonentry rescue (i.e., use of equipment that does not require additional personnel to enter the confined space) is the preferred method of rescue and should be utilized whenever possible. Nonpermit required confined spaces do not require retrieval or rescue services, however; retrieval systems should be utilized whenever possible.

### **6.1 Non-permit Required Confined Space**

Work in non-permit confined spaces does not require retrieval systems or rescue services to be on site. If an accident or emergency occurs within a non-permit required confined space, any worker may enter a non-permit space to respond to an emergency and determine if any other hazards are present. If a non-permit required confined space rescue is necessary, the worker is responsible for the following:

- Summoning emergency responders;
- Attempting to rescue entrants using nonentry rescue procedures;
- If nonentry rescue procedures are not available, enter the space and attempt to retrieve the victim(s); and
- Monitoring the emergency and informing responders about the location, number of victims, their condition, and any hazards in the space.

### **6.2 Permit Required Confine Space with Retrieval System**

A retrieval system must be available to retrieve entrants from vertical permit required confined spaces that are more than 5 feet deep. The retrieval system must be used to rescue an entrant unless the equipment would increase the entrant's risk of injury. Each authorized entrant must use a properly-attached full-body harness. Entrants may use wristlets if full-body harnesses put them at a greater risk of injury in an emergency. The other end of the retrieval line must be attached to a retrieval system outside the permit space so that rescue can begin immediately. If an entrant can be exposed to a hazardous substance a safety data sheet (SDS) is required to be kept so that it is available to the medical facility that treats the entrant.

### **6.3 Permit Required Confined Space without Retrieval System**

For any permit required confined spaces where non-entry retrieval systems cannot be utilized, a third-party emergency rescue service shall be on site or on-call. Crew Leaders must notify the Subgrantee for further assessment for all confined spaces that require entry for rescue. Rescue services shall be available on site where the confined space has been found to have an IDLH atmosphere, a hazardous atmosphere or the potential for engulfment or non-entry rescue cannot be performed. Emergency rescue service contact information must appear on all permit required *Confined Space Entry Permits* and must be provided to all competent persons, entry supervisors, attendants, and entrants during confined space operations. Calling 911 is not an appropriate means of emergency rescue due to the fact that an adequate response time cannot be guaranteed.

## 7.0 Recordkeeping

The following confined space records must be maintained by Crew Leaders for a period of one year and must be available to the DNREC WAP, Subgrantee auditors, workers, and regulatory inspectors:

- *Confined Space Entry Permits; and*
- *Alternate Entry Procedure Certification Forms.*

The Subgrantee is responsible for maintaining the following records in accordance with this plan:

- An inventory of all permit required confined spaces;
- Reports of accidents involving confined spaces; and
- A list of all WAP workers who receive *Confined Space Entry Training* and *Confined Space Awareness Training*.

## Appendix A Confined Space Entry Permit

CONFINED SPACE ENTRY PERMIT	
Space to be Entered:	Purpose of Entry:
Address/Location on Property	Authorized Duration of Permit – Date(s):
Description of Work to be Performed:	

### Section 1: Personnel

		First Name		Last Name		
Entry Supervisor						
	First Name	Last Name	Time On Duty	Time Off Duty	Time On Duty	Time Off Duty
Attendant 1						
Attendant 2						
	First Name	Last Name	Entry Time 1	Exit Time 1	Entry Time 2	Exit Time 2
Entrant 1						
Entrant 2						
Entrant 3						
Entrant 4						
Prepared By:				Date:		
Entry Supervisor:				Date:		

### Section 2: Atmospheric Hazards – Toxic Air Contaminants

Identify the potential toxic air contaminants	1.	2.	3.	4.	N/A
Permissible Exposure Limit (PEL) in ppm					
Actual results based on testing (ppm)					
Time testing was conducted					
Meter Used:	Meter Model:	Calibration Date:	Tester's Name:	Tester's Signature:	

### Section 3: Atmospheric Hazards - Oxygen

	Area 1	Area 2	Area 3	Area 4
Oxygen Percentage (must be between 19.5 – 23.5%)				
Time testing was conducted				
Meter Used:	Meter Model:	Calibration Date:	Tester's Name:	Tester's Signature:

**Section 4: Atmospheric Hazards – Flammable/Combustible Gases**

Potential Flammable/Combustible Gases	1. ac	2.	3.	4.	N/A
Chemical Name					
Chemical LEL as provided by safety documents (SDS)					
Actual results based on testing					
Time testing was conducted					
Meter Used:	Meter Model:	Calibration Date:	Tester's Name:	Tester's	Signature:

**Section 5: Procedures**

		No	
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

**Section 6: Unique Hazards - Identify any unique hazards associated with this confined space**

**Section 7: PPE/Equipment**

**Section 8: Rescue Services:**

<b>Contact Number for Local Emergency Rescue Services:</b>	
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**Section 9: Rescue Procedures - Describe specific steps that must be taken in the event of an injury or exposure based on existing hazards**

**Section 10: Periodic Atmospheric Monitoring**

Oxygen	Time	Results	Oxygen	Time	Results
1			5		
2			6		
3			7		
4			8		

Flammables	Time	Results	Flammables	Time	Results
1			5		
2			6		
3			7		
4			8		

Toxics	Time	Results	Toxics	Time	Results
1			5		
2			6		
3			7		
4			8		

**Appendix B**  
**Alternate Entry Procedure Certification Form**

**Address:** \_\_\_\_\_ **Location on Property:** \_\_\_\_\_

**Confined Space Description:** \_\_\_\_\_ **Entry Supervisor Name:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**Section 1. Conditions**

<i>All of the following conditions must be satisfied to use alternate entry procedures.</i>	<b>Yes</b>	<b>No</b>
The only hazard within the confined space is atmospheric. No other hazards exist.	<input type="checkbox"/>	<input type="checkbox"/>
Continuous forced-air ventilation alone is sufficient to eliminate the atmospheric hazard.	<input type="checkbox"/>	<input type="checkbox"/>
Monitoring and inspections verify that no other hazardous conditions exist.	<input type="checkbox"/>	<input type="checkbox"/>
Conditions that make it unsafe to remove entrance covers have been eliminated prior to removing the cover.	<input type="checkbox"/>	<input type="checkbox"/>
Entrances and openings are guarded to protect workers from falls and foreign objects.	<input type="checkbox"/>	<input type="checkbox"/>

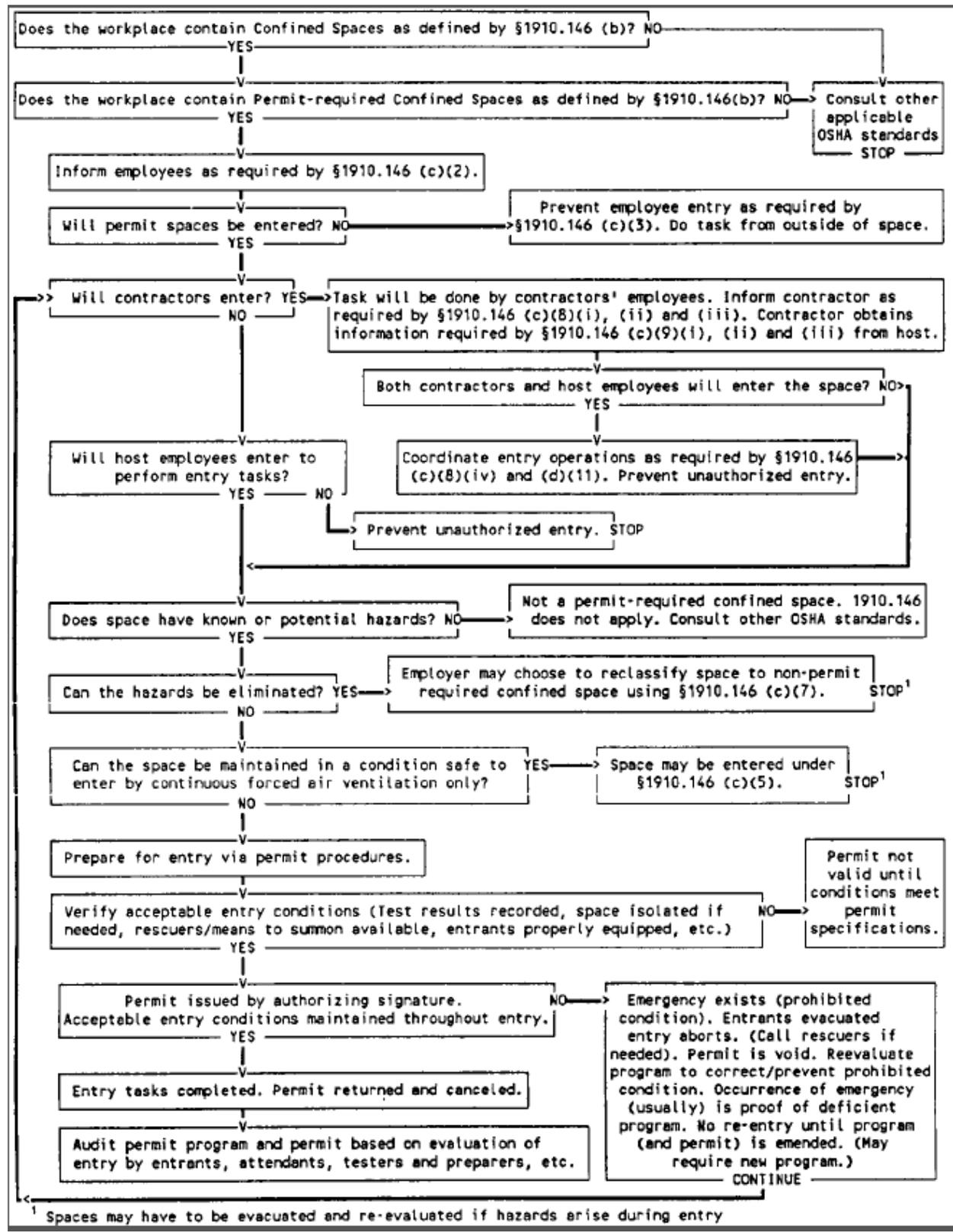
*If entry is required to conduct tests or inspections to determine the presence of hazards, permit required confined spaced procedures must be followed*

