

MULTIFAMILY OWNER AFFORDABILITY AGREEMENT

This Agreement is made and entered into by and between

Action for Boston Community Development (ABCD)

And

NAME/COMPANY

The Owner/Manager of

ADDRESS, MA ZIPCODE

Building(s) to Receive Energy Efficiency Services

This Agreement shall commence on the ____ day of _____ (the day this Agreement is signed) and shall terminate ten (10) years after the date the Notice to Proceed is signed. This Agreement is binding only if the Low-Income Multi-family Energy Retrofit Program provides energy efficiency services to the named property.

Recitals:

- A. Action for Boston Community Development (ABCD) is a Massachusetts corporation organized pursuant to Chapter 180 of the Massachusetts General **Laws**.
- B. ABCD is a Lead Agency as defined below and serves as the administrator for The Low-Income Energy Affordability Network (LEAN).
- C. LEAN has partnered with the Energy Efficiency Program Administrators (gas and electric utilities) to implement the Low-Income Multi-Family Retrofit (LIMF) Program: a public/private partnership that was created to help low-income electric and gas customers in Massachusetts save money through energy conservation.
- D. Each Lead Agency is under contract to one or more of Berkshire Gas, Cape Light Compact, Columbia Gas, Liberty Utilities, National Grid, Unitil, and Eversource (NSTAR, Western Massachusetts Electric Co. (WMECo)) to administer the LIMF Program.

Exhibits incorporated herein and made a part hereof:

- A. The Low-Income Multi-Family Retrofit Program: Program Guide
- B. Sample Notice to Proceed

WHEREAS, the above named building(s) is served by the Program Administrators and one or more of the Lead Agencies listed in I.B., below;

WHEREAS, many low-income multifamily buildings contain both subsidized units and unsubsidized units occupied by income-eligible households and may contain units occupied by households that are not income-eligible, the Low-Income Multi-Family Retrofit Program will serve entire low-income multifamily buildings if not less than 50% of the dwelling units in the buildings are occupied by income-eligible households;

WHEREAS, the Lead Agencies have demonstrated a readiness to provide energy efficiency services for the benefit of eligible households who reside in rental housing;

WHEREAS, the eligible households residing in the dwelling units in buildings receiving energy efficiency services are the intended third-party beneficiaries of this Agreement; and

WHEREAS, the building(s) named above has been deemed an Eligible Project by ABCD or another Lead Agency;

NOW THEREFORE, in consideration of the foregoing building the parties agree as follows:

I. DEFINITIONS As used in this Agreement:

A. OWNER shall mean and include the owners of the freehold of the building or lesser estate therein, mortgagee or vendee in possession, assignee of rents, receiver, executor, trustee, lessee, agent or any other person, firm or corporation, directly or indirectly in control of the building or buildings located at STREET ADDRESS TOWN, MA ZIPCODE which contains a total of # dwelling units.

B. LEAD AGENCY shall mean the entity under contract with the gas and/or electric utility (Program Administrator) to implement the Low-Income Multi-Family Retrofit Program, as follows:

| Lead Agency | Program Administrator |
|--|--|
| ABCD | Columbia Gas, Eversource Gas & Electric, |
| Action | National Grid Gas & Electric |
| Citizens for Citizens (CFC) | Liberty Utilities |
| Community Action! | Berkshire Gas |
| Housing Assistance Corp. (HAC) | Cape Light Compact |
| Montachusett Opportunity Council (MOC) | Unitil |

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

D. HOUSEHOLD shall mean any individual or group of individuals who are living together as one economic unit in a Dwelling Unit and who make undesignated payments for their gas and/or electric utilities in the form of rent or pay for their gas and/or electric utilities directly.

E. ELIGIBLE HOUSEHOLD shall mean a Household whose income is less than or equal to 60% of Area Median Income (AMI). AMI is defined as the Median Family Income, as last published by the Department of Housing & Urban Development (HUD) for the size of the household in the HUD-defined Income Limits Area where the building is located.

F. ELIGIBLE DWELLING UNIT shall mean:

1. A Dwelling Unit occupied as of the effective date of this Agreement by an Eligible Household. LEAN shall not consider any Dwelling Unit to be an Eligible Dwelling Unit unless ABCD or another Lead Agency has received written documentation, sufficient in the sole judgment of ABCD or the Lead Agency and in the form required by LEAN, indicating that the Dwelling Unit is occupied by an Eligible Household. The name and income of the Eligible Household must remain confidential in accordance with state or federal law.

2. A Dwelling Unit that is vacant as of the effective date of this Agreement designated by the **Owner** as a Dwelling Unit that will be rented to or occupied by an Eligible Household within 180 days of the Certification date of the completion of the work, provided that it becomes so rented.

