



Interoffice Memorandum

AGENDA ITEM

July 10, 2017

TO: Mayor Teresa Jacobs
And
Board of County Commissioners

THRU: Lonnie C. Bell, Jr., Director *DC for LCB*
Family Services Department

FROM: Debbie Aska-Graham, Program Manager *DAG*
Community Action Division

CONTACT: Debbie Aska-Graham, Program Manager
(407) 836-6516

SUBJECT: Vendor agreement for Low Income Home Energy Assistance
Program (LIHEAP)

August 1, 2017 Consent Agenda/All Districts

The Low Income Home Energy Assistance Program (LIHEAP) is a federal grant to assist low-income families and individuals whose income is at or below 150% of the Federal Poverty Level with home energy expenses. On an annual basis, federal funds are sent to the Florida Department of Economic Opportunity, which enters into a contract with the County.

LIHEAP disburses funds directly to utility companies on behalf of eligible clients. The Florida Department of Economic Opportunity requires vendor agreements with each utility company as a condition of the LIHEAP grant. The Orlando Utilities Commission participates in the program.

ACTION REQUESTED: Approval and execution of the Low-Income Home Energy Assistance Program Vendor Agreement by and between Orange County, Florida and Orlando Utilities Commission. The term of the agreement is from April 1, 2017 through March 31, 2018 with four automatic one-year renewals.

Attachments

C: Randy Singh, Assistant County Administrator
Lonnie C. Bell, Jr., Acting Director, Family Services Department
Wanzo Galloway, County Attorney's Office
John Petrelli, Manager, Risk Management
Jamille Clemens, Grants Supervisor
Patria Morales, Grant Coordinator
Yolanda Brown, Fiscal Manager

BCC Mtg. Date: Aug. 1, 2017

**LOW-INCOME HOME ENERGY
ASSISTANCE PROGRAM VENDOR
AGREEMENT**

This Low-Income Home Energy Assistant Program Vendor Agreement (hereinafter "Agreement") is entered into by and between Orange County, Florida, a charter county and political subdivision of the State of Florida ("County") and Orlando Utilities Commission (OUC). County and OUC may be referred to individually as the "Party" and collectively as the "Parties."

W I T N E S S E T H:

WHEREAS, OUC is a public utility organized under the laws of the State of Florida and is engaged in the business of providing electric service to residential, industrial and commercial customers in northern and central Florida; and

WHEREAS, the County has entered into that certain sub-grant agreement with the State of Florida, Department of Economic Opportunity ("DEO"), and has been designated as a sub-recipient to receive certain U.S. Department of Health and Human Services ("HHS") funding through the DEO under federal grant CFDA No.: 93.568 ("Grant") for the provision of LIHEAP services; and

WHEREAS, the County shall utilize funding received under the Grant (hereinafter referred to as "Grant Funds" or "Funds") to provide payment assistance for eligible individuals living in the communities located within the service area of OUC (hereinafter "Qualifying Customer" or "Customer") of their electric service bill; and

WHEREAS, the County has designated its Community Action Division ("Program Administrator") to administrate the payment of Qualified Customer electric service bills through its Low-Income Home Energy Assistance Program ("LIHEAP Program" or "Program") ; and

WHEREAS, OUC and County believe that an efficient means of administering Funds to assist Qualified Customers in paying for their electric bill is an important joint community effort that provides a higher standard of living for OUC customers; and

WHEREAS, OUC and County believe that establishing a means by which Grant Funds may be utilized to cover the costs of utility service for Qualified Customers within the community is in their mutual interest and in the interest of the communities that they serve; and

WHEREAS, OUC and County desire enter into this Agreement to set forth the terms and conditions whereby such Funds may be handled and administered efficiently in carrying out their respective obligations.

NOW THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree

as follows:

1. RECITALS. The above recitals are true and correct and incorporated herein as a material part of this Agreement.

2. ASSIGNMENT, TERM AND TERMINATION.

(a) **Assignment.** OUC shall not assign or sub-contract any of the services contemplated herein to another party without prior written approval from the County. The County reserves the right to assign or transfer its rights/duties under this Agreement to another governmental entity, without notice to OUC, if required to do so by operation of Florida law.

(b) **Term.** The term of this Agreement shall be for a period of one (1) year from the date of the last signing party, with up to four (4) automatic one (1) year renewals, unless otherwise terminated by either party.

(c) **Termination.** This Agreement may be terminated for convenience by either party upon no less than thirty (30) day written notice without cause. In the event that funding for this Agreement becomes unavailable, the County may terminate this Agreement upon twenty-four (24) hour written notice to OUC. The County shall have final authority over availability of Funds. Termination of this Agreement by either party shall comply with the notice requirements set forth in Section 10 of this Agreement.