<b>Section 2. Confined Space Monitoring Results</b>	<b>Percent Oxygen</b>	<b>Carbon Monoxide</b>	<b>10% of Lower Explosive Limit</b>	<b>Toxic (Name)</b>	<b>Toxic Permissible Exposure Limit (PEL)</b>
Monitoring results prior to forced-air ventilation					
Monitoring results with forced-air ventilation					

**Entry Supervisor Signature** \_\_\_\_\_

**Subgrantee Representative Signature** \_\_\_\_\_

### Appendix C Permit-Required Confined Space Decision Flow Chart



original  
for reference

PROFESSIONAL SERVICES AGREEMENT

This Agreement ("Agreement") is entered into as of May 9, 2014 ("Effective Date") and will end on March 31, 2017, by and between the State of Delaware, Department of Natural Resources and Environmental Control, Division of Energy and Climate, ("Delaware" or "DNREC"), and Catholic Charities, a Delaware corporation with offices at 2601 W 4<sup>th</sup> St., Wilmington, DE ("VENDOR").

WHEREAS, Delaware desires to obtain certain services to weatherize homes for low income Delawareans under the Delaware Weatherization Assistance Program ("WAP"); and

WHEREAS, VENDOR desires to provide such services to Delaware on the terms set forth herein; and

WHEREAS, Delaware and VENDOR represent and warrant that each party has full right, power and authority to enter into and perform the obligations and services required under this Agreement;

NOW THEREFORE, for and in consideration of the mutual agreements provided herein, Delaware and VENDOR agree as follows:

1. Services.

1.1 VENDOR shall perform for Delaware the obligations and services specified herein as well as those obligations and services set forth in the attached Appendices which are hereby incorporated within and made a part of this Agreement.

1.2 Any conflict or inconsistency between the provisions of the following documents shall be resolved by giving precedence to such documents in the following order: (a) this Agreement (including any subsequent amendments or modifications thereto); (b) Appendix A – Scope of Services; (c) Appendix B – Contract Budget; and (d) Appendix C - Department Of Energy (DOE) Terms and Condition "Flow Down" Requirements for Subgrantee Contracts  
. The aforementioned documents are specifically incorporated into this Agreement and made a part hereof by reference.

1.3 Delaware may, at any time, by written order, make changes to the scope of services, as well as the other obligations and/or work to be performed pursuant to this Agreement. No services for which additional compensation may be charged by VENDOR shall be furnished without the prior, written authorization of Delaware.

2. Payment for Services and Expenses.

2.1 The term of the initial contract shall be from ~~March 1, 2014~~ <sup>Effective Date</sup> through March 31, 2017. This contract may be extended for an additional two years period after the initial contract term or as negotiated by the Parties

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2.2 Delaware will pay VENDOR for the performance of services and work product as described in Appendix A, "Scope of Work". The fee will be paid in accordance with the payment schedule attached hereto as part of Appendix B.

2.3 Delaware's obligation to pay VENDOR for the performance of services described in Appendix A, Scope of Work for the first year of the contract period will not exceed the fixed fee amount of \$ \$3,100,000. This contract, specifically the unit target in Appendix A and the contract budget in Appendix B, will be amended each year on or about March 1 of 2015 and 2016, as new federal and state funding sources to support the WAP are received by DNREC or otherwise appropriated by Congress or the Delaware General Assembly. It is expressly understood that the services and work defined in the appendices to this Agreement must be completed by VENDOR and it shall be VENDOR's responsibility to ensure that hours and tasks are properly budgeted so that all services and work are completed for the agreed upon Budget set forth in Appendix B. Delaware's total liability for all charges for services and work that may become due under this Agreement is limited to the total maximum expenditure(s) authorized in the purchase order(s) issued by Delaware to VENDOR for the specific services and work that have been completed by VENDOR.

2.4 VENDOR shall submit invoices to Delaware as described in Appendix B. The invoices shall provide sufficient detail to support the services and work completed as of the date of the invoice. Delaware agrees to pay the invoiced costs of services and work that has been completed to Delaware's satisfaction within thirty (30) days of receipt of the invoice. In the event it disputes a portion of an invoice for any reason, Delaware agrees to pay the undisputed portion of the invoice within thirty (30) days of its receipt and to provide VENDOR a written statement setting forth the reason(s) it disputes the remaining portion of the invoice. Delaware's failure to pay any amount of an invoice that is not the subject of a good-faith dispute within thirty (30) days of receipt of the invoice shall entitle VENDOR to charge interest on the overdue portion at no more than 1.0% per month or 12% per annum. All payments will be sent to:

Dioocese of Wilmington  
Finance Office  
1925 Delaware Avenue  
Wilmington, DE 19806.

2.5 Unless specifically provided otherwise in in this Agreement, including all Appendices and any supporting documentation, approved in writing by Delaware and VENDOR expenses incurred by VENDOR in the performing the services and work hereunder are to be paid by VENDOR. If any Appendix or other supporting documents approved by both parties specifically provides for reimbursement of specific VENDOR expenses by Delaware, VENDOR shall be reimbursed only for those reasonable expenses incurred by VENDOR in the performance of the services or work expressly identified by the parties as being subject to reimbursement.

2.6 Delaware is a sovereign entity, and shall not be liable for the payment of federal, state and local sales, use and excise or other taxes, including any interest and/or penalties related thereto, that may result as a consequence of the performance of this Agreement.

2.7 Unless already reimbursed by VENDOR, Delaware shall withhold from any payment due to VENDOR an amount sufficient to cover all damages, costs and expenses caused by VENDOR's negligence in performing the services and work required of it pursuant to this Agreement.

2.8 Invoices shall be submitted to: Philip Cherry  
WAP Administrator  
Division of Energy and Climate  
1203 College Park Dr.  
Suite 101  
Dover, DE 19904

### 3. Responsibilities of VENDOR.

3.1 VENDOR shall be responsible for the professional quality, technical accuracy, timely completion, and coordination of all services and work product furnished by VENDOR, its principals, officers, employees and agents under this Agreement. In addition, VENDOR shall be responsible for the professional quality, technical accuracy, timely completion, and coordination of all services and work product furnished on behalf of VENDOR by any subcontractors, including their principals, officers, employees and agents under this Agreement. In performing the specified services and work product, VENDOR shall follow practices that are consistent with generally accepted professional and technical standards and are acceptable to Delaware.

3.2 It shall be the duty of VENDOR to ensure that all services and work product of VENDOR are technically sound and in conformance with all pertinent federal, state and local statutes, codes, ordinances, and regulations. VENDOR agrees it will not provide services or produce work product that violates or infringes upon any copyright, trademark or other patent right(s).

3.3 The VENDOR is shall ensure the professional and technical accuracy and adequacy of its work and that of its contractors providing weatherization services. Delaware's review, approval, acceptance, or payment of any services or work product performed by VENDOR shall not be construed to operate as a waiver of any rights Delaware may have under this Agreement and/or applicable law, to pursue any cause of action relating to the quality and/or sufficiency of the services and work product performed by

VENDOR. VENDOR shall be and shall remain liable in accordance with the terms of this Agreement and applicable law for all damages due to negligent performance under this Agreement.