G. SUBSIDIZED **ELIGIBLE** DWELLING UNIT shall mean any Eligible Dwelling Unit that is subject to a state or federal rental restriction.

- H. ELIGIBLE PROJECT shall mean one or more buildings on a site in which at least 50% of the total units have been deemed Eligible Dwelling Units.
- I. WORKSCOPE shall mean the entire scope of the work approved through the Low-Income Multi-Family Retrofit Program, including but not limited to materials and labor, to be performed pursuant to this Agreement and to the signed Notice to Proceed.
- J. CERTIFICATION shall mean the written and signed attestation by a Lead Agency representative that the Work Scope for a particular Eligible Dwelling Unit has been satisfactorily performed.
- K. SUBGRANTEE shall mean the contractor or vendor to which the Lead Agency has awarded the implementation of the approved energy efficiency measures.
- L. NOTICE TO PROCEED shall mean the document signed by the Lead Agency and the Owner, or authorized representative thereof, approving the Work Scope to commence. The Notice to Proceed is not signed until appropriate energy efficiency measures have been identified, evaluated and approved by the Lead Agency, including energy audit of the Eligible Project, cost-effectiveness testing of recommended measures, contractor bidding, and authorization from the Program Administrator.

ii. OWNER'S OBLIGATIONS

- A. For the period of ten years starting on the date the Notice to Proceed is signed by all parties, Owner agrees that at all times at least 50% of the total Dwelling Units in the Eligible Project will be occupied by Eligible Households. Notwithstanding the foregoing sentence, if the Building(s) to Receive Energy Efficiency Services, named above including in paragraph I.A., consist(s) of a total of fewer than 50 Dwelling Units, Owner agrees, for the period of five years starting on the date the Notice to Proceed is signed by all parties, that at all times at least 50% of the total Dwelling Units in the Eligible Project will be occupied by Eligible Households.
- B. Owner agrees that the rents in the Eligible Project shall not be raised as a result of any increase in value of the property due to this energy efficiency project.
- c. For Subsidized Eligible Dwelling Units, Owner remains able to implement normal incremental rent **increases** granted by the governing authority.
- D. Owner agrees that Eligible Dwelling Units which are designated as vacant as of the effective date of this Agreement, shall be rented to or occupied by an Eligible Household within 180 days of the Certification date. The Owner further agrees to submit, or cause to have submitted to the Lead Agency, written proof of that household's eligibility, prior to lease or occupancy of such vacant-eligible dwelling unit.
- E. Owner agrees to maintain all the energy efficient equipment and materials, including all new heating systems, installed under the LIMF Program in a manner consistent with optimum performance, save for normal wear and tear, and in conformance with all relevant codes, manuals, commissioning, and instructions regarding maintenance.

III. LEAN'S OBLIGATIONS

- A. LEAN, through the Lead Agency, agrees to install, **or cause to** have installed, the energy efficiency measures itemized in the Work Scope.
- B. LEAN, through the Lead Agency, agrees to commence, or cause to commence, the installation of energy efficiency work upon receipt of the Notice to Proceed.

IV. BREACH

In the event of a breach of this Agreement by the Owner, the Owner shall reimburse the Lead Agency in the amount equal to all costs, as certified by the Lead Agency, of all energy efficiency measures installed and labor performed on the premises, including overhead costs, as well as attorney's fees, court costs and interest at the statutory rate for judgments from the time of the breach. Owner may also be liable for damages to a tenant or applicant for tenancy, as third-party beneficiaries, in accordance with applicable law; in such instance, Owner shall reimburse tenant or applicant for tenancy for attorney' fees and court costs. Without limiting the foregoing, the Lead Agency may at its option terminate this agreement by providing written notice to the **Owner**, in the event of a breach by **Owner**.

V. INDEMNIFICATION

SUBGRANTEE shall not be held responsible or liable in any way for the failure to provide work, labor, service, or materials provided for by the terms of this Agreement by reason of federal, state or municipal requirements or regulations prohibiting the provision of such work, labor, service, or materials.

VI. EXHIBITS

All Exhibits relevant to this Agreement shall be signed by both parties and become a part of this Agreement upon signing of both parties. In the event an Exhibit or Exhibits cannot be completed at signing, provisions relating to those exhibits shall not be considered binding until such time as they are completed, signed by both parties, and attached to this Agreement.

VII. SEVERABILITY

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

The parties acknowledge that this Agreement is under seal.

Owner/Agent

Date



John Wells, Vice President, ABCD

9/16/2019

Date