3. CUSTOMER ELIGIBILITY.

(a) Program Administrator shall determine eligibility for the receiving of assistance under this Agreement and shall provide to OUC upon request and on a form substantially similar to the form attached to this Agreement as Exhibit "A" or through the OUC Agency Hotline (1-888-634-4354), all information used in determining eligibility and the amount of financial assistance to be provided by the County under this Agreement..

(b) OUC shall not provide any assistance under this Agreement without eligibility having first been established by the Program Administrator.

4. APPLICATION FOR ELECTRIC SERVICE. Qualified Customers applying for electric service with OUC shall be instructed to do so in their own name. Applications filed in the name of an individual that does not reside at the address, or that otherwise provides false or fraudulent information, shall be in violation of Florida law, §817.034, Florida Statutes and shall apply to both the person making the fraudulent request as well as anyone else that "cause(s) another" to transmit false information.

5. UTILITY SERVICE PAYMENT.

(a) Program Administrator shall provide payment to OUC, on behalf of the Qualified Customer, in the amount due for utility service, as indicated on Exhibit "A." The Parties acknowledge that the foregoing amount may not be the entire amount of the Qualified Customer's monthly service statement.

(b) OUC and County acknowledge that OUC is entitled, under its service tariffs approved by the Florida Public Service Commission, to receive payment for utility service within twenty (20) days of the date of OUC statement for such service. Notwithstanding the foregoing, OUC shall permit Program Administrator to submit its payment within thirty (30) days of the date of notification of the amount due for a Qualified Customer's utility service (the "Program Pay Period"). OUC shall not seek to terminate the utility service of the Customer during any such Program Pay Period so long as such Customer is designated as an eligible recipient of assistance by or through the County under this Agreement. OUC shall not seek to collect such monies that may be due for electric service from such Qualified Customer during the Program Pay Period nor shall OUC assess any late fees or charges on the Qualified Customer.

(c) In the event the Program Administrator fails to make the required payment within the established thirty (30) day Program Pay Period, OUC shall be entitled to take whatever action is deemed appropriate under the terms of its approved service tariffs. Nothing in this provision shall be deemed to be a waiver of OUC rights under its approved tariffs, or to preclude OUC from changing, modifying or otherwise amending its approved service tariffs. Further, nothing herein shall be construed to mean that OUC forfeits or surrenders its right to any unpaid portion of the monthly statement. The Qualified Customer shall remain solely liable for any unpaid portion of the monthly statement.

(d) Program Administrator may make all payments for Qualified Customers in one payment so long as the Program Administrator provides OUC sufficient information concerning the allocation of the amount paid for each respective Qualified Customer account. OUC shall properly record the receipt of such payment against the amounts due for each of the Qualified Customers and shall make available evidence of such payment records to the County upon request. Program Administrator may utilize OUC forms provided for this purpose.

(e) **ALL OF THE AFORESAID PAYMENTS BY COUNTY SHOULD BE MAILED DIRECTLY TO:**

**OUC
P.O. BOX 31329
TAMPA, FL 33631-3329**

6. INDEMNIFICATION.

Each party agrees to defend, indemnify and hold harmless the other party, its officials and employees from all claims, actions, losses, suits, judgments, fines, liabilities, costs and expenses (including attorneys' fees) attributable to its negligent acts or omissions, or those of its officials and employees acting within the scope of their employment, or arising out of or resulting from the indemnifying party's negligent performance under this Agreement. Nothing contained herein shall constitute a waiver of sovereign immunity or the provisions of Section 768.28, Florida Statutes. The foregoing shall not constitute an agreement by either party to assume any liability for acts, omissions and/or negligence of the other party.

7. RECORDS MANAGEMENT.

(a) OUC shall retain copies of all records relating to this Agreement (collectively referred to as "Records") for a period of five (5) years after termination of this Agreement. In the event of litigation, claim or audit findings, the Records retention period shall be for the period of five (5) years from the time of resolution of the litigation, claim, or audit findings.

(b) Should OUC dissolve or otherwise terminate this Agreement without the capability of retaining the Records, as required herein, all Records from OUC shall be transferred to the County. OUC shall strictly adhere to the Records retention requirements set forth in this Agreement.

(c) OUC shall provide full access of all records to the Program Administrator, County, representatives of the DEO, the Chief Financial Officer of the State of Florida, the Auditor General of the State of Florida, the Florida Office of Program Policy Analysis and Government Accountability, or representatives of the federal government, and their duly authorized representatives for the purposes of conducting audits, examinations, investigations, or making excerpts or transcriptions.