3.4 VENDOR shall appoint a Program Manager who will manage the performance of services and work product provided pursuant to this Agreement. All of the services and work product shall be performed directly under the management and supervision of the Program Manager. It is anticipated that the project team will include:

<u>Project Team</u>	<u>Title</u>	<u>% of Project Involvement</u>
WAP	Program Manager	100%
WAP	Technical Experts (4 FTE)	100%
WAP	Intake specialists (2.0 FTE)	100%
WAP	Admin Support (2 FTE)	100%
WAP	Accountant (1.0 FTE)	100%

Staffing level may change from that listed above with prior approval of the DNREC WAP Administrator and an adjustment to the contract Budget if applicable.

3.5 VENDOR shall select its own staff following the VENDORS normal hiring and screening processes. Should Delaware determine that the VENDOR's WAP Program Manager and/or staff are performing poorly under this contract, or have need for additional training, Delaware will make its concerns noted in writing to the VENDOR. VENDOR shall take appropriate corrective action to address the noted concern and shall promptly report back to Delaware the disposition of the matter.

3.6 VENDOR shall furnish to Delaware's designated representative copies of all correspondence in intends to provide to any regulatory agencies for review prior to issuing such correspondence.

3.7 VENDOR agrees that its principals, officers, employees and agents will cooperate with Delaware in the performance of services and work product under this Agreement and will be available for consultation with Delaware at such reasonable times as to not conflict with their other responsibilities.

3.8 VENDOR has or will retain such employees as it may need to perform the services and work product required by this Agreement. Such employees shall not be employed by Delaware or any other political subdivision of Delaware.

3.9 VENDOR will not use Delaware's name, either express or implied, in any of its advertising or sales materials without Delaware's express written consent.

3.10 The rights and remedies of Delaware provided for in this Agreement are in addition to any other rights and remedies provided by state or federal law.

#### **4. Time Schedule.**

In the event that VENDOR fails to complete the project or any phase thereof within the time(s) specified in paragraphs 1 and 2 of Appendix A of this Agreement or any extension(s) granted by in writing by Delaware upon the timely written request of VENDOR, or fails to prosecute the work, or any severable phase thereof, with such diligence as will ensure its completion within the time specified in this Agreement as determined by Delaware, or any extensions thereof, the VENDOR shall present to Delaware a corrective action plan to address the cause of the failure as specified in Appendix A.

#### **5. Responsibilities of Delaware.**

5.1 Delaware agrees to perform those tasks and fulfill those responsibilities required of it under this Agreement.

5.2 Delaware agrees that its employees and representatives will cooperate with VENDOR in the performance of services and work product under this Agreement and that the employees will be available for consultation with VENDOR at such reasonable times with advance notice so as to not conflict with their other responsibilities.

5.3 The services and work product performed by VENDOR under this Agreement shall be subject to review for compliance with the terms of this Agreement by Delaware's designated representatives. Delaware representatives may delegate any or all responsibilities under the Agreement to appropriate employee, and shall so inform VENDOR by written notice before the effective date of each such delegation.

5.4 The review comments of Delaware's designated representatives/employees may be reported in writing as needed to VENDOR. It is understood that Delaware's review comments do not relieve VENDOR from the responsibility for the professional and technical accuracy of all services and work product delivered under this Agreement.

5.5 Upon request, Delaware shall, without charge, furnish to or make available for examination or use by VENDOR, any data which Delaware has available, including as examples only and not by way of limitation the following types of data:

- a. Copies of reports, surveys, records, and other pertinent documents;
- b. Copies of previously prepared reports, job specifications, surveys, records, ordinances, codes, regulations, other document, and information related to the services and/or work product specified by this Agreement.

When no longer required, VENDOR shall return all original data provided by Delaware.

5.6 Upon request, Delaware shall assist VENDOR in obtaining data or other necessary documentation whenever such material is necessary to enable VENDOR to provide the services and work product specified by this Agreement.

## **6. Work Product**

6.1 All materials, information, documents, and reports, whether in draft form, complete, or incomplete, which are created, developed, prepared, edited, amended, adopted, accepted or acquired by VENDOR for Delaware that relate to the services and work product to be performed under this Agreement shall become the property of Delaware and shall be delivered to Delaware's designated representative upon completion or termination of this Agreement, whichever comes first. Delaware shall have the right to reproduce and reuse, as it sees fit, all documentation supplied by VENDOR pursuant to this Agreement.

6.2 Notwithstanding anything to the contrary contained in this Agreement or in any attachment hereto, any and all intellectual property or other proprietary data owned by VENDOR prior to the effective date of this Agreement ("Preexisting Information") shall remain the exclusive property of VENDOR even if such Preexisting Information is embedded or otherwise incorporated into materials or products first produced as a result of this Agreement or used to develop such materials or products. Delaware's rights under this section shall not apply to any Preexisting Information or any component thereof regardless of form or media.

## **7. Confidential Information.**

To the extent permissible under 29 *Del. C.* § 10001, et seq., the parties to this Agreement shall preserve in strict confidence any information, reports or documents obtained, assembled or prepared in connection with the performance of this Agreement.

## **8. Warranty.**

8.1 VENDOR warrants that its services and work product will be provided and performed in a good and workmanlike manner. VENDOR agrees to provide additional services and/or work product in the event the quality of the original services and/or work is determined by Delaware to have been performed in a less than good and workmanlike manner. Any additional services and/or work that are required as a result of VENDOR's non-compliance with this warranty shall be performed at VENDOR's expense. In order to exercise this warranty, Delaware must bring any deficiencies in VENDOR's performance to its attention within a reasonable time after the services and/or work is fully completed.

8.2 Third-party products and services within the scope of this Agreement are warranted solely under

the terms and conditions of the licenses or other agreements by which such products and services are governed. With respect to all third-party products and services purchased by VENDOR for Delaware in connection with this Agreement, VENDOR shall pass through or assign to Delaware the rights VENDOR obtains from the manufacturers and/or vendors of such products and services (including warranty and indemnification rights), all to the extent that such rights are assignable.

**9. Indemnification; Limitation of Liability.**

9.1 VENDOR shall indemnify and hold harmless the State, its officials, employees and agents from any and all liability, suits, actions or claims, together with all reasonable costs and expenses (including attorneys' fees) directly arising out of: (1) the negligence or other wrongful conduct of VENDOR, its agents or employees; or (2) VENDOR's breach of any material provision of this Agreement. Delaware must notify VENDOR promptly in writing of any such claim of which it becomes aware, and, in such a circumstance, Delaware acknowledges that VENDOR shall have the sole control of the defense of any action on such claim as well as all negotiations related to the settlement or compromise of such claim.

9.2 If Delaware promptly notifies VENDOR in writing of a third party claim against Delaware that any deliverable provided by VENDOR infringes a copyright, patent, trademark or trade secret of any third party, VENDOR will defend such claim at its expense and will pay any costs or damages that may be finally awarded against Delaware. VENDOR will not indemnify Delaware, however, if the claim of infringement is caused by (1) Delaware's misuse or modification of the deliverable; (2) Delaware's failure to use corrections or enhancements made available by VENDOR; (3) Delaware's use of the deliverable in combination with any product or information not owned or developed by VENDOR; (4) Delaware's distribution, marketing or use for the benefit of third parties of the deliverable or (5) information, direction, specification or materials provided by any third party. If any deliverable is, or in VENDOR's opinion is likely to be, held to be infringing, VENDOR shall at its expense and option either: (a) procure the right for Delaware to continue using it; (b) replace it with a non-infringing equivalent; or, (c) modify it to make it non-infringing. The foregoing remedies constitute Delaware's sole and exclusive remedies and VENDOR's entire liability with respect to infringement.

9.3 Vendor shall have all subcontractors it uses to carry out its responsibilities under this Agreement agree to indemnify Delaware in the same manner as stated above.

**10. Employees.**

Except as the other party expressly authorizes in writing in advance, neither party shall solicit, offer work to, employ, or contract with, whether as a partner, employee or independent contractor, directly or indirectly, any of the other party's Personnel during its participation in the provision of services and work product under this Agreement for a period of twelve (12) months following the completion of all of the services and work product required by this Agreement. For purposes of this Section 10, "Personnel" includes any individual or company employed by a party as a partner, employee or independent contractor and with whom a party comes into direct contact during the course of the performance of this Agreement.

