

**FIRST AMENDMENT TO THE PROGRAMMATIC AGREEMENT
AMONG
THE UNITED STATES DEPARTMENT OF ENERGY, THE TEXAS HISTORICAL COMMISSION,
THE TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS, AND THE TEXAS
COMPTROLLER OF PUBLIC ACCOUNTS
REGARDING THE USE OF INTERSTATE AGREEMENTS FOR SECTION 106 REVIEW OF
EECBG, SEP AND WAP UNDERTAKINGS**

WHEREAS, on April 1, 2010 the United States Department of Energy (“DOE”), the Texas Historical Commission (“SHPO”), the Texas Department of Housing and Community Affairs (“HCA”), and the Texas Comptroller of Public Accounts (“Comptroller”) entered into a Programmatic Agreement (“PA”) in order to fulfill the requirements of Section 106 of the National Historic Preservation Act for certain DOE-funded programs, projects or undertakings in Texas; and


WHEREAS, the SHPO, HCA, and Comptroller have requested that the PA be amended to clarify its applicability to all DOE financial assistance projects under the State Energy Program (“SEP”), Weatherization Assistance Program (“WAP”), and Energy Efficiency and Conservation Block Grant (“EECBG”) Program rather than limiting its applicability only to projects funded by the American Recovery and Reinvestment Act (“ARRA”); and

WHEREAS, although the increased funding associated with ARRA was an impetus for DOE to collaborate on the development of a prototype Programmatic Agreement, DOE did not intend the executed PA to apply only to projects funded through ARRA; and


WHEREAS, this Amendment shall be effective as of April 1, 2013.

NOW THEREFORE, the undersigned signatories agree that the language, terms and conditions of this PA are applicable in their entirety to Section 106 reviews of all DOE-funded programs, projects or undertakings in Texas under the SEP, WAP and EECBG Programs.

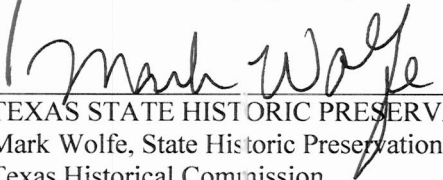
Signatories:

 Date: 9/11/13

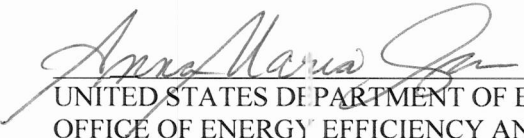
TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
Tim Irvine, Executive Director

 Date: 9/3/13

TEXAS COMPTROLLER OF PUBLIC ACCOUNTS
Martin A. Hubert, Deputy Comptroller

 Date: 8/21/13

TEXAS STATE HISTORIC PRESERVATION OFFICER
Mark Wolfe, State Historic Preservation Officer and Executive Director,
Texas Historical Commission

 Date: 9/26/13

UNITED STATES DEPARTMENT OF ENERGY
OFFICE OF ENERGY EFFICIENCY AND RENEWABLE ENERGY
OFFICE OF WEATHERIZATION AND INTERGOVERNMENTAL PROGRAMS
Anna Garcia, Program Manager

**AMENDMENT NO. 1 TO
THE MEMORANDUM OF UNDERSTANDING
BETWEEN
THE TEXAS COMPTROLLER OF PUBLIC ACCOUNTS
AND
THE TEXAS HISTORICAL COMMISSION
REGARDING EECBG AND SEP UNDERTAKINGS**

Contract No: _____

This is Amendment No. 1 (“Amendment”) to the March 9, 2010 Memorandum of Understanding (referred to hereinafter as “MOU” or “Agreement”) that was entered into by and between the Texas Comptroller of Public Accounts (“CPA”) and the Texas Historical Commission (“THC”), acting as the Texas State Historic Preservation Officer (“SHPO”), as parties pursuant to the authority granted and in compliance with the provisions of "The Interagency Cooperation Act," TEX. GOV'T CODE ANN. § 771.001, et. seq.