8. CONFIDENTIALITY.

(a) In accordance with Florida Statutes, OUC shall take reasonable measures to protect and secure data in electronic form containing any personal information retained in the performance of services relating to this Agreement. Personal information shall mean an individual an individual's first name or first initial and last name in combination with any of the following:

- (1) a social security number;
- (2) a driver's license or identification card number, passport number, military identification number, or other similar number issued on a government document used to verify identity;
- (3) a financial account number or credit or debit card number in combination with any required security code, access code, or password that is necessary to permit access to an individual's financial account;

(4) any information regarding an individual's medical history, mental or physical condition, or medical treatment or diagnosis by a health care professional; or

(5) an individual's health insurance policy number or subscriber identification number and a unique identifier used by a health insurer to identify the individual.

(b) Personal information shall include a user name or e-mail address, in combination with a password or security question and answer that would permit access to an online account.

(c) OUC shall take reasonable measures to protect and secure data in electronic form containing the personal information, identified in this section (collectively hereinafter referred to as "Personal Information"), that OUC has been contracted to maintain, store, or process on behalf of the County or Program Administrator, in accordance with the requirements of this section.

(d) OUC shall provide notice to the County as expeditiously as possible, but no later than forty-eight (48) hours, following the determination of the breach, or reasonable suspicion of a breach, of any system containing data in the electronic form that OUC has been contracted to maintain, store, or process on behalf of the County. Breach shall mean any unauthorized access of data in electronic form regardless of its source.

(e) Notice of such breach to the County shall include the following:

(1) a synopsis of the events surrounding the breach including the date(s) or date range of the breach of security;

(2) the number of individuals who were or potentially have been affected by the breach;

(3) a description of the Personal Information that was accessed or reasonably believed to have been accessed as part of the breach of security;

(4) the name, address, telephone number, and e-mail address of the employee, agent, or contractor from whom additional information may be obtained concerning the breach; and

(5) any additional information requested by the Program Administrator.

9. PUBLIC RECORDS COMPLIANCE REQUIREMENTS.

(a) OUC shall comply with the Florida State public records law and shall maintain all public records required by the County for services performed under this Agreement.

(b) Upon request from the County or Program Administrator, OUC shall provide copies of all requested records or allow the records to be inspected or copied within a reasonable time, at a cost that does not exceed the cost provided by the Florida Statutes.

(c) OUC shall ensure that all records which are exempt or confidential, and exempt from public records disclosure requirements, are not disclosed except as authorized by law for the duration of this Agreement and following completion of this Agreement if OUC does not transfer the records back to the Program Administrator or County.

(d) In the event OUC fails to comply with the public records law requirements, OUC may be subject to penalties under Section 119.10, Florida Statutes.

(e) IF OUC HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, AS TO OUC'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, OUC SHALL CONTACT COUNTY'S CUSTODIAN OF PUBLIC RECORDS AT:

**Procurement Public Records Liaison
400 E. South Street, 2nd Floor, Orlando, FL 32801
ProcurementRecords@ocfl.net, 407-836-5897**

10. NOTICE.

(a) Notwithstanding anything herein to the contrary, no party shall be considered in default for failure to perform the terms and conditions hereof unless said party shall have first received written notice specifying the nature of such failure and party fails to cure the same within the time specified in such notice.

(b) Any notice required or permitted hereunder shall be delivered by hand delivery, express Courier, or certified mail, return receipt requested, and shall be effective upon receipt of the same. Notices shall be delivered to each of the parties at the following addresses or such other addresses as specified by written notice in compliance with the terms of this paragraph.

As to County: Orange County, Florida
Attn: Manager, Community Action Division
2100 East Michigan Street
Orlando, Florida 32806

Copy to: Orange County, Florida
Attn: County Administrator
P.O. Box 1393
Orlando, Florida 32802-1393

Copy to: Orange County, Florida
Attn: Manager, Procurement Division
P.O. Box 1393
Orlando, Florida 32802-1393

At to OUC: OUC
Orlando Utilities Commission
3800 Gardenia Ave
Orlando, FL 32839

11. PROGRAM MONITORING. OUC shall comply with the most recent LIHEAP Program Monitoring Field Manual provided by DEO and cooperate with any monitoring procedures/ processes deemed appropriate by the DEO and any additional instructions as may be deemed appropriate by the DEO and County, as applicable.

12. GOVERNING LAW & VENUE.

(a) This Agreement and the provisions contained herein shall be governed by and construed in accordance with the laws of the State of Florida. THE PARTIES EXPRESSLY WAIVE ALL RIGHTS TO TRIAL BY JURY IN ANY ACTION BROUGHT HEREUNDER.