**11. Independent Contractor.**

11.1 It is understood that in the performance of the services and work product provided pursuant to this Agreement, VENDOR shall be, and is, an independent contractor, and is not an agent or employee of Delaware. As such, VENDOR shall furnish such services and work product in its own manner and method except as required by this Agreement. VENDOR shall be solely responsible for, and shall indemnify, defend and save Delaware harmless from all matters relating to the payment of its employees, including compliance with social security, withholding and all other wages, salaries, benefits, taxes, exactions, and regulations of any nature whatsoever.

11.2 VENDOR acknowledges that VENDOR and any subcontractors, agents or employees employed by VENDOR shall not, under any circumstances, be considered employees of Delaware, nor shall they identify themselves as while performing any services or work pursuant to this Agreement. VENDOR further acknowledges its subcontractors, agents and employees shall not be entitled to any of the benefits or rights afforded employees of Delaware, including, but not limited to, sick leave, vacation leave, holiday pay, Public Employees Retirement System benefits, or health, life, dental, long-term disability or workers'

compensation insurance benefits. Delaware will not provide or pay for any liability or medical insurance, retirement contributions or any other benefits for or on behalf of Delaware or any of its officers, employees or other agents.

11.3 In addition to complying with the requirements of this Section 11, VENDOR shall also be responsible for complying with all of the insurance requirements detailed in Appendix A of this Agreement.

11.4 VENDOR has no authority to bind or commit Delaware to any obligations arising pursuant to this Agreement unless expressly set forth herein. This Agreement is not intended to, nor shall it be deemed or construed to, create a joint venture, partnership, fiduciary or agency relationship between the parties for any purpose whatsoever.

## **12. Suspension.**

12.1 Delaware may suspend performance by VENDOR under this Agreement for such period of time as Delaware, at its sole discretion, may prescribe by providing written notice to VENDOR no less than 30 days prior to the date on which Delaware wishes to suspend performance. Upon such suspension, Delaware shall pay VENDOR its compensation, based upon the work performed by VENDOR up to the date the suspension commences. VENDOR shall not perform further work under this Agreement once it receives written notice from Delaware to suspend performance, and shall not resume performance until it receives written notice to do so.

## **13. Termination.**

13.1 This Agreement may be terminated in whole or in part by either party in the event of substantial failure of the other party to fulfill its obligations under the Agreement through no fault of the terminating party; but only after both of the following requirements are met:

- a. Not less than 30 calendar days before terminating the Agreement, the terminating party must provide written notice of intent to terminate; and
- b. The terminating party must provide the other party with an opportunity for consultation prior to termination.

13.2 This Agreement may be terminated in whole or in part by Delaware for its convenience, but only after VENDOR is given:

- a. Not less than 30 calendar days written notice of intent to terminate; and
- b. An opportunity for consultation with Delaware prior to termination.

13.3 If termination for default is effected by Delaware, Delaware will pay VENDOR that portion of the compensation which has been earned as of the effective date of termination; however, Delaware may take over the work and prosecute the same to completion by agreement with another party or otherwise. In the event VENDOR shall cease conducting business, Delaware shall have the right to make an unsolicited offer of employment to any employees of VENDOR assigned to the performance of the Agreement, notwithstanding the provisions of Section 10 of this Agreement.

13.4 After termination for failure of VENDOR to fulfill contractual obligations, if it is determined that VENDOR has not so failed, the termination shall be deemed to have been effected for the convenience of Delaware.

13.5 The rights and remedies of Delaware and VENDOR provided in this section are in addition to any other rights and remedies provided by law or under this Agreement.

### **13.6 Gratuities.**

13.6.1 Delaware may, by written notice to VENDOR, terminate this Agreement if, after notice and hearing, it is found by Delaware that gratuities (in the form of entertainment, gifts, or

otherwise) were offered or given by VENDOR or any agent or representative of VENDOR to any officer or employee of Delaware with a view toward securing this Agreement or any other contract or securing favorable treatment with respect to the awarding or amending or making of any determinations with respect to the performance of this Agreement or any other contract.

13.6.2 In the event this Agreement is terminated as provided in 13.6.1 hereof, it shall be considered a breach of this Agreement by VENDOR and Delaware shall be entitled to pursue any remedy against VENDOR applicable to breach of the Agreement as provided herein.

13.6.3 The rights and remedies of Delaware provided in Section 13.6 shall not be exclusive of, and are in addition to, any other rights and remedies provided by law or under this Agreement.

#### **14. Severability.**

If any term or provision of this Agreement is found by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable, the same shall not affect the other terms or provisions hereof or the whole of this Agreement, but such term or provision shall be deemed modified to the extent necessary to render such term or provision enforceable, and the rights and obligations of the parties shall be construed and enforced accordingly, preserving to the fullest permissible extent the intent and agreements of the parties herein set forth.

#### **15. Assignment; Subcontracts.**

15.1 Any attempt by VENDOR to assign or otherwise transfer any interest in this Agreement without the prior written consent of Delaware shall be void; however, such consent shall not be unreasonably withheld by Delaware.

15.2 Services or work product to be provided by VENDOR under this Agreement shall not be subcontracted by VENDOR without the prior written approval of Delaware.

15.3 Approval by Delaware of VENDOR's request to subcontract or acceptance of or payment for subcontracted work by Delaware shall not relieve VENDOR of its responsibility for the professional and technical accuracy and adequacy of the services or work provided. All subcontractors shall adhere to all applicable provisions of this Agreement.

15.4 VENDOR shall be and remain liable for all damages to Delaware caused by negligent performance or non-performance of the services and work product provided under this Agreement by VENDOR, its subcontractor(s) or its sub-subcontractor(s).

15.5 Any compensation due VENDOR shall not be affected by Delaware's approval of VENDOR's request to subcontract.

#### **16. Force Majeure.**

Neither Delaware nor Vendor shall be held liable for non-performance under the terms and conditions of this Agreement as a result of, but not limited to, governmental restriction, strike, flood, fire or unforeseen catastrophe beyond either party's control. Each party shall notify the other in writing of any situation that may prevent performance under the terms and conditions of this Agreement.

#### **17. Non-Appropriation of Funds.**

17.1 Validity and enforcement of this Agreement is subject to appropriations by the Delaware General Assembly and/or the federal government, or the receipt of sufficient funding from any other source(s) earmarked for WAP activities necessary in order to carry out the purposes of this Agreement. Should sufficient funds be unavailable, Delaware may immediately terminate this Agreement. Absent immediate termination by the State, this Agreement shall be terminated at the end of the fiscal year for which no appropriation remains or during which funds required to satisfy any obligation any obligation of the State

have been exhausted.

17.2 Notwithstanding any other provision of this Agreement, this Agreement shall terminate and Delaware's obligations under it shall be extinguished at the end of the fiscal year in which Delaware fails to receive sufficient funds for the ensuing fiscal year necessary in order to meet its obligations under the Agreement.

**18. State of Delaware Business License.**

VENDOR and all subcontractors are required to be, and hereby represent, they are properly licensed and authorized to transact business in the State of Delaware as provided in 30 *Del. C.* § 2301, *et seq.*

**19. Complete Agreement.**

19.1 This Agreement and its Appendices shall constitute the entire agreement between Delaware and VENDOR with respect to the subject matter of this Agreement and shall not be modified or changed without the express written consent of the parties. The provisions of this Agreement supersede all prior oral and written quotations, communications, agreements and understandings of the parties with respect to the subject matter of this Agreement.

19.2 If the scope of any provision of this Agreement is too broad in any respect to permit enforcement to its full extent, then such provision shall be enforced to the maximum extent permitted by law. The parties hereto consent and agree that the scope of such provision may be modified accordingly and that the whole of the provision shall not thereby fail and that it shall be curtailed only to the extent necessary to conform to the law.

19.3 VENDOR may not order any service or product requiring a purchase order prior to Delaware's issuance of such order. Each Appendix, except as its terms otherwise expressly provide, shall be a complete statement of its subject matter and shall supplement and modify the terms and conditions of this Agreement for the purposes of that subject matter only. No other agreements, representations, warranties or other matters, whether oral or written, shall be deemed to bind the parties hereto with respect to the subject matter hereof.

**20. Miscellaneous Provisions.**

20.1 In performance of this Agreement, VENDOR shall comply with all applicable federal, state and local laws, ordinances, codes and regulations. The costs of permits and other related costs required in the performance of this Agreement are the responsibility of the Vendor or its weatherization subcontractors, and are allowable, reimbursable expenses under this agreement.

20.2 Neither this Agreement nor any Appendix may be modified or amended except by the mutual written agreement of the parties. No waiver of any provision of this Agreement shall be effective unless it is in writing and signed by the party against which it is sought to be enforced.