Recitals

Whereas, CPA, through its State Energy Conservation Office (“SECO”), received a series of grant funds via the United States Department of Energy (“DOE”) to provide for implementation of American Recovery & Reinvestment Act of 2009 (ARRA), including funds for the Energy Efficiency & Conservation Block Grants (“EECBG”) for local governments statewide and the State Energy Plan (“SEP”);

Whereas, the projects funded by these programs are undertakings subject to review under Section 106 of the National Historic Preservation Act of 1966 (NHPA), 16 USC 470f and its implementing regulations at 36 CFR Part 800, and include rehabilitation, energy efficiency retrofits, renewables, and weatherization;

Whereas, by memorandum dated August 28, 2009 (Attachment B to the MOU), DOE delegated certain tasks necessary for compliance with Section 106 of the NHPA to recipients of funding, including CPA, and authorized recipients to initiate Section 106 consultation in accordance with 36 CFR 800.2(c)(4);

Whereas, CPA has awarded EECBG and SEP grants to subrecipients responsible for work at individual properties;

Whereas, the foregoing grant subrecipients, as a condition of receipt of grant funds from the CPA, are required to comply with the provisions of the NHPA and applicable state law, including the Antiquities Code of Texas (Title 9, Chapter 191 of the Texas Natural Resource Code) and the Recorded Texas Historic Landmark and courthouse protection provisions of the Texas Government Code (Chapter 442: Texas Historical Commission, Sections 442.006 and 442.008), and related provisions, including obtaining documentation before altering or implementing changes to certain historic structures and buildings;

Whereas, DOE has determined that projects funded by these programs may have an effect on properties included in or eligible for inclusion in the National Register of Historic Places (National Register) and has consulted with THC as SHPO pursuant to the requirements of the NHPA;

Whereas, CPA and THC memorialized in the MOU the procedures, roles and responsibilities of CPA and THC applicable to subrecipients to ensure full compliance with all required laws and regulations relative to historic structures and buildings for EECBG and SEP funded through ARRA, specifically noting in

MOU Attachment A that the consultations provided by the MOU were limited to ARRA funded EECBG and SEP projects;

Whereas, in February 2010, DOE reached an understanding with the Advisory Council on Historic Preservation (“ACHP”) to standardize DOE’s compliance with NHPA Section 106, by which DOE would execute programmatic agreements with the SHPO and the relevant state agencies that administer the following three DOE weatherization related grant programs: EECBG, SEP, and the Weatherization Assistance Program;

Whereas, DOE has clarified that the obligations and tasks necessary for compliance with Section 106 of the NHPA that DOE delegated pursuant to the memorandum dated August 28, 2009 (Attachment B to the MOU) are not limited to EECBG and SEP projects funded by ARRA but extend to such programs after the expiration of the ARRA funding;

Whereas, in March of 2010, and in conjunction with the execution of the MOU, DOE, CPA, THC, acting as the SHPO, and the Texas Department of Housing and Community Affairs, executed a programmatic agreement in order for DOE to comply with its NHPA Section 106 obligations, for the three DOE weatherization programs in Texas and which by its terms expires three (3) years from the date of its execution;

Whereas, using the authority under NHPA implementing regulations at 36 CFR Part 800, on March 11, 2013, ACHP issued a program comment to extend the term of the DOE weatherization programs programmatic agreements until December 31, 2020;

Whereas, the MOU expired on August 31, 2012, but the parties have continued to operate pursuant to its provisions and now wish to formally extend the terms of the MOU;

Whereas, the MOU, as amended by this Amendment, is a zero-dollar agreement and no costs, expenses, or reimbursements of any kind shall be incurred by the undersigned parties in the course of performing the MOU, as amended, including implementation of procedures and activities under the terms of the MOU; and

Whereas, any capitalized term not defined herein shall have the meaning assigned to such term in the MOU.

Now, Therefore, in consideration of all the foregoing, CPA and THC hereby agree as follows:

I. Amendments

1. Section VII, *Term of Agreement; Termination; Amendments*, is amended by only changing the first sentence only to read as follows:

“This Agreement is effective as of the date it is signed by CPA, after having first been signed by THC, and shall terminate on December 31, 2020 unless otherwise terminated, amended or extended as set forth herein.”

2. The parties expressly acknowledge and confirm that the terms of the MOU, as amended, apply to EECBG and SEP awards made by CPA to subrecipients. In support of this intent, the MOU, Attachment A, “*Terms of Use*”, first paragraph is amended and replaced to read as follows:

“Any work item in the EECBG or SEP program that is not addressed in this list shall be subject to SHIPO consultation under Category B. This Consultation List applies only for projects funded through the EECBG or SEP programs as part of the DOE’s Energy Efficiency and Renewable Energy Program (EERE). This Consultation List is for the exclusive use of SECO and the EECBG and SEP programs and shall not apply to any other federally-funded programs. SECO is advised to document all points of its decision-making in order to demonstrate proper compliance with Section 106.”