(b) All claims, controversies, or disputes arising out of this Agreement shall be settled as required by this Agreement or by law in the Ninth Judicial Circuit, Orange County, Florida.

13. ENTIRE AGREEMENT.

(a) This Agreement contains the entire understanding between the Parties with respect to the subject matter hereof and supersedes any prior or contemporaneous agreement or understanding between the Parties.

(b) Any amendments, alterations, variations, modifications, or waivers of provisions of this Agreement shall only be valid when reduced to writing, duly signed by both parties, and attached to this Agreement.

(c) The parties agree to renegotiate this Agreement if revisions of any applicable law or regulation make changes in this Agreement necessary.

14. NO PARTNERSHIP OR AGENCY. Nothing in this Agreement is intended to, or shall be construed in any manner, as creating or establishing the relationship of principal/agent, employer/employee, or joint venture partnership between the County and OUC.

15. CIVIL RIGHTS REQUIREMENTS.

(a) There shall be no discrimination against any employee, Customer, or person served on account of race, color, sex, age, religion, ancestry, national origin, handicap, or marital status in the performance of this Agreement.

(b) OUC shall comply with Title VI and Title VII of the Civil Rights Act of 1964 (Section 42 USC 2000(d) and Section 42 USC 2000(e), respectively) and Section 504 of the Rehabilitation Act of 1973.

(c) Evidence of OUC's violation of the requirements set forth in this Section shall constitute a breach of this Agreement and possible termination.

16. AUDITING. The Orange County Comptroller, or its authorized designee, shall have the right to audit OUC's use of the Funds disbursed under this Agreement, from time to time, for compliance with the terms, conditions, and obligations set forth herein. OUC shall provide full access to all records, documents, and information, whether paper or electronic data, necessary to perform such audits.

17. DEBARMENT AND SUSPENSION.

(a) An executive order was signed by the President directing federal agencies to ensure that federal agencies and any state or other agency receiving federal funds are not contracting or awarding grants to persons, organizations, or companies who have been excluded from participating in federal contracts or grants. This process is to avoid the consequences of contracting with agencies that have been debarred from receiving federal funds as stipulated in Executive Order 12549.

(b) The County will ensure that debarment checks are conducted prior to contracting with any agency and annually thereafter. OUC shall provide to the County with a Dun & Bradstreet Identifier in order to ascertain debarment status. In the event OUC is found to have violated any of the provisions described in Executive Order 12549, and in accordance with Section 17-314 of the Orange County Code, OUC may be suspended or permanently debarred from the right to be included on the vendor list as well as having any submitted bid or response from OUC rejected.

(c) OUC shall notify the County if it is on the Convicted Vendor List identified in Section 287.133(2), Florida Statutes, or the Discriminatory Vendor List identified in Section 287.134(2), Florida Statutes.

18. EMPLOYMENT ELIGIBILITY VERIFICATION. In accordance with Executive Order 11-116, signed May 27, 2011, by the Governor of Florida, OUC shall utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by OUC during the term of this Agreement.

19. SEVERABILITY.

The provisions of this Agreement are declared by the parties to be severable. However, the material provisions of this Agreement are dependent upon one another, and such interdependence is a material inducement for the parties to enter into this Agreement. Therefore, should any material term, provision, covenant or condition of this Agreement be held invalid or unenforceable by a court of competent jurisdiction, the party protected or benefited by such term,

provision, covenant, or condition may demand that the parties negotiate such reasonable alternate contract language or provisions as may be necessary either to restore the protected or benefited party to its previous position or otherwise mitigate the loss of protection or benefit resulting from the holding

20. HEADINGS. The descriptive headings used throughout this Agreement are formulated and used for reference purposes only and are in no way to be construed as a limitation of the scope of the particular section to which they refer. In case of a conflict between a heading and the content of a section, the content shall control the meaning.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the dates set forth below.



ORANGE COUNTY, FLORIDA

By: Orange County Board of County Commissioners

By: *Teresa Jacobs*
Teresa Jacobs
Orange County Mayor

Date: 8.1.17

ATTEST: Phil Diamond, CPA, County Comptroller
As Clerk of the Board of County Commissioners

By: *Katie Smith*
Deputy Clerk

ORLANDO UTILITIES COMMISSION

By: *Ron Nelson*
Signature

Printed Name: Ron Nelson
Title: Director, Residential Customer Service
Date: 7/5/17

Approved as to form and legal
OUC Legal Department
DATE: 6/30/17 BY: *[Signature]*