20.3 The delay or failure by either party to exercise or enforce any of its rights under this Agreement shall not constitute or be deemed a waiver of that party's right thereafter to enforce those rights, nor shall any single or partial exercise of any such right preclude any other or further exercise thereof or the exercise of any other right.

20.4 VENDOR covenants that it presently has no interest, and that it will not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services or work product required pursuant to this Agreement. VENDOR further covenants that, to its knowledge, no person performing services or work under this Agreement has any interest that is in direct or indirect conflict with the purposes of this Agreement. Further, VENDOR agrees that any person with such a conflict shall not be employed or contracted with to perform services or work under this Agreement.

20.5 VENDOR acknowledges that Delaware has an obligation to ensure that public funds are not used to subsidize private discrimination. VENDOR recognizes that if it refuses to hire or do business with an individual or company due to reasons of race, color, gender, ethnicity, disability, national origin, age, or any other protected status, Delaware may declare VENDOR in breach of the Agreement, terminate the

Agreement, and designate VENDOR as non-responsive.

20.6 VENDOR warrants that no person or selling agency has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, or a percentage, brokerage or contingent fee. For breach or violation of this warranty, Delaware shall have the right to annul this contract without liability or at its discretion deduct from the contract price or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee.

20.7 This Agreement was drafted with the joint participation of both parties and shall be construed neither against nor in favor of either, but rather in accordance with the fair meaning thereof.

20.8 VENDOR shall maintain all public records, as defined by 29 *Del. C.* § 502(7), relating to this Agreement and its deliverables for the time and in the manner specified by the Delaware Division of Archives, pursuant to the Delaware Public Records Law, 29 *Del. C.* Ch. 5. and the Delaware WAP Manual. During the term of this Agreement, authorized representatives of Delaware may inspect or audit VENDOR's performance and records pertaining to this Agreement at the VENDOR's business office during normal business hours.

**21. Insurance.**

21.1 VENDOR shall maintain the following insurance during the term of this Agreement:

- A. Worker's Compensation and Employer's Liability Insurance in accordance with applicable law, and
- B. Comprehensive General Liability - \$1,000,000.00 per person/\$3,000,000 per occurrence, and
- C. Medical/Professional Liability - \$1,000,000.00 per person/\$3,000,000 per occurrence; or
- D. Miscellaneous Errors and Omissions - \$1,000,000.00 per person/\$3,000,000 per occurrence, or
- E. Product Liability - \$1,000,000.00 per person/\$3,000,000 per occurrence, and
- F. If required to transport state employees, Automotive Liability Insurance covering all automotive units used in the work with limits of not less than \$100,000 each person and \$300,000 each accident as to bodily injury and \$25,000 as to property damage to others.

21.2. VENDOR shall provide forty-five (45) days written notice of cancellation or material change of any applicable insurance policies.

21.3. Before any work is performed pursuant to this Agreement, the Certificate of Insurance and/or copies of the insurance policies, referencing the contract number stated herein, shall be filed with the State. The certificate holder is as follows: State of Delaware

21.4. In no event shall the State of Delaware be named as an additional insured on any policy required under this Agreement and any attempt to do so shall be void.

**22. Assignment of Antitrust Claims.**

As consideration for the award and execution of this contract by the State, VENDOR hereby grants, conveys, sells, assigns, and transfers to Delaware all of its right, title and interest in and to all known or unknown causes of action it presently has or may now or hereafter acquire under the antitrust laws of the United States and the State of Delaware, relating to the particular goods, services and work product purchased or acquired by the State pursuant to this contract.

**23. Governing Law.**

This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware, except where expressly superseded by federal law. VENDOR consents to jurisdiction and venue in the State of Delaware.

**24. Notices.**

Any and all notices required to be provided by the provisions of this Agreement shall be in writing and shall

be mailed, certified or registered mail, return receipt requested. All notices shall be sent to the following addresses:

Executive Director  
Catholic Charities  
2601 W. 4<sup>th</sup> Street  
Wilmington, DE 19805

WAP Administrator  
Division of Energy and Climate  
1203 College Park Dr.  
Suite 101  
Dover, DE 19904

**25. Effective Date.**

The effective date of this Agreement shall be the date it is signed by all parties.

**26. List of Appendices.**

- a. Appendix A, Scope of Services
- b. Appendix B, Contract Budget
- c. Appendix C, DOE Terms and Condition "Flow Down" Requirements for Subgrantee Contracts

**27. Counterparts.**

This Agreement may be executed in multiple counterparts each of which shall be deemed an original but which together shall constitute one and the same instrument. An electronic signature may also constitute an original signature in accordance with 6 Del. C. Ch. 12A.

**SIGNATURE PAGE TO FOLLOW**

IN WITNESS THEREOF, the Parties hereto have caused this Agreement to be duly executed as of the date and year first above written.

Original On File

Witness \_\_\_\_\_  
Date: 5/9/14

**STATE OF DELAWARE  
DEPARTMENT OF NATURAL RESOURCES AND  
ENVIRONMENTAL CONTROL**

Original On File

Name: \_\_\_\_\_  
Title: Cabinet Secretary  
Date: 5/9/14

Original On File

Witness \_\_\_\_\_  
Date: 5/8/14

**VENDOR**

Original On File

Name: \_\_\_\_\_  
Title: Executive Director, Catholic Charities Inc.  
Date: 5/8/14

**Appendix A**  
**Scope of Services**

**VENDOR:** Catholic Charities  
2601 W. 4<sup>th</sup> Street  
Wilmington, DE 19805

**SERVICE AREA:**

New Castle, Kent and Sussex Counties, Delaware

The VENDOR shall administer the Delaware Weatherization Assistance Program (WAP) in the State of Delaware in accordance with all applicable federal, state and local laws, rules, regulations, procedures and guidance manuals and under the guidance and supervision of the Weatherization Assistance Program within the Division of Energy and Climate of the Delaware Department of Natural Resources and Environmental Control ("DNREC" or "DEPARTMENT").

VENDOR shall administer the Delaware Weatherization Assistance Program in compliance with this Agreement and all other applicable Federal, State, and local laws, rules, regulations, administrative procedures, guidance manuals and definitions, and any amendments thereto. Specifically, and in addition to any other applicable requirements, VENDOR shall comply with 42 U.S.C. § 6861 et seq.; and 10 C.F.R. Parts 440 and 600, the approved U.S. Department of Energy Weatherization Assistance Program State Plan for the State of Delaware, the Delaware Weatherization Field Guide, the Delaware Weatherization Policy Manual (WAP Manual), and all other applicable state weatherization Program Updates or directives.

VENDOR shall further administer the weatherization program in compliance with the requirements as specified in State of Delaware Office of Management and Budget ("OMB") Circular A-110, the "Common Rule,"; OMB Circular A-122, "Cost Principles for Non-Profit Organizations"; and OMB Circular A-133, entitled "Audits of States, Local Governments, and Non-Profit Organizations".

**The Scope of Services and requirements under this Agreement are as follows:**

1. VENDOR shall have as a target the weatherization of 400 homes statewide for Program Year 2014. VENDOR shall make every effort to complete half (50%) of the contracted number of weatherized units within New Castle County and half within Kent and Sussex Counties, regardless of clients position on the priority list.
2. VENDOR shall have the following interim goals for weatherizing homes during the Program Year;
  - a. 50 completed weatherized units (passed Final inspection) by 9/30/14
  - b. 150 completed weatherized units (passed Final inspection) by 12/31/14Failure to achieve these goals will require the VENDOR to report to Delaware the cause of the failure and develop a work plan in concert with Delaware to achieve them in the future
3. VENDOR shall provide WAP services to eligible dwelling units in accordance with the WAP Manual and acknowledges and agrees that the funds provided through this Agreement shall be used solely for the purposes of weatherizing homes as defined herein.
4. Any unit weatherized through the Delaware Weatherization Assistance Program on or after September 30, 1994, shall not be eligible for weatherization services pursuant to this Agreement and VENDOR shall not re-weatherize any such unit using any funds related to this Agreement unless specifically authorized in writing to do so by DNREC.
5. The WAP program in Delaware operates on a reimbursement basis, whereby VENDOR engages staff