II. Incorporation of Amendments


1. This Amendment together with the MOU represent the entire agreement between the parties concerning the subject matter of this Amendment and supersede any and all prior or contemporaneous oral or written statements, agreements, or negotiations.
2. Except as expressly amended herein, all other terms of the MOU remain unchanged, are in full force and effect, and are ratified and affirmed by the parties. By their execution and delivery of this Amendment neither party waives or releases any default hereunder.
3. In the event of conflicting language between the MOU and the language in this Amendment, the language in this Amendment shall control.

III. Authorized Signatories

The undersigned signatories represent and warrant that they have full authority to enter into this Amendment on behalf of the respective parties named below.

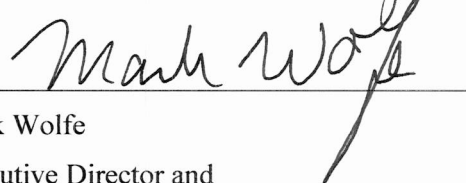
IN WITNESS WHEREOF, the parties have executed this Amendment to be effective as of August 31, 2012.

CPA:
Texas Comptroller of Public Accounts

By: 
Martin A. Hubert
Deputy Comptroller

Date: 9/3/13

THC:
Texas Historical Commission

By: 
Mark Wolfe
Executive Director and
State Historic Preservation Officer

Date: 8/21/13

**FIRST AMENDMENT TO THE INTERAGENCY AGREEMENT
BETWEEN
THE TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS AND
THE TEXAS STATE HISTORIC PRESERVATION OFFICER
REGARDING HISTORICAL PROPERTIES AFFECTED BY USE OF
DEPARTMENT OF ENERGY WEATHERIZATION ASSISTANCE PROGRAM FUNDS
July 26, 2013**

By and among the Texas Department of Housing and Community Affairs (TDHCA) and the Texas Historical Commission, acting as the Texas State Historic Preservation Officer (SHPO), regarding properties affected by use of the United States Department of Energy (DOE) *Weatherization Assistance Program* (WAP, herein called the Program), herein called the Agreement.

RECITALS

WHEREAS, parties entered into an agreement on February 10, 2010, dated/effective February 12, 2010, in order to ensure completion of certain tasks necessary for compliance with Section 106 of the NHPA to recipients of funding from the Program, including TDHCA, and authorized recipients to initiate Section 106 consultation in accordance with 36 CFR 800.2(c)(4);

WHEREAS, the parties intended to provided for the continuation of the Agreement in biennial increments; and

WHEREAS, the parties wish to make other changes to the Agreement;

Now therefore, in consideration for the mutual covenants and conditions set forth herein, including the Recitals, which are contractual in nature, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, TDHCA and SHPO hereby agree as follows:

TERMS

Section 1.

Stipulation II of the Agreement is deleted in its entirety.

Section 2.

Stipulation VI of the Agreement is amended by deleting items B and C in their entirety.

Section 3.

Stipulation X of the Agreement is replaced in its entirety with the following:

If TDHCA, TDHCA Subrecipients, and SHPO are unable to resolve any disagreement arising under the provisions of this Agreement, the Subrecipient will, unless the dispute relates to the National Register eligibility of any property, forward full documentation regarding the project and the basis for the dispute to TDHCA, who through DOE will

initiate consultation with the Advisory Council on Historic Preservation (Council) in accordance with 36 CFR 800.9.

Section 4.

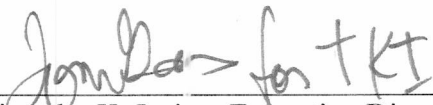
Stipulation XIIA is replaced in its entirety with the following:

This agreement shall be in effect from the date it is signed by both parties and terminate on August 31, 2013, unless prior to the termination both parties agree in writing that the term of the Agreement shall be extended to the end of the next biennium, or an earlier date. The Agreement may be extended for successive biennia in this manner. Any party to this Agreement may terminate the Agreement by providing thirty (30) days written notice to the other parties, provided that the parties consult during the period prior to the termination to seek agreement or other actions that would avoid termination.

Stipulation XIIC of the Agreement is amended by replacing the term "ARRA-funded" with the term "DOE-funded".

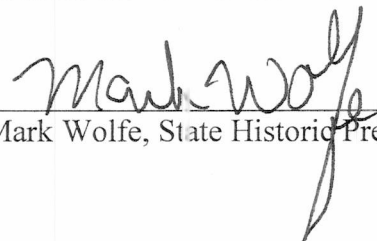
APPROVED:

Texas Department of Housing and Community Affairs (TDHCA)

By: 
Timothy K. Irvine, Executive Director

Date: August 7 2013

Texas Historical Commission acting as Texas State Historic Preservation Officer (SHPO)

By: 
Mark Wolfe, State Historic Preservation Officer

Date: 8/21/13