## Appendix A Scope of Services

- or subcontractors to provide WAP services to eligible clients and then seeks payment or reimbursement from DNREC for all eligible program expenses in accordance with the WAP Manual.
6. VENDOR shall not pay any subcontractor, nor shall VENDOR submit claims for reimbursement of any costs incurred by VENDOR for any work performed, until such time as VENDOR has performed the Final Inspection and has determined in writing that any such work has been performed in a satisfactory manner. DNREC may waive this requirement in its sole discretion. This requirement does not apply to the payment of charges for HVAC servicing or replacement where delays in paying HVAC contractors may delay overall progress of the program.
  7. VENDOR may request, and DNREC may grant, a funding advance to initiate program operations and pay staff salaries, operational expenses or subcontractor costs in accordance with the WAP Manual and this Agreement.
  8. VENDOR shall follow generally accepted accounting procedures and practices which sufficiently and properly reflect all costs incurred by VENDOR pursuant to this Agreement and shall keep accurate and up-to-date accounting records.
  9. VENDOR shall submit a written report to DNREC on a monthly basis, within 20 business days of the end of each month, setting forth its WAP expenditures by budget categories for the preceding month. Said report shall also include year-to-date expenditure totals and explain any past deviations from the budget included with this Agreement.
  10. VENDOR and its subcontractors shall not impose any fees or accept any money from the recipients of any services provided through this Agreement except as explicitly authorized in writing by DNREC prior to imposing any such fee or accepting any funds.
  11. Any program income earned by VENDOR from activities conducted with funds obtained through this Agreement must be maintained and expended by VENDOR in accordance with the Delaware WAP Manual and all relevant federal and state laws, rules and regulations regarding program income.
  12. VENDOR acknowledges and agrees that DNREC will withhold or recover payments made to VENDOR for disallowed costs relating to weatherization measures installed that are not allowed by law including any that are not provided pursuant to a work order that complies with the Delaware Weatherization Priority List and the Delaware Field Guide or are not specifically authorized by the Delaware WAP Manual.
  13. VENDOR shall not use funds provided through this Agreement for the purchase or improvement of land, or for the purchase, construction, or permanent improvements (other than low-income residential weatherization or other energy-related home repairs) of any building or other facility.
  14. VENDOR shall comply with the budget set forth in this Agreement and shall limit expenditures within each of the defined budget categories.
  15. VENDOR shall maintain an overall average cost per dwelling in "Program Operations" expenditures not to exceed six thousand, five hundred dollars (\$6,500.00), over the period of the Agreement for all units completed, i.e., having a passed final inspection, prior to the close of each program year on March 31.
  16. Following the expiration or termination of this Agreement, or at such other times as required by federal or state law or rules, or if requested by DNREC, VENDOR shall secure an audit of funds provided by DNREC pursuant to this Agreement. Such audit shall be conducted by an independent public or certified public accountant and performed in accordance with all directives provided by DNREC as well as applicable provisions of the OMB Circular A-133, entitled "Audits of States, Local Governments, and Non-Profit Organizations" and any implementing regulations.
  17. VENDOR is provided a goal to achieve the Agreement target number of units within the program year. If VENDOR's production reports indicate difficulties in reaching the contracted unit target, DNREC may require a performance improvement plan be prepared and implemented to address the deficiency.
  18. If deficiencies persist, DNREC may, at its sole discretion, terminate the Agreement pursuant to terms

## Appendix A Scope of Services

- in Section 13 of this Agreement, or take such other action as it may find necessary.
19. Supplies and equipment, as defined in the WAP Manual, purchased by VENDOR in furtherance of this Agreement are property of the VENDOR, however, upon termination of this agreement for any cause, ownership of all supplies and equipment with a value in excess of \$500 and all field equipment with a value of greater than \$100 will be transferred to the Delaware Weatherization Assistance Program and shall be managed, maintained and/or disposed of according to the Delaware WAP Manual and 10 CFR 600.
  20. DNREC may withhold payment and issue a defective invoice notification for any claim submitted if it finds errors or omission in file contents or if the work is found to be substandard or has not passed final inspection.
  21. DNREC may withhold payment and VENDOR shall repay DNREC for any claim submitted that is inaccurate or if VENDOR has not complied with the claim preparation instructions issued by DNREC, including, but not limited to, following the current price list and costing procedures. Prior to requiring repayment, DNREC will provide VENDOR with reasonable written notice of any error in the claims submitted and allow a reasonable time for VENDOR to make corrections or revisions to the satisfaction of DNREC necessary for payment.
  22. Any subcontractors hired by VENDOR to perform weatherization services shall be retained and managed in accordance with the Delaware WAP Manual and shall be approved in writing by DNREC prior to engagement.
  23. Any subcontractor hired by the VENDOR to conduct weatherization services shall provide no less than a one year warranty on labor conducted under the program. Warranty for supplies or materials installed in any home shall be for the product warranty from the manufacturer.
  24. VENDOR shall hire a WAP Program Manager with experience in running complex governmental regulatory programs involving technical and administrative components. WAP experience is recommended but not essential. DNREC may make recommendations to VENDOR for suitable employees in the program.
  25. VENDOR shall furnish to DNREC written job descriptions of each staff position involved in the Program, prior to hiring, noting the position's duties and functions and the necessary educational or experiential qualifications for the position. DNREC shall approve the job description and duties prior to hiring by the VENDOR.
  26. VENDOR shall only use properly licensed private subcontractors who have attended required training and have attained the required certifications to provide and install weatherization measures, as detailed in the Delaware WAP Manual
  27. VENDOR shall submit weekly performance reports to DNREC on a spreadsheet as provided by DNREC. VENDOR shall use the reporting spreadsheet as a tool to manage progress in weatherizing units and to ensure adequate production to meet the requirements of the Agreement. Weekly reports for weeks normally ending on Friday's are due to DNREC by COB the following work day, and shall include all data and information through COB the previous Friday.
  28. VENDOR shall utilize and provide data entry into the Hancock WAP On-Line database for all clients entering the Program. DNREC will provide training for VENDOR's staff as needed.
  29. VENDOR shall maintain a computerized master spreadsheet of all training hours, training modules, and training activities conducted through its Training and Technical Assistance funding and attended by its staff and subcontractors.
  30. DNREC shall conduct at least one on-site comprehensive monitoring inspection of VENDOR's Administrative operations and field work per year and may conduct additional monitoring at any time, as it deems necessary. Monitoring procedures and requirements are found in the Delaware WAP Manual.
  31. VENDOR and its employees, officers, board members, and subcontractors shall cooperate in all monitoring reviews, audits, or inspections conducted by authorized representatives of DNREC or the United State Department of Energy.

## Appendix B - Contract Budget

VENDOR shall adhere to all fiscal practices outlined in the DNREC WAP Manual. VENDOR shall maintain its weatherization accounts separate and distinct from any other accounts within its organization. All accounts maintained for weatherization purposes shall be interest bearing.

### Coordination of Funds

VENDOR shall adhere to the weatherization budget below. Amendments to the budget are permissible and shall be approved in writing by DNREC, subject to availability of funds.

The WAP Program uses the following cost categories (also referred to as "market titles") as required by the U.S. Department of Energy (DOE). Each cost category is described below.

1. Administration
2. Insurance
3. Fiscal Audit
4. Health and Safety
5. Program Operations
6. Training and Technical Assistance

#### 1. Administrative Costs

Administrative Costs are those costs of a general nature, not specific to one program, but applied to a range of VENDOR's programs: for example, salary and fringe costs for individuals such as directors, bookkeepers, clerks, and information technology specialists. Personnel functions such as agency planning, budgeting, accounting, and activities that establish and direct VENDOR's policies, goals, and objectives overall, may be considered part of its administrative costs. Consumable office supplies used across programs, such as copier paper, notepaper and pads, pencils and pens, and application pads, are considered administrative costs. Rental or purchase of equipment that is used across programs may be allocated partially to the Weatherization Program on a reasonable basis.

Administration Budget Examples -Some specific examples of costs that, so far as they are not directly chargeable to program operations, may be considered as administrative include:

- Executive functions
- Office management functions
- Accounting, auditing, and budgeting
- Corporate legal services
- Personnel management
- Purchasing and distribution of supplies
- General operational Insurance and bonding
- Receptionist, mail distribution, filing, and other central clerical services
- Data processing and computer services
- Computer equipment used for administrative functions
- General record keeping

## Appendix B - Contract Budget

- Office space/facilities lease or rental
- Utilities in the office space/facilities
- Postage
- Duplicating/copying.
- Telephone equipment and services
- Administrative staff training
- Applicable state and local taxes
- General personal liability and property insurance

### Cost Basis for Administrative Costs

Each administrative cost category as shown above must employ a cost allocation formula or basis that reveals how the relative proportion of the WAP administrative expenses to overall VENDOR administrative expenses is determined. VENDOR shall annually prepare and submit to DNREC the cost allocation formula and rationale for each administrative cost. Cost allocation justifications shall be due to DNREC within 60 days of the close of VENDOR's fiscal year and at the time of program monitoring as determined by DNREC.

### **2. Insurance**

**Liability Insurance:** Liability insurance required by the DOE and DNREC may be charged to the Weatherization Program at the actual direct cost. Liability insurance is a separate line item in the budget and as such is not considered part of the administrative or operational costs of the program. VENDOR must carry liability insurance at the rates specified in the Delaware WAP Manual.

**Workers' Compensation:** VENDOR must abide by federal and state laws and regulations concerning Workers' Compensation Insurance and must provide Workers' Compensation as required by law.

**Unemployment Insurance:** VENDOR must abide by federal and state laws and regulations concerning Unemployment Insurance and provide Unemployment Insurance as required by law.

**Pollution Occurrence Insurance:** Standard liability insurance policies do not generally provide coverage for many health and safety circumstances which the weatherization program may encounter. For example, standard liability policies may not extend to such hazards as lead based paint or asbestos. DOE has mandated that if the VENDOR's current policy does not specifically cover liability for these work-related hazards, it must obtain additional insurance to protect against these risks. VENDOR shall review its existing policies and shall ensure that they have coverage in accordance with the Delaware WAP manual.

### **3. Fiscal Audit**

Fiscal Audit costs are budgeted for VENDOR's fiscal audit of its weatherization funds, which is performed on an Annual basis. The audit costs must be a separate line item in the budget and not considered a part of administrative or program operations costs. In the event that more than one program is being audited, the cost to the weatherization program is to be allocated on a reasonable basis and included with other cost allocation plans as specified in paragraph #1 above. The audit must be conducted by an independent public or certified public accountant and may be a part of the agency-wide audit as

## Appendix B - Contract Budget

required under OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations".

### 4. Health and Safety

Health and Safety costs are budgeted at 14.9 percent of the program operations budget. In no event shall funds for Health and Safety exceed 14.9 percent of the program operations budget without the prior, express written consent of DNREC. Expenditures for Health and Safety must be made in accordance with the Delaware WAP Manual.

### 5. Program Operation Costs

Program Operations costs are those that are clearly related to the operation of VENDOR's weatherization program. VENDOR's direct costs for weatherization costs as well as the cost of subcontractors to the agency are included in this budget line item.

#### VENDOR Costs

- a. Staff: VENDOR's projected costs are budgeted for the staff and labor working directly in the operation of the weatherization program. These personnel include technical staff, the program manager, and program support staff. Where employees work on other VENDOR activities outside of weatherization, the allocation of their salaries or wages to the weatherization program must be supported by adequate documentation that establishes the percentage of each employee's work time devoted to the weatherization program together with the specific activities performed.
- b. Program Support: VENDOR program support costs include the direct costs to the program for rent and utilities for agency labor, program advertising, supplies consumed by the program, as well as office equipment, furnishings, and computer equipment used in the program. Program support charges must be budgeted using the actual, net projected cost.
- c. Supplies and Equipment:
  - a) "Equipment" is defined by federal and state regulation as an item of non-expendable, tangible personal property, having a useful life of more than one year and an acquisition cost which equals or exceeds a unit cost of \$5,000.
  - b) Purchases less than \$5,000 are considered supplies and are further defined as "office supplies" or "field supplies".
  - c) "Office supplies" are those articles ordinarily found in an office environment which are necessary to conduct everyday business, including paper, copiers, notebooks, furniture, chairs, phones, envelopes, etc.
  - d) "Field supplies" are those items that are instrumental in the weatherization of a home, including blower door equipment, infrared cameras, gas meters, smoke detectors, moisture meters borescopes, tape measures, circular saws, building supplies etc.

## Appendix B - Contract Budget

- e) All equipment and supplies are the property of the Delaware Weatherization Assistance Program and are not considered to be the property of the VENDOR.
- f) VENDOR shall receive prior, written approval from DNREC before making any equipment purchases.
- g) Office supplies costing less than \$500 unit cost are exempt from inventory tracking requirements as specified in the WAP Manual.
- h) Field supplies costing less than \$100 are exempt from inventory tracking requirements as specified in the WAP Manual.
- i) All supply and equipment purchases must be made in accordance with VENDORS procurement standards.

### Subcontractor Costs

The cost of all anticipated weatherization subcontractor costs are budgeted in the program operations cost category. This includes all subcontractor costs for staff and labor; including subcontractor management staff, supervisory staff and laborers, as well as subcontractor overhead. The funds to be used by the subcontractor for purchase of weatherization materials are also included.

### **6. Training and Technical Assistance (T&TA)**

T&TA funds are used for training expenses of VENDOR's staff, as well as travel to training conferences and other expenses related to training or the provision of technical assistance to staff or workers in the program. All T&TA expenses and expenditures shall comply with the requirements contained in the Delaware WAP Manual.

### **7. Advance Funding**

- a. DNREC may advance funds to VENDOR at the inception of this Agreement and as needed at any time during the term of the Agreement. The authorization to advance funds is provided at 10 CFR 600.221(c) "Advances" and 10 CFR 600.221(e) "Working capital advances."
- b. VENDOR shall not use advanced funds for any costs other than eligible weatherization program expenditures in accordance with the requirements of the funding source from which they are provided, or as otherwise authorized in writing by DNREC.
- c. Advance funding requests shall be in writing and include a plan for how the advance will be used and a justification for the amount of advance requested. If justified, DNREC also limits such requests to no more than 10% of the total initial contract amount.

## Appendix B - Contract Budget

- d. After receiving the advance, VENDOR shall use it as “working capital” as authorized in writing by DNREC in its approval of the advance.
  
- e. VENDOR shall keep detailed records of each invoice or expense where advance funds are used, and shall provide those records to DNREC upon request. Prior to the end of the Agreement’s term, or at any time during the contract period, VENDOR may elect to return an advance of funds in one of two ways: as a lump sum payment to DNREC; or, by deducting from VENDOR’S claims for payment an amount equal to the original advance. Should a funding advance balance exceed the final claim at the close of the Agreement, VENDOR shall reimburse DNREC by direct payment of the remaining balance of the advance within 10 days of the termination of the contract.
  
- f. DNREC will monitor the use of any Funding Advance. If DNREC determines that any portion of the funding advance is used improperly or in violation of DNREC’s approval of the advance, DNREC may require the immediate return of the Funding Advance and VENDOR shall immediately but, in no case, more than 7 days after the written demand repay the full outstanding balance of the Funding Advance.
  
- g. VENDOR shall deposit and hold any advances in an interest-bearing account, with interest treated under applicable federal regulations, such as 10 CFR 600.221.

### Contract Budget

Budget categories and appropriations are shown in the following budget sheet.



## Department Of Energy (DOE) Terms and Condition "Flow Down" Requirements for Subgrantee Contracts

### 1. STATEMENT OF FEDERAL AND STATE STEWARDSHIP

DOE and DNREC will exercise normal Federal stewardship in overseeing the project activities performed under this award. Stewardship activities include, but are not limited to, conducting site visits; reviewing performance and financial reports; providing technical assistance and/or temporary intervention in unusual circumstances to correct deficiencies which develop during the project; assuring compliance with terms and conditions; and reviewing technical performance after project completion to ensure that the award objectives have been accomplished.

### 2. SITE VISITS

DOE's and DNREC's authorized representatives have the right to make site visits at reasonable times to review project accomplishments and management control systems and to provide technical assistance, if required. You must provide reasonable access to facilities, office space, resources, and assistance for the safety and convenience of the government representatives in the performance of their duties. All site visits and evaluations must be performed in a manner that does not unduly interfere with or delay the work.

### 3. REPORTING REQUIREMENTS

- a. Dissemination of scientific/technical reports. Scientific/technical reports submitted under this award will be disseminated on the Internet via the DOE Information Bridge ([www.osti.gov/bridge](http://www.osti.gov/bridge)), unless the report contains patentable material, protected data or SBIR/STTR data. Citations for journal articles produced under the award will appear on the DOE Energy Citations Database ([www.osti.gov/energycitations](http://www.osti.gov/energycitations)).
- c. Restrictions. Reports submitted to the DOE Information Bridge must not contain any Protected Personal Identifiable Information (PII), limited rights data (proprietary data), classified information, information subject to export control classification, or other information not subject to release.

### 4. PUBLICATIONS

- a. You are encouraged to publish or otherwise make publicly available the results of the work conducted under the award.
- b. An acknowledgment of DOE support and a disclaimer must appear in the publication of any material, whether copyrighted or not, based on or developed under this project, as follows:

## Appendix C - Department Of Energy (DOE) Terms and Condition "Flow Down" Requirements for Subgrantee Contracts

*Acknowledgment:* "This material is based upon work supported by the Department of Energy [add name(s) of other agencies, if applicable] under Award Number(s) [enter the award number(s)]."

*Disclaimer:* "This report was prepared as an account of work sponsored by an agency of the United States Government. Neither the United States Government nor any agency thereof, nor any of their employees, makes any warranty, express or implied, or assumes any legal liability or responsibility for the accuracy, completeness, or usefulness of any information, apparatus, product, or process disclosed, or represents that its use would not infringe privately owned rights. Reference herein to any specific commercial product, process, or service by trade name, trademark, manufacturer, or otherwise does not necessarily constitute or imply its endorsement, recommendation, or favoring by the United States Government or any agency thereof. The views and opinions of authors expressed herein do not necessarily state or reflect those of the United States Government or any agency thereof."

### 5. FEDERAL, STATE, AND MUNICIPAL REQUIREMENTS

You must obtain any required permits and comply with applicable federal, state, and municipal laws, codes, and regulations for work performed under this award.

### 6. INTELLECTUAL PROPERTY PROVISIONS AND CONTACT INFORMATION

- a. The intellectual property provisions applicable to this award will be provided as an attachment to this award. A list of all intellectual property provisions may be found at: <http://energy.gov/gc/standard-intellectual-property-ip-provisions-financial-assistance-awards>
- b. Questions regarding intellectual property matters should be referred to the DOE Award Administrator identified and the Patent Counsel designated as the service provider for the DOE office that issued the award. The Patent Counsel for the Golden Field Office is Julia Moody who may be reached at [julia.moody@go.doe.gov](mailto:julia.moody@go.doe.gov) or 720-356-1699.

### 7. LOBBYING RESTRICTIONS

By accepting funds under this award, you agree that none of the funds obligated on the award shall be expended, directly or indirectly, to influence congressional action on any legislation or appropriation matters pending before Congress, other than to communicate to Members of Congress as described in 18 U.S.C. 1913. This restriction is in addition to those prescribed elsewhere in statute and regulation.

### 8. NOTICE REGARDING THE PURCHASE OF AMERICAN-MADE EQUIPMENT AND PRODUCTS

To the greatest extent practicable, all equipment and products purchased with funds made available under this award should be American-made.

### 9. DECONTAMINATION AND/OR DECOMMISSIONING (D&D) COSTS

## **Appendix C - Department Of Energy (DOE) Terms and Condition "Flow Down" Requirements for Subgrantee Contracts**

Notwithstanding any other provisions of this Agreement, the Government shall not be responsible for or have any obligation to the Recipient for (i) Decontamination and/or Decommissioning (D&D) of any of the Recipient's facilities, or (ii) any costs which may be incurred by the Recipient in connection with the D&D of any of its facilities due to the performance of the work under this Agreement, whether said work was performed prior to or subsequent to the effective date of the Agreement.

### **10. HISTORIC PRESERVATION**

Prior to the expenditure of Federal funds to alter any structure or site, the Recipient is required to comply with the requirements of Section 106 of the National Historic Preservation Act (NHPA), consistent with DOE's 2009 letter of delegation of authority regarding the NHPA. Section 106 applies to historic properties that are listed in or eligible for listing in the National Register of Historic Places. In order to fulfill the requirements of Section 106, the recipient must contact the State Historic Preservation Officer (SHPO), and, if applicable, the Tribal Historic Preservation Officer (THPO), to coordinate the Section 106 review outlined in 36 CFR Part 800. SHPO contact information is available at the following link: <http://www.ncshpo.org/find/index.htm>. THPO contact information is available at the following link: <http://www.nathpo.org/map.html>

Section 110(k) of the NHPA applies to DOE funded activities. Recipients shall avoid taking any action that results in an adverse effect to historic properties pending compliance with Section 106.

Recipients should be aware that the DOE Contracting Officer will consider the recipient in compliance with Section 106 of the NHPA only after the Recipient has submitted adequate background documentation to the SHPO/THPO for its review, and the SHPO/THPO has provided written concurrence to the Recipient that it does not object to its Section 106 finding or determination. Recipient shall provide a copy of this concurrence to the Contracting Officer.

### **11. MINIMUM PRIVACY PROTECTIONS REGARDING APPLICANT INFORMATION**

(1) States, Tribes and their subawardees, including, but not limited to subrecipients, subgrantees, contractors and subcontractors that participate in the Weatherization program are required to treat all requests for information concerning applicants and recipients of WAP funds in a manner consistent with the federal government's treatment of information requested under the Freedom of Information Act (FOIA), 5 U.S.C. 552, including the privacy protections contained in Exemption (b)(6) of the FOIA, 5 U.S.C. 552(b)(6). Under 5 U.S.C. 552(b)(6), information relating to an individual's eligibility application or the individual's participation in the program, such as name, address, or income information, are generally exempt from disclosure.

**Appendix C - Department Of Energy (DOE) Terms and Condition "Flow Down" Requirements  
for Subgrantee Contracts**

- (2) A balancing test must be used in applying Exemption (b)(6) in order to determine:
  - (A) whether a significant privacy interest would be invaded;
  - (B) whether the release of the information would further the public interest by shedding light on the operations or activities of the Government; and
  - (C) whether in balancing the privacy interests against the public interest, disclosure would constitute a clearly unwarranted invasion of privacy.
  
- (3) A request for personal information including but not limited to the names, addresses, or income information of WAP applicants or recipients would require the state or other service provider to balance a clearly defined public interest in obtaining this information against the individuals' legitimate expectation of privacy.
  
- (4) Given a legitimate, articulated public interest in the disclosure, States and other service providers may release information regarding recipients in the aggregate that does not identify specific individuals. However, a State or service provider must apply a FOIA Exemption (b)(6) balancing test to any request for information that cannot be satisfied by such less-intrusive methods.

**12. WASTE STREAM**

The Recipient assures that it will create or obtain a waste management plan addressing waste generated by a proposed Project prior to the Project generating waste. This waste management plan will describe the Recipient's or subrecipient's plan to dispose of any sanitary or hazardous waste (e.g., construction and demolition debris, old light bulbs, lead ballasts, piping, roofing material, discarded equipment, debris, and asbestos) generated as a result of the proposed Project. The Recipient shall ensure that the Project is in compliance with all Federal, state and local regulations for waste disposal. The Recipient shall make the waste management plan and related documentation available to DOE on DOE's request (for example, during a post-award audit).

**13. REPORTING SUBAWARDS AND EXECUTIVE COMPENSATION**

**a. Reporting of Total Compensation of Executives.**

1. Applicability and what to report. Unless you are exempt as provided in paragraph b. of this award term, you shall report the names and total compensation of each of your five most highly compensated executives for the preceding completed fiscal year, if;

i. In your preceding fiscal year, you received;

(A) 80 percent or more of its annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and

**Appendix C - Department Of Energy (DOE) Terms and Condition "Flow Down" Requirements  
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(B) \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts), and Federal financial assistance subject to the Transparency Act (and subawards); and

ii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/excomp.htm> )

2. Where and when to report. You must report executive total compensation described in paragraph c.1. of this award term:

i. To DNREC.

ii. By the end of the month following the month during which you received the award

**b. Exemptions**

If, in the previous tax year, you had gross income, from all sources, under \$300,000, you are exempt from the requirements to report:

i. Subawards and;

ii. The total compensation of the five most highly compensated executives of any subrecipient.

**c. Definitions. For purposes of this award term:**

1. Entity means all of the following, as defined in 2 CFR Part 25:

i. A Governmental organization, which is a State, local government, or Indian tribe;

ii. A foreign public entity;

iii. A domestic or foreign nonprofit organization;

iv. A domestic or foreign for-profit organization;

v. A Federal agency, but only as a subrecipient under an award or subaward to a non-Federal entity.

2. Executive means officers, managing partners, or any other employees in management positions.

**Appendix C - Department Of Energy (DOE) Terms and Condition "Flow Down" Requirements  
for Subgrantee Contracts**

3. Total compensation means the cash and noncash dollar value earned by the executive during the recipient's or subrecipient's preceding fiscal year and includes the following (for more information see 17 CFR 229.402(c)(2)):

- i. Salary and bonus.
- ii. Awards of stock, stock options, and stock appreciation rights. Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.
- iii. Earnings for services under non-equity incentive plans. This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.
- iv. Change in pension value. This is the change in present value of defined benefit and actuarial pension plans.
- v. Above-market earnings on deferred compensation which is not tax-qualified.
- vi. Other compensation, if the aggregate value of all such other compensation (*e.g.* severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds \$10